



SAN JOAQUIN COUNTY

# FLOOD CONTROL & WATER CONSERVATION DISTRICT

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KRIS BALAJI  
DIRECTOR OF PUBLIC WORKS

## ADVISORY WATER COMMISSION

June 21, 2017, 1:00 p.m.

Public Health Conference Room, 1601 E. Hazelton Avenue, Stockton, California

### AGENDA

- I. Roll Call
- II. Approve Minutes for the Meeting of May 17, 2017
- III. Discussion/Action Items:
  - A. H.R. 23 “Gaining Responsibility on Water Act of 2017” (See Attached) – Brandon Nakagawa
  - B. Presidential 2017 Winter Storm Disaster – Michael Cockrell
  - C. Lower San Joaquin River Feasibility Study Update – Roger Churchwell
  - D. Spring 2017 Groundwater Monitoring Report – Gerardo Dominguez
  - E. Flood and Water Projects – Open Forum
- IV. Informational Items (See Attached):
  - A. June 6, 2017, lodinews.com, “Fish and Wildlife Accepting Proposals for Grant Programs”
  - B. June 8, 2017, circleofblue.org, “California Hones Drinking Water Affordability Plan”
  - C. June 12, 2017, sfchronicle.com, “12 Dead This Season in Torrential Sierra Snow Melt, Yosemite’s Merced, Other CA Rivers Dangerous”
  - D. June 13, 2017, sacbee.com, “Why Years of Waiting May Be over on Delta Tunnels”
  - E. June 13, 2017, Delta Counties Coalition Letter of Support of Assembly Bill 732 (Frazier), Delta Levee Maintenance (as Amended on May 23, 2017)
  - F. June 15, 2017, Delta Counties Coalition Letter to Mr. John Watts, Office of Senator Dianne Feinstein
- V. Public Comment:
- VI. Commissioners’ Comments:
- VII. Adjournment:

**Next Regular Meeting**  
**July 19, 2017, 1:00 p.m.**  
Public Health Conference Room

*Commission may make recommendations to the Board of Supervisors on any listed item.*

If you need disability-related modification or accommodation in order to participate in this meeting, please contact the Water Resources Staff at (209) 468-3089 at least 48 hours prior to the start of the meeting. Any materials related to items on this agenda distributed to the Commissioners less than 72 hours before the public meeting are available for public inspection at Public Works Dept. Offices located at the following address: 1810 East Hazelton Ave., Stockton, CA 95205. These materials are also available at <http://www.sjwater.org>. Upon request these materials may be made available in an alternative format to persons with disabilities.

**REPORT FOR THE MEETING OF  
THE ADVISORY WATER COMMISSION OF THE SAN JOAQUIN COUNTY  
FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
May 17, 2017**

The regular meeting of the Advisory Water Commission of the San Joaquin County Flood Control and Water Conservation District was held on Wednesday, May 17, 2017, beginning at 1:00 p.m., at Public Health Services, 1601 E. Hazelton Avenue, Stockton, California.

**Roll Call**

Present were Commissioners Nomellini, Roberts, Murken, Swimley, de Graaf, Holman, Alternate Reyna-Hiestand, Commissioners Winn, Holbrook, Alternate Heberle, Commissioners Hartmann, Meyers, Neudeck, Secretary Nakagawa, and Vice-Chair Price.

Others present are listed on the Attendance Sheet. The Commission had a quorum.

**Approval of Minutes for the Meeting of March 15, 2017.**

Motion and second to approve the minutes of March 15, 2017 (Nomellini/Holbrook). Unanimously approved.

**SCHEDULED ITEMS**

Willard Price, Vice-Chairman of the Advisory Water Commission (AWC), led the agenda.

**I. Discussion Items:**

**A. Presentation on the San Joaquin County Flood Control and Water Conservation District 2017 Flood Response – Matthew Ward**

Mr. Matthew Ward, San Joaquin County Public Works – Engineer IV, gave an update on the San Joaquin Flood Control and Water Conservation District (District) activities during the month of January and February 2017. The District maintains an area encompassing 106 miles of levees that provide flood protection to the Stockton area including the Bear Creek System, the Calaveras System, Diverting Canal, Duck Creek, and Littlejohns Creek. Mr. Ward stated that the District fared well in comparison to other reclamation districts during the winter storm season. Water levels were high but overtopping did not occur. While there were no reported levee breaks, there were a few areas with localized ponding and/or flooding in which the District provided assistance.

Mr. Ward's presentation highlighted five areas of interest in which the District was highly engaged, including:

1. Acampo
2. Mokelumne River
3. Upper Calaveras River
4. Howard Road at the San Joaquin River
5. Corral Hollow Creek

- 1) Acampo – This area is located between Galt and Lodi (south) and issues included ponding water, road closures, and flooded structures. Mr. Ward presented slides displaying flooded

yards and vineyards, a road washout at Kennefick Road north of Liberty Road, and flooding at both Dustin Road, and Cooper's Corner.

