

112th CONGRESS

1st Session

**H. R. 1837**

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

**IN THE HOUSE OF REPRESENTATIVES**

**May 11, 2011**

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

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**A BILL**

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

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'San Joaquin Valley Water Reliability Act'.

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

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## **TITLE I--CENTRAL VALLEY PROJECT IMPROVEMENT ACT REFORMS**

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

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

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

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

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

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

Section 3403(a) of the Central Valley Project Improvement Act (106 Stat. 4707) is amended to read as follows:

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

## **SEC. 103. LIMITATION ON CONTRACTING AND CONTRACT REFORM.**

Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4710) is amended by striking the language of the section and by adding:

`(a) Renewal of Existing Long-Term Contracts- Upon request of the contractor, the Secretary shall renew any existing long-term repayment or water service contract that provides for the delivery of water from the Central Valley Project for a period of 40 years, and renew such contracts for successive periods of 40 years each.`

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

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

Section 3405 of the Central Valley Project Improvement Act (106 Stat. 4710) is amended as follows:

(1) In subsection (a)--

(A) by inserting before `Except as provided herein' the following: `The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with such Act or any other provision of law.';

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

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

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

`(F) Except as provided in this section, the Secretary shall not impose mitigation or other requirements on a proposed transfer, but the contracting district from which the water is coming or the

agency shall retain all authority under State law to approve or condition a proposed transfer.'; and

(D) by adding at the end the following:

`(4) Notwithstanding any other provision of law--

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

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

(2) In subsection (b)--

(A) in the heading, by striking `Metering' and inserting `Measurement'; and

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

(3) By striking subsection (d).

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

(5) By amending subsection (e) (as redesignated by paragraph (4)) to read as follows:

`(e) Restoration Fund- All revenues received by the Secretary that exceed the cost-of-service rate applicable to the delivery of water transferred from irrigation use to municipal and industrial use under subsection (a) shall be deposited into the Restoration Fund, as established under section 3407.'.

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

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

(1) In subsection (b)--

(A) in paragraph (1), by amending subparagraph (B) to read as follows:

`(B) MODIFICATION OF PROGRAM-

`(i) IN GENERAL- As needed to achieve the goals of the program established under this paragraph, the Secretary may modify Central Valley Project operations to provide reasonable water flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish. Such flows shall be provided--

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

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

`(III) from other sources that do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes.

`(ii) INSTREAM FLOW NEEDS- Reasonable instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the United States Fish and Wildlife Service and the National Marine Fisheries Service after consultation with the United States Geological Survey.';

(B) by amending paragraph (2) to read as follows:

`(2) upon October 30, 1992, dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the purposes of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by such Act; assisting the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and helping to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following October 30, 1992, including additional obligations under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). For the purpose of this section, the term `Central Valley Project yield' means the delivery capability of the Central Valley Project during the 1928 to 1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, have been met. All Central Valley Project water used for the purposes specified in this paragraph shall be credited to the quantity of Central Valley Project yield dedicated and managed under this paragraph by determining how the dedication and management of such water would affect the delivery capability of the Central Valley Project during the 1928 to 1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, have been met. To the fullest extent possible and in accordance with section 3411, Central Valley Project water dedicated and managed pursuant to this paragraph shall be reused to fulfill the Secretary's remaining contractual obligations to provide Central Valley Project water for agricultural or municipal and industrial purposes.'; and

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

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

(2) By adding at the end the following:

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

## SEC. 106. RESTORATION FUND.

Section 3407 of the Central Valley Project Improvement Act (106 Stat. 4714) is amended as follows:

(1) By amending subsection (a) to read as follows:

`(a) Restoration Fund Established-

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

`(2) PROHIBITION- The Secretary may not--

`(A) directly or indirectly require a donation or other payment to the Restoration Fund, or environmental restoration or mitigation fees not otherwise provided by law, as--

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

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

`(B) require a donation or other payment to the Restoration Fund for any water that is delivered with the sole intent of groundwater recharge.

`(3) USE OF CERTAIN AMOUNTS- The Secretary shall use the amounts collected pursuant to section 3406(c)(1)--

`(A) to assist in improving water quality, riparian values, and fish habitat in the San Joaquin River from Friant Dam to Mendota Pool; or

`(B) to support other projects benefitting land within the Friant Division.