Cooper's Corner, located at Acampo Road and Highway 99, experienced a high concentration of water and flooding occurred in three homes, Houston Elementary School, and a store parking lot. The County created a diversion system with mobile pumps draining water to the Caltrans ditch. He added it was a complex operation with assistance from County Road Maintenance and Channel Maintenance crews.

In response to these recent activities in Acampo, the County is working with Kjeldsen, Sinnock and Neudeck, Inc. (KSN) to create short-term and long-term flood contingency plans, broken into Phases 1, 2 and 3, to address flooding within the area. An image was displayed showing the completed Phase I of the Flood Contingency Plan which depicted the immediate needs to set up temporary pumps and drainage lines based on 3 priority levels: Priority 1) Place pump and appurtenances at northeast corner of Acampo Road and Brandywine Road; Priority 2) If Priority 1 does not prevent flooding, place pump and appurtenances at northwest corner of intersection at Acampo Road and N. 99 Frontage Road (includes homes and market); and, Priority 3) If Priorities 1 and 2 do not prevent flooding, place pump and appurtenances at inlet in front of Houston Elementary School. He added Phase 2 and Phase 3 of the project will entail long-term solutions with consideration being given to utilizing groundwater recharge opportunities. The District will be applying for Federal Emergency Management Agency (FEMA) hazard mitigation grants to address funding for these projects.

Vice-Chair Price asked if there was a plan in place to divert the water, or if the District and locals were unprepared for the heavy rainfall. Mr. Ward responded that there was no set plan aside from the emergency mobile pump as a solution to the flooding. Mr. Ward added that Acampo drainage issues trace back to the 1950s including historical reports of drainage assessment districts being established in the area. A study conducted in 2004 by RBF Engineering concluded that the cost for improvements (\$5-11 million) could neither have been absorbed by the number of property owners who would benefit, nor were they willing to pay.

Vice-Chair Price asked if the District or the County could be held liable for any damages incurred in the Acampo area. Mr. Kris Balaji, San Joaquin County Public Works – Director, interjected and stated the answer is no. The County is responsible for protecting the public infrastructure. The amount of water that entered due to changes in land use (i.e., vineyards) contributed to increased runoff and the County acted to protect the public's safety. He reiterated that homeowners have been aware of their property flooding issues since the 1950s and the aforementioned studies concluded potential projects for the area: 1) water diversion; 2) hold flows – release later; and, 3) groundwater recharge. Mr. Balaji said costs would have been exorbitant and projects were put on hold. Future activities will address Sustainable Groundwater Management Act (SGMA) issues, as well as projects to address flooding and recharge. Mr. Ward added that in the last five years, the San Joaquin County Community Development Department has been regulating development in historical floodplains in Acampo. New residences are required to elevate their finished floors two feet above the highest adjacent grade.

Commissioner Neudeck asked where the flow ends up that is diverted north into the Caltrans right-of-way. Mr. Balaji responded it is not a Caltrans right-of-way and said the ditch being used was a Caltrans road at one time, but is now a County road. Mr. Ward clarified the water flows north to Peltier Road, then west under the freeway, then into Gill Creek. He stated a condition that contributed to the flooding, and first recorded in 2004, is that Gill Creek was graded over

and filled in over the years. Mr. Fritz Buchman, San Joaquin County Public Works – Deputy Director, concurred and added that one of the main reasons the Acampo area has flooded every 20-30 years since the 1950s is that Gill Creek has been gradually filled in by adjacent property owners. Mr. Ward stated Phase 2 entails a permanent solution of Phase 1 by putting in drainage pipes in the roadway. KSN has drawn the preliminary design of Phase 1 and the County will work on the final design.

- 2) Mokelumne River – There are no reclamation districts along the Mokelumne River until Thornton, which is located in Reclamation District 348. During the months of January and February, numerous calls were received from homeowners along the Mokelumne River to report levee breaks and request assistance. This system is not maintained by the County or the Army Corps of Engineers, but rather private levees built by farmers. The County does not have a maintenance obligation of the levees but did conduct site visits and advised. In addition, property owners were referred to the California Department of Water Resources (DWR) Flood Operations Center, who provided financial and personal assistance to some landowners along the Mokelumne River.

Vice-Chair Price commented that the area contains a floodplain that was intended to be flooded. Mr. Ward concurred and added that FEMA has a floodway along the Mokelumne and DWR has a regulatory floodway, but the levees are not maintained by any reclamation district. In addition, County ordinance prohibits any development in the floodway. The County cleared fallen trees in the District's Flood Channel Maintenance Zone No. 10 located in the Woodbridge area, but does not have easement rights to access these area levees, which has initiated discussions of developing a Zone 10 Emergency Operation Plan.

- 3) Upper Calaveras River – This area is non-leveed. Additionally, this area is not maintained by the County. During the months of January and February, incidents of overtopping on the Calaveras River occurred, specifically at Pezzi Road. Since this is not a County-maintained channel, overgrowth may have contributed to the out-of-bank flow. The County met with property owners in the area who wanted to remove overgrowth from the channel to help prevent the out-of-bank flow. However, the landowners shared concerns of possible disciplinary action from the California Department of Fish and Wildlife (CDFW) for entering and tampering with government property. Public Works staff has uploaded emergency creek maintenance information to [www.sjgov.org/pubworks/](http://www.sjgov.org/pubworks/), which provides a link to the CDFW Lake of Streambed Alteration Program – Notification of Emergency Work Form (LSA Emergency Form) and contains information and reporting requirements regarding emergency work performed to remove vegetation or debris from channels.
- 4) Howard Road at the San Joaquin River – Due to the heavy rainfall, this area experienced seepage from the San Joaquin River, which resulted in the embankment failure. Mr. Ward presented slides of the affected area, and addressed Commissioner Neudeck on the source of the water pictured in the slide. Commissioner Neudeck replied the water source shown was seepage as well as rainfall due to the property owner not willing to operate his circulator pump. He added the water is beginning to dry up naturally, though some fields remain seeped up.
- 5) Corral Hollow Creek at Chrisman Road – Mr. Ward stated this area is located in West County and is not maintained by the County, and is non-leveed. Corral Hollow Creek overtopped on February 21<sup>st</sup>. Consequently, several homes and one basement received water. Rainfall nearby measured at 3.2 inches within 48 hours which contributed to flooding in some parts of the area and forced evacuations of residents by the local fire department. Mr. Ward met with a property owner, whose property is located on a “low spot” along Corral Hollow. Mr. Ward and

the property owner discussed coordination amongst neighbors to fill in “low spots” to keep water in the channel. Mr. Ward reiterated that the District will be applying for three FEMA hazard mitigation grants to assist in funding for repairs: 1 – for Acampo area; 1 – for Corral Hollow / Chrisman Road area; and, 1 – for a private property owner in the Acampo area.

In conclusion, Mr. Ward provided flood prevention tips. When heavy rains and flooding situations are anticipated, every property owner is advised to: “Know your risk, and protect your house.” Recommendations to prevent becoming a victim of flooding include:

- Installing concrete drains
- Construct dry wells
- Create berms
- Elevate your house

Mr. Ward concluded his presentation and discussion was opened.

Commissioner Winn commented on his interactions with residents facing potential flooding of their homes in the Acampo area and their gratitude for the emergency mobile pumping by the County. He also viewed the area along the Calaveras River at Alpine Road and Pezzi Road and stated that some residents are dumping vegetation in the river creating a “forest” and blocking the flow of water. He noted instances of noncooperation amongst agencies, and neighbors pumping water onto adjacent neighbors’ land. Moving forward, he envisions constructive conversations with all agencies dealing with water and finding ways to take the excess to contribute to groundwater recharge and SGMA compliance.

Mr. Ward concurred and stated there have been collaborative efforts with the North San Joaquin Water Conservation District (NSJWCD) on Phase II of the Acampo Drainage Innovation Project to utilize their pipe running east to west along Acampo Road. During wet years, water will be placed in the pipe as a drainage system whereby NSJWCD will retain its ability to distribute to farmers. Other examples of collaborative efforts include a potential project with the Union Pacific Railroad to create a conveyance system sending water south along Kennefick Road, within the railroad right-of-way. This project appeared to be promising until recent findings identified an arsenic presence in the ground. In addition, there have been discussions with Liberty Winery, located south of Acampo Road, for possible construction of berms and using its fields as retention/detention basins.

Commissioner Hartmann referenced Commissioner Winn’s comment of uniting agencies to contribute to groundwater recharge and SGMA compliance and suggested that the AWC could serve as forum to convene agencies and have an open discussion. He said the AWC serves the Board of Supervisors (BOS), thus the BOS could task the AWC with bringing all stakeholders together to pursue proactive behavior versus reactive behavior. Commissioner Winn concurred.

Mr. Ward added that the Department of Public Works website provides a link that lists guidelines for homeowners who maintain private drainage courses passing through their property. Instructions provided by the U.S. Fish and Wildlife Service and County Ordinance 6-7008 detail the mandates in which private property owners are subject to in maintaining drainage courses on their property to convey the flows. The “Creek Maintenance Before-After Diagrams” can be found at [www.sjgov.org/pubworks/](http://www.sjgov.org/pubworks/).

## **B. Presentation on Status of 2017 Winter Storm – Michael Cockrell**

Commissioner Hartmann acknowledged Mr. Michael Cockrell, Director – San Joaquin County Office of Emergency Services (OES), and commended him and the OES staff on creating an exemplary

environment of cooperation, collaboration, and communication during the recent winter storms, unprecedented during any previous flood seasons. Mr. Cockrell commented that he is surrounded by good people. He referred to information provided by Mr. Ward and reiterated that funding, up to billions of dollars, is potentially available by FEMA for hazard mitigation planning or project work.