`(4) CERTAIN USE OF RESTORATION FUND- Except as provided under paragraph (1), funds deposited into the Restoration Fund may be appropriated for the acquisition of water supplies and the construction of facilities used to implement projects or programs undertaken pursuant to section 3408(j).'

(2) In subsection (c), by amending paragraph (1) to read as follows:

`(1) To the extent required in Acts of appropriation, the Secretary shall assess and collect additional annual payments, in addition to the charges collected under sections 3404(c)(3), 3405(a)(1)(C), 3405(f), and 3406(c)(1), 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 carrying out

programs, projects, plans, habitat restoration, improvement, and acquisition provisions of this title.'.

(3) By adding at the end the following:

`(g) Report on Expenditure of Funds- At the end of each fiscal year, the Secretary, in consultation with the Restoration Fund Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year. Such plan shall contain a cost effectiveness analysis of each expenditure.

`(h) Advisory Board-

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

`(2) DUTIES- The duties of the Advisory Board are as follows:

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

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

`(C) Not later than December 31, 2012, and annually thereafter, to transmit to the Secretary and Congress recommendations required under subparagraph (A).

`(D) Not later than December 31, 2012, and biennially thereafter, to transmit to Congress a report that details the progress made in achieving the goals of the Restoration Fund as identified in this Act.

`(3) ADMINISTRATION- With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency. Non-Federal members of the Advisory Board, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence under section 5703 of title 5, United States Code. Funds from the Restoration Fund may be used to carry out this paragraph.

`(4) FACA- The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.'.

## **SEC. 107. ADDITIONAL AUTHORITIES.**

(a) Authority for Certain Activities- Section 3408(c) of the Central Valley Project Improvement Act (106 Stat. 4728) is amended to read as follows:

`(c) Contracts for Additional Storage and Delivery of Water-

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

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

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

`(4) RATES-

`(A) IN GENERAL- 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.

`(B) REDUCTION IN OPERATIONS AND MAINTENANCE- Any payment received in connection with the use of Central Valley Project facilities shall be applied to reduce the current-year operations and maintenance expenses, otherwise payable by Central Valley Project contractors, for such facilities used.

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

(b) Reporting Requirements- Section 3408(f) of the Central Valley Project Improvement Act (106 Stat. 4729) is amended--

(1) by striking 'Interior and Insular Affairs and Merchant Marine and Fisheries' and inserting 'Natural Resources';

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

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

(c) Project Yield Increase- Section 3408(j) of the Central Valley Project Improvement Act (106 Stat. 4730) is amended to read as follows:

`(j) Project Yield Increase-

`(1) PLAN REQUIRED- In order to minimize adverse effects upon existing Central Valley Project water contractors resulting from the water dedicated for fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary, on a priority basis and not later than September 30, 2012, shall submit to Congress a least-cost plan to increase, as soon as possible but not later than September 30, 2016 (except for the construction of new facilities which shall not be limited by that deadline), the water of the Central Valley Project by the amount dedicated and managed for fish and wildlife purposes under this title and otherwise required to meet the purposes of the Central Valley Project including satisfying contractual obligations.

`(2) CONTENTS OF PLAN- The plan required by paragraph (1) shall include--

`(A) recommendations on appropriate cost-sharing arrangements and authorizing legislation or other measures needed to implement the intent, purposes, and provisions of this subsection; and

`(B) a description of how the Secretary intends to use the following options:

`(i) Improvements in, modification of, or additions to the facilities and operations of the project and construction of new water storage facilities.

`(ii) Conservation.

`(iii) Transfers.

`(iv) Conjunctive use.

`(v) Purchase of water.

`(vi) Purchase and idling of agricultural land.

`(vii) Direct purchase of water rights.

`(viii) Water banking and recharge.

`(3) IMPLEMENTATION OF PLAN- Subject to the availability of appropriated funds, the Secretary shall implement the plan required by paragraph (1) commencing on October 1, 2012. 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.

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

(d) Technical Correction- Section 3408(h) of the Central Valley Project Improvement Act (106 Stat. 4729) is amended--

(1) in paragraph (1), by striking `paragraph (h)(2)' and inserting `paragraph (2)'; and

(2) in paragraph (2), by striking `paragraph (h)(i)' and inserting `paragraph (1)'.