Mr. Cockrell gave an update on the status of drought, weather predictions, and drought impacts. Governor Brown terminated the Drought State of Emergency on April 7, 2017, first proclaimed on January 17, 2014. Upon recommendation from OES, the BOS terminated the San Joaquin County Local Drought Emergency on May 9, 2017, first proclaimed on January 28, 2014. Temporary requirements, mandated by the Governor and the State Water Resources Control Board (SWRCB), still remain through November 2017. These requirements include the use of shutoff hose nozzles, no sidewalk washing, no watering of vegetation within 48-hours after rain, etc. Governor Brown has directed the SWRCB to develop permanent requirements to make water conservation a way of life in California.

The last El Niño effect occurred in 2015-16. There is a 46-47% chance of El Niño returning in summer/fall 2017 or remain in neutral condition. Latest projections predict weather forecasts at drier / normal / above normal precipitation, and temperatures at warmer than normal. In the last series of storms experienced since October 2016, California suffered 30 atmospheric rivers – on average, one every 4 to 6 days. This proved problematic as water releases from Friant Dam and concurrent storms did not allow for waterways to reduce or seepages to dry up. Issues San Joaquin County is experiencing for disaster recovery is that FEMA “lumped” all these storms together into only four state disasters occurring throughout January and February, and stated damages occurred from the previous storm.

The Precipitation Index for Water Year 2017 shows precipitation supplies average above normal for the Northern Sierra, San Joaquin, and Tulare Basin stations. The San Joaquin Precipitation 5-Station Index reflect cumulative daily measurements were 71.3 inches, just under the wettest year of 1982-83 which had cumulative daily measurements at 77.4 inches. Mr. Cockrell presented a slide of the Office of Weather Prediction’s “side-by-side” snowpack comparison of March 30, 2011 and March 30, 2017. The aerial views depict the snowpack in 2011 was wider, but the snowpack in 2017 was deeper. This could be advantageous as temperatures in the higher elevations will remain cooler, thus delaying runoff. A slide was presented depicting California snow water content for the northern, central, and southern Tuolumne Basin. As of May 15, 2017, averages measured 195% of normal for the northern basin, 207% of normal for the central basin, and 169% of normal for the southern basin.

Damages incurred during the 2016-17 storm season amounted to \$2,370,590 in January for Public Agency (PA) costs which include roads, and tree/debris clearing; \$9,264,459 in February for PA costs, and an estimated \$12,974,000 for agriculture damage. The complete agriculture damage cannot be accessed until harvest. Governor Brown may roll all costs into one disaster assistance fund. There were a total of eight levee failures; most along the Mokelumne and contained in agriculture land. However, one levee failure flowed across a County road and was located in Thornton, on the Sacramento side. A levee failure, which occurred in Reclamation District 2075, was spotted and immediate emergency action was implemented by the landowners and patrol crews.

Peak snowpack measurement for the April – June runoff is expected near Memorial Day. Weekly meetings are being held with the reservoir operators and downstream jurisdictions to discuss the snowmelt. The Vernalis Gauging Station is projecting a 1-2 foot rise with the total maximum level at 26 feet. Seasonal Historical Flow Chart for the San Joaquin Index April-July Runoff measures 2017

at approximately 69,000 AF. Mr. Cockrell presented a slide depicting DWR's modeling of 10% volume flows, and 50% probability flows for April through July. Based on the ongoing temperatures, storms and release, the modeling efforts project a non-emergency status.

East Bay Municipal Utilities District (EBMUD) still has an estimated 500,000 AF of snowmelt to come down, and 128,000 AF of storage capability. The release of 4,000 cubic feet per second (cfs) is expected to be reduced in June. Vice-Chair Price asked if releases from Comanche will be below 5,000 cfs. Mr. Cockrell answered affirmative.

Mr. Cockrell discussed the Multi-Agency Coordination System consisting of DWR, the US Army Corps of Engineers (USACE), and California OES. Other participants included Pacific Gas & Electric (PG&E), the Operational Area Incident Management Team, and Local/Levee Maintaining Agencies (LMA). The intent was to accommodate the immediate needs of the LMAs, with all resources accessible and readily available to deal with issues with expedient authorities. Other activities of the Multi-Agency Coordination System included providing status updates of the Unified Flood-Fight Command Meetings, City/County Executive conference calls, and San Joaquin River conference calls. Other objectives included to expedite emergency work on levees, public safety, contain damages to lowest level, and inform the public of situation and assistance. Mr. Cockrell commented on the positive feedback from DWR on San Joaquin County's Flood-Fight contingency maps, planning, and methodology. Commissioner de Graaf interjected that his previous employment involved working with Reclamation District 2064 to create the maps, and added that working with the OES staff was an enjoyable process.

To access storm threat situations, the County was divided into four areas – north, east, west and south.

- North – Camanche level was near spillway with updates received four to five times daily, five levee breeches occurred on ag lands, and downed trees and power poles.
- East – Calaveras River Mosher Slough overtopped, vegetation overflows, and five to six homes damaged.
- West – A lot of erosion, sinkholes and sloughing. High winds caused battering.
- South – Levee breach on RD 2075, threats on both banks of Hwy 205, and ordered evacuations. As of May 17, 2017, three roads remain closed for access and patrol of levee agencies.

During emergencies, Board of Supervisors Chairman Winn becomes the Emergency Director of OES and is able to issue emergency orders, as needed. BOS Chairman Winn declared the shutdown of the South Delta due to floating hazards, thus allowing engineers access and inspections of the levees. Currently, the Delta remains closed from Burns Cut to the Stanislaus border, and out to Tracy Blvd. to Mill River. Access is being permitted to biologists to allow for salmon inspections via prior notification.

A reoccurring topic of concern were boats breaking loose from docks. These "runaway" boats can create a barrier and clog up water flow as well as damage to levees. Criteria was established on the removal of these vessels to determine emergency accessibility, and threat to the levees. Authority for removal of the boats can be made by California Highway Patrol– for emergency access, Fire – for emergency access, Reclamation District – for levee stability, and, the United States Coast Guard – for water, HazMat and debris. Ongoing 2017 storm activities include continuing boil and seepage watch via continuous levee patrols. In addition, weekly coordination continues amongst reservoir operators and agencies in the San Joaquin River watershed, as well as levee maintaining agencies in the South Delta Unified Flood-Fight Command.

Mr. Cockrell concluded his presentation and discussion was opened.

Vice-Chair Price inquired about the snowmelt anticipated as a result of high temperatures in the upcoming weekend. Mr. Cockrell replied that the modeling includes 6-10 day high temperatures with the projected peak runoff on Memorial Day weekend.

On behalf of the City of Lodi, Commissioner Swimley acknowledged and thanked OES staff, Woodbridge Irrigation District, and EBMUD on assistance with levee repair during the storm season. Commissioner Winn complimented OES on the access of available information and the “spirit of cooperation” amongst agencies.

### **C. Water Resources Update – Brandon Nakagawa**

Mr. Brandon Nakagawa gave an update on the recent Water Resources activities and timelines.

- April 11, 2017:
  - Board of Supervisors approved the Demonstration Recharge Extraction and Aquifer Management (DREAM) Project Export Permit. Strong support from the Advisory Water Commission proved critical. The project is receiving infrastructure improvements for NSJWCD’s pump station with funding, in part, from a \$1.75 million settlement agreement. Bids have been received for this pump station project.
  - Board of Supervisors approved the Joint Exercise of Powers Agreement (JPA) for the governance of the Eastern San Joaquin Basin. Nearly all entities have had the JPA approved by their Boards or Councils. The City of Stockton is expected to seek its approval in mid-June.
- May 23, 2017:
  - Originally, the County had filed with DWR on top of all agencies, to “stop the clock” and initiate discussions on involvement, governance, and organization. On May 23, 2017, the County is hoping to lift overlaps and approve the revised Groundwater Sustainability Agency (GSA) Map of the Eastern San Joaquin Subbasin and authorize submittal of the final map to DWR. Mr. Gerardo Dominguez, San Joaquin County Public Works – Engineer IV, has been working with the GSAs on the map, and revisions have been made down to the parcel level. Each GSA will have its own shape file for submittal to DWR.
  - Cal Water – Cal Water is not a public agency and cannot be a signatory to the new JPA. The solution proposed by the County was to create a “seat at the JPA table” for Cal Water by creating a separate agreement with Cal Water and to create two separate and distinct GSAs, one for the unincorporated area served by Cal Water, and other for the remaining unincorporated area not included within the boundary of another GSA. In exchange for the seat and representation, Cal Water will pay its proportional fees and be a limited voting member, which has conditions of abstaining from voting on: 1) Entering eminent domain; 2) Curtailment of groundwater pumping; and, 3) Taxes / Fees.

On May 23, 2017, the County the Board of Supervisors will consider approving the Memorandum of Agreement with Cal Water for limited representation on the Eastern San Joaquin Groundwater Authority Board of Directors JPA.



Commissioner Holbrook inquired as to whether the voting scenario of the County / Cal Water GSA would equal two votes. Mr. Nakagawa responded that the County is creating a separate GSA for the Cal Water service area with Cal Water having the vote for the County / Cal Water GSA. Should a vote occur involving one of the three issues mentioned where Cal Water would abstain, the County will only vote once for their entire GSA area, which includes the County / Cal Water GSA.