## **SEC. 108. COMPLIANCE WITH ENDANGERED SPECIES ACT OF 1973.**

### **(a) Compliance-**

(1) IN GENERAL- All requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be considered to be fully met for the protection and conservation of the species listed pursuant to the Act for the operations of the Central Valley Project and the California State Water Project, if the Central Valley Project and the California State Water Project 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' dated December 15, 1994.

(2) BIOLOGICAL OPINIONS AND MODIFICATION- The Secretary of the Interior and the Secretary of Commerce shall issue biological opinions for coordinated operations of the Central Valley Project and the California State Water Project that are no more restrictive than provisions of the `Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government' dated December 15, 1994. Such biological opinions may be modified only with the consent of the signatories to the `Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government' dated December 15, 1994.

### **(b) Preemption of State Law-**

(1) STATE LAW PREEMPTION- Neither the State of California, an agency of the State, nor any political subdivision of the State shall adopt or enforce any requirement for the protection or conservation of any species listed under the Endangered Species Act for the operations of the Central Valley Project or the California State Water Project that is more restrictive than the requirements of this section. Any provision of California State law that authorizes the imposition of conditions or restrictions on the operations of the Central Valley Project or the California State Water Project for the protection or conservation of a species that is more restrictive than this section is preempted.

(2) NATIVE SPECIES PROTECTION- Any restriction imposed under California law on the take or harvest of any nonnative or introduced aquatic or terrestrial species that preys upon a native fish species that occupies the Sacramento and San Joaquin Rivers and their tributaries or the Sacramento-San Joaquin Rivers Delta shall be void and is preempted.

## **SEC. 109. AUTHORIZED SERVICE AREA.**

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

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

Nothing in this title shall affect the Secretary's duty to operate the Central Valley Project in a manner consistent with applicable provisions of State water law protecting any area of origin, watershed of origin, county of origin, or any other water rights, such as senior appropriative rights, including rights appropriated prior to December 19, 1914.

## **SEC. 111. WATER STORAGE.**

The Secretary, acting through the Commissioner of the Bureau of Reclamation, may provide funds authorized to be appropriated to the surface 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 of that Act, to 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 those projects.

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

### **SEC. 201. REFERENCE.**

Subtitle A of title X of Public Law 111-11 is hereby repealed.

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

Notwithstanding section 8 of the Reclamation Act of 1902, except as provided herein, this title preempts and supersedes any State law, regulation, or requirement that imposes more restrictive requirements or regulations on the activities authorized under such title. Provided nothing herein shall exempt the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project from orders issued by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000 et seq.).

### **SEC. 203. REPEAL OF THE SAN JOAQUIN RIVER SETTLEMENT.**

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

### **SEC. 204. SATISFACTION AND DISCHARGE OF OBLIGATIONS.**

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

(1) Those of the Secretary contained in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575), except that the Secretary shall continue to assess and collect the charges described in such section 3406(c)(1).

(2) Those of the Secretary and all other parties to protect and keep in good condition any fish that may be planted or exist below Friant Dam, including any obligations under section 5937 of the California Fish and Game Code and the public trust doctrine.

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

(a) Purpose- The purpose of this section is to implement a program of increased water releases from Friant Dam to address environmental, habitat, fisheries, and water quality concerns on the San Joaquin River from Friant Dam to Sack Dam.

(b) Definitions- For the purposes of this section:

(1) RESTORATION FLOWS- The term `Restoration Flows' means the minimum flow of 50 cubic feet per second at Sack Dam, located approximately 85 river miles downstream from Friant Dam.

(2) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(3) WATER YEAR- The term `Water Year' means October 1 through the following September 30.

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

(d) Release of Restoration Flows- In each Water Year, commencing in the Water Year starting on October 1, 2012, the Secretary--

(1) shall modify Friant Dam operations so as to release the Restoration Flows for that Water Year, except in any critical water year;

(2) shall ensure that the release of Restoration Flows are maintained at the levels prescribed by this section;

(3) shall release the Restoration Flows in a manner that improves the fishery in the San Joaquin River below Friant Dam, but upstream of Gravelly Ford in existence as of the date of the enactment of this section, and the associated riparian habitat, while improving water quality in the San Joaquin River at Vernalis and achieving such other environmental benefits as the Secretary may reasonably determine; and

(4) may, without limiting the actions required under paragraphs (1) through (3) and subject to subsection (m), use the Restoration Flows to enhance or restore a warm water fishery if the Secretary determines that it is reasonable, prudent, and feasible to do so.