Mr. Nakagawa offered some background on the creation process of the MOA with Cal Water. Discussions with agencies concluded there were potential concerns with the County having two votes on issues, and the powers reserved for public agencies. The MOA with Cal Water addresses these issues. Mr. Balaji interjected and stated that there are other GSAs with multiple agencies so intent of the County / Cal Water GSA was cohesion with these other agreements.

Concerns were raised with Cal Water not being a public agency but allowed public agency preference. Mr. Balaji reiterated Cal Water will not have a vote in 3 categories – entering eminent domain, curtailment of groundwater pumping, and fees. He added that Cal Water is a major water purveyor serving a lot of customers, thus the community would feel better to have them at the table as a representative. The Eastern San Joaquin Groundwater Authority will gain revenue with Cal Water at the table, without giving up any rights. Mr. Nakagawa added that the JPA also has off ramps for the removal of members, if such is decided. Commissioner Hartmann stated the agreement with Cal Water expires when the Groundwater Sustainability Plan (GSP) is developed whereby a new agreement would need to be established.

Discussion continued amongst the Commission regarding Cal Water. Mr. Balaji stated Cal Water is a member of the Eastern San Joaquin County Groundwater Basin Authority (GBA). The powers of Cal Water under the new JPA are subservient of the powers they hold on the current GBA. He said he is “cautiously comfortable.” Commissioner Nomellini interjected that the JPA does not have authority to act as a GSA, thus there should be no concern of those powers. The JPA language has off ramps should an agency choose to withdraw. The goal is one GSP.

Commissioner Holbrook asked, “If an agency withdraws from the GSA, does it change the plan?” Commissioner Nomellini answered affirmative. Commissioner Holbrook asked if all GSAs have to have one plan. Commissioner Nomellini answered negative. Our JPA is choosing to have one plan but each GSA could have their own plan. However, DWR prefers one plan and encourages coordination for one GSP. Commissioner Nomellini added that GSAs have their power in the JPA and there should be no concern about Cal Water. Commissioner Hartmann stated that a GSA could exit from the JPA, but still work with the GSP through an MOA with the JPA. Mr. Balaji added that the JPA stands as a “protection” for the GSAs with the JPA.

Commissioner Hartmann commended Public Works staff – Mr. Balaji, Mr. Buchman, Mr. Nakagawa, Ms. Lynn Hoffman, Mr. Dominguez, and Ms. Kelly Villalpando on the work done on the JPA process. San Joaquin County is used as a “poster child” by DWR to demonstrate coordination of GSAs. Commissioner Winn concurred.

- Tracy Subbasin: Mr. Nakagawa gave an update on activities in the Tracy Subbasin. This area of the basin is not in “critical overdraft” status so the deadline for a GSP is not until 2022. However, the GSAs need to be defined by June 30, 2017.

Meetings were held with the City of Tracy, Byron Bethany Irrigation District (BBID), and Banta Carbona Irrigation District (BCID). The General Manager (GM) of West Side Irrigation District (WSID) is retired and GM duties will be taken over by the Greg Gilmore, GM of BBID.

Overlap issues between the City of Tracy, BBID, BCID, and WSID have been resolved. Mr. Nakagawa presented a slide of the final County GSA map of the Tracy Subbasin. The County will seek approval of the Tracy Subbasin map at the Board of Supervisors Meeting on June 13, 2017. He added that the GSA areas are located within CDWA and SDWA boundaries, who have elected to go with the County GSA, with details to be discussed at a later time.

Additional updates include the River Islands, Stewart Tract, and City of Lathrop have come to an agreement that the two reclamation districts will be a GSA for Stewart Tract. An agreement has been established between Del Puerto Water District and West Stanislaus Irrigation District for the area reaching south to Fresno. A basin boundary change has been granted with these agencies now located in the Delta-Mendota Subbasin.

Mr. Nakagawa concluded his presentation.

## II. Communications:

- A. **April 21, 2017, Delta Counties Coalition Letter to Delta Stewardship Council, “April 27-28, 2017 Delta Stewardship Council Meeting – Amendments to the Delta Plan”**
- B. **April 24, 2017, San Joaquin County Board of Supervisors Letter of Support for Assembly Bill 1427 (Eggman) Beneficial Use: Storing of Water Underground**
- C. **May 9, 2017, San Joaquin Delta Coalition Letter of Support for Assembly Bill 200 (Eggman): Reclamation District No. 1614: Pump Station No. 7**
- D. **May 9, 2017, San Joaquin Delta Coalition Letter of Support for Senate Bill 231 (Hertzberg) Local Government: Fees and Charges**
- E. **May 9, 2017, San Joaquin Delta Coalition Letter of Support for Assembly Bill 791 (Frazier) Sacramento-San Joaquin Delta: State Water Project and Federal Central Valley Project (as Amended on March 21, 2017)**

### Public Comment:

Commissioner de Graaf addressed the Commission and introduced himself as the new representative for the City of Ripon. He provided background of growing up in a farming family in Manteca with an educational background, including a degree in Agricultural Engineering, acquired from Cal Poly San Luis Obispo. His work history included irrigation design and sales, and work for a land development engineering firm where he obtained his civil engineering license, and an engineering consulting firm where his focus was agricultural water. He looks forward to working with all.

**Next Regular Meeting:** June 21, 2017, at 1:00 p.m.  
Public Health Conference Room

**Adjournment:** 2:55 p.m.



SAN JOAQUIN COUNTY  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

ADVISORY WATER COMMISSION  
MEETING OF MAY 17, 2017

ATTENDANCE SHEET

NAME	AFFILIATION	E-MAIL ADDRESS	PHONE
DANIELE BARNEY	SJC PN	dbarney@sjgov.org	8-3089
Jane Wagner-Tyack	League of Women Voters	JaneTyack@mac.com	642-5105
Kelly Villalpando	SJC PW	KRVillalpando@sjgov.org	8-3073
lynn Hoffman	SJC PW-WR	mlhoffman@sjgov.org	8-3531
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TERRY DERMOODY	SJC	tdermoody94@gmail.com	
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Brent Williams	stakeholder	same	
Fritz Buchman	SJC PN		
Kris Balaji	"	"	468-3100
Brandon Nakagun	"		
Stephanie Reyna-Hiestand	City of Tracy	<sup># New</sup> Stephanie.hiestand@cityoftracy.org	<sup># New</sup> 209 831-6333
Walt Mueken	Escalon	wmueken@cityofescalon.org	(209) 691-7460
Drew Mayers	RD'S	CDRWS 9057 @ Ad.com	209-443-1223
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ATTACHMENTS  
III. A.

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RICHARD FRANK [June 10, 2017](#)

## California Members of Congress Seek to Eviscerate State Water & Environmental Laws

[H.R. 23 Would Preempt California State Water Law & Supersede Federal, State Environmental Statutes](#)



Quite understandably, the attention of the media, environmental organizations and the general public has been focused on the myriad misadventures of the Trump Administration, now rumbling and stumbling through its fifth month. And, as recounted on *Legal Planet* since mid-January, those contretemps include a great deal of environmental mischief emanating from the Executive Branch.

But it would be a mistake to focus just on (anti-) environmental policies being generated by the White House. The Republican-controlled Congress—and especially the House of Representatives—is more quietly developing its own strategy to eviscerate environmental laws and supersede longstanding state prerogatives.

Exhibit A is [H.R. 23](#).



David Valadao

H.R. 23, co-sponsored by a group of California San Joaquin Valley Republican members of Congress led by David Valadao (R-Hanford), is formally titled the “Gaining Responsibility on Water Act of 2017.” 125 pages in length, the bill seeks to make numerous changes to the way the federally-constructed and administered

Central Valley Project (CVP) operates to deliver water throughout California’s Central Valley. It’s a most depressing read.

Perhaps the most pernicious provision of H.R. 23 is section 108, which deals with the operation of both the CVP and the State of California-operated State Water Project (SWP). Section 108 represents a radical rejection of longstanding deference to state water law in the building and operation of federal water projects such as the CVP. And it brazenly exempts the operation of *both* the CVP *and* SWP projects from the federal Endangered Species Act “or any other law” pertaining to

those operations. Section 108 goes on to bar both federal and California state agencies from imposing on any state-issued water 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 [CVP or SWP].”

But the most alarming language in this most extreme section of H.R. 23 is that which immediately follows the above-quoted provisions:

“Nor shall the State of California, including any agency or board of the State of California, restrict the exercise of any water right obtained pursuant to State law...in order to protect, enhance or restore under the Public Trust Doctrine any public trust value.”

Why is this bill language so radical? For over a century, since passage of the venerable [Reclamation Act of 1902](#)—which sparked construction of an extensive system of federal reclamation projects that changed the face of the American West—Congress has been careful to include in all such legislation a guarantee that federal projects such as the CVP will be operated in full conformance with state water law. Section 108 of H.R. 23 would prevent state water regulators from imposing any restriction on CVP or SWP project water deliveries that would protect environmental values. And it would expressly exempt those water projects (and those who obtain water from them) from application of the public trust doctrine, which has been a longstanding cornerstone of California environmental and water law.

H.R. 23 exposes the hypocrisy of House Republicans, who frequently advocate for states’ rights and, conversely, against increased federal authority. But principles of state sovereignty are baldly cast aside by the proponents of H.R. 23 when those principles protect environmental values that limit water deliveries to thirsty agricultural interests in California’s Central Valley. Such “one-way federalism” should be exposed for what it is—a cynical effort to degrade California’s environment in order to accommodate well-heeled water interests. Alarming, H.R. 23 turns its back on over a century of federal-state comity when it comes to the intersection of federal water projects and state water law principles.

The above-quoted preemption provisions are the worst aspect of H.R. 23, but the bill contains other pernicious features that are similarly worthy of note. For example, the bill also would effectively repeal a cornerstone feature of the [Central Valley Improvement Act](#), landmark 1992 Congressional legislation that set aside 800,000 acre feet/year of San Joaquin River water to restore environmental values in California’s second-largest river system—one that federal CVP operations have devastated. H.R. 23 specifically requires that “water dedicated to fish and wildlife purposes by this title [be] replaced and provided to Central Valley Project water contractors...”

While Congressional Republicans increasingly appear to be the Gang That Can't Shoot Straight, it's certainly conceivable that the House of Representatives may eventually pass this abysmal bill. The focus would then turn to the U.S. Senate, where chances are better that such meat-axe legislation will falter and longstanding federalism principles may actually be respected.

On the other hand, if H.R. 23 is approved by both houses of Congress, there's little doubt that President Trump would eagerly sign it into law. After all, this is the man who, during a 2016 campaign swing through California's Central Valley, remarkably declared that the state's five-year drought was a falsehood. (Alternative facts, indeed.) Given the chance, our President will be all too happy to sacrifice California's environment in order to maximize water deliveries to the state's water contractors. And if a trifle like 100+ years of federal deference to state water law stands in the way, too bad. The President, like the Congressional authors of H.R. 23, will be eager to Trump environmental and state water laws.

To quote a certain Chief Executive, sad.

◆ **California, Central Valley Project, Congressman David Valadao, Endangered Species Act, federal preemption, federalism, H.R. 23, public trust doctrine, Reclamation Act of 1902, State Water Project, water law**

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115TH CONGRESS  
1ST SESSION

# H. R. 23

To provide drought relief in the State of California, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Mr. VALADAO (for himself, Mr. NUNES, Mr. ROHRBACHER, Mr. COOK, Mr. ISSA, Mr. ROYCE of California, Mrs. MIMI WALTERS of California, Mr. CALVERT, Mr. KNIGHT, Mr. MCCARTHY, Mr. HUNTER, Mr. LAMALFA, and Mr. MCCINTOCK) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide drought relief in the State of California, 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 “Gaining Responsibility on Water Act of 2017”.

### SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

[Sec. 1. Short title.](#)

[Sec. 2. Table of contents.](#)

#### TITLE I—CENTRAL VALLEY PROJECT WATER RELIABILITY

[Sec. 101. Amendment to purposes.](#)

[Sec. 102. Amendment to definition.](#)

[Sec. 103. Contracts.](#)

[Sec. 104. Water transfers, improved water management, and conservation.](#)

[Sec. 105. Fish, wildlife, and habitat restoration.](#)

[Sec. 106. Restoration fund.](#)

[Sec. 107. Additional authorities.](#)

[Sec. 108. Bay-Delta Accord.](#)

[Sec. 109. Natural and artificially spawned species.](#)

[Sec. 110. Regulatory streamlining.](#)

[Sec. 111. Additional emergency consultation.](#)

[Sec. 112. Regarding the operation of Folsom Reservoir.](#)

[Sec. 113. Applicants.](#)

[Sec. 114. San Joaquin River settlement.](#)

TITLE II—CALFED STORAGE FEASIBILITY STUDIES

- [Sec. 201. Studies.](#)
- [Sec. 202. Temperance Flat.](#)
- [Sec. 203. CALFED storage accountability.](#)
- [Sec. 204. Water storage project construction.](#)

TITLE III—WATER RIGHTS PROTECTIONS

- [Sec. 301. Offset for State Water Project.](#)
- [Sec. 302. Area of origin protections.](#)
- [Sec. 303. No redirected adverse impacts.](#)
- [Sec. 304. Allocations for Sacramento Valley contractors.](#)
- [Sec. 305. Effect on existing obligations.](#)

TITLE IV—MISCELLANEOUS

- [Sec. 401. Water supply accounting.](#)
- [Sec. 402. Operations of the Trinity River Division.](#)
- [Sec. 403. Report on results of water usage.](#)
- [Sec. 404. Klamath project consultation applicants.](#)
- [Sec. 405. Losses caused by the construction and operation of storage projects.](#)
- [Sec. 406. CA State Water Resources Control Board.](#)

TITLE V—WATER SUPPLY PERMITTING ACT

- [Sec. 501. Short title.](#)
- [Sec. 502. Definitions.](#)
- [Sec. 503. Establishment of lead agency and cooperating agencies.](#)
- [Sec. 504. Bureau responsibilities.](#)
- [Sec. 505. Cooperating agency responsibilities.](#)
- [Sec. 506. Funding to process permits.](#)

TITLE VI—BUREAU OF RECLAMATION PROJECT STREAMLINING