(e) Effect on Existing Obligations- Except as described in subsection (f), nothing in this section shall modify any existing obligation of the United States under Federal Reclamation law to operate the Central Valley Project in conformity with State law and existing or to be renewed water service, repayment, purchase, or exchange contracts.

(f) Recovery of Restoration Flows- Not later than 1 year after the date of the enactment of this section, the Secretary shall develop and implement a least-cost plan to fully recover or replace all Restoration Flows and provide such recovered or replacement flows to those water service contractors

within the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project that relinquished the Restoration Flows so recovered or replaced. Such a program shall not impact the water supply or water rights of any entity outside the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project.

(g) Groundwater Impact Plan-

(1) IN GENERAL- Not later than 1 year after the date of the enactment of this section, the Secretary, in cooperation with representatives of affected landowners, shall develop and implement a least-cost plan to fully mitigate the impact on groundwater resources within the service area of the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project caused by the release of Restoration Flows.

(2) MITIGATION- The mitigation required under paragraph (1) may include one or more of the following: the development of new water supplies, land retirement, and groundwater banking and recharge projects. To the extent Restoration Flows are recovered or replaced pursuant to subsection (g) in a manner that mitigates the impact on groundwater resources caused by the release of Restoration Flows, such recovery or replacement may be considered to be a part of the plan to be implemented under this subsection.

(h) Private Rights of Action- Nothing in this section shall confer upon any person or entity a private right of action or claim for relief to interpret or enforce the provisions of this section. Any Central Valley Project long-term water service or repayment contractor within the Friant Division, Hidden Unit, or Buchanan Unit adversely affected by the Secretary's failure to comply with subsection (f) or (g) may bring an action against the Secretary for injunctive relief or damages, or both. Any action for damages shall be brought in the United States Court of Federal Claims.

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

(j) Priority-

(1) IN GENERAL- All actions taken under this section shall be subordinate to the Secretary's use of Central Valley Project facilities to make Project water, other than water released from the Friant Dam pursuant to this section, and the Secretary's performance of the Agreement.

(2) DEFINITION OF AGREEMENT- For the purposes of this subsection, the term `Agreement' means the Agreement of November 24, 1986, between the United States and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project as authorized by section 103 of Public Law 99-546, including any agreement to resolve conflicts arising from that Agreement.

## **SEC. 206. RESTORATION FUND.**

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

- (1) All payments received pursuant to section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721).
- (2) Any non-Federal funds, including State cost-sharing funds, contributed to the United States for this purpose.
- (3) Funds in the San Joaquin River Restoration Fund, (Public Law 111-11 section 10009(c)(1)), on the day before the date of the enactment of this Act.

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

After the date of the enactment of this title, the Secretary 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.

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

### **SEC. 301. REPAYMENT CONTRACTS AND ACCELERATION OF REPAYMENT OF CONSTRUCTION COSTS.**

#### **(a) Conversion of Contracts--**

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

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

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

(A) require the repayment, either in lump sum or by accelerated prepayment, of the remaining amount of construction costs identified in the most current version of the Central Valley Project Schedule of Irrigation Capital Allocations by Contractor, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor, no later than January 31, 2013, or if made in approximately equal annual installments, no later than January 31, 2016; such amount to

be discounted by 1/2 the Treasury Rate. An estimate of the remaining amount of construction costs as of January 31, 2013, as adjusted, shall be provided by the Secretary of the Interior to each contractor no later than 180 days after enactment;

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

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

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

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

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

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

(c) Applicability of Certain Provisions-

(1) Notwithstanding any repayment obligation under subsection (a)(3)(B) or subsection (b), upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs as provided in subsection (a)(3)(A), the ownership and full-cost pricing limitations of any provision of

Federal Reclamation Law shall not apply to lands in such district.

(2) Notwithstanding any repayment obligation under paragraph (3)(B) or paragraph (4)(B) of subsection (a), or subsection (b), upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs as provided in paragraphs (3)(A) and (4)(A) of subsection (a), the Secretary of the Interior shall waive the pricing provisions of section 3405(d) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575) for such contractor, provided that such contractor shall continue to pay applicable operation and maintenance costs and other charges applicable to such repayment contracts pursuant to the then-current rate-setting policy and applicable law.

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

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

*END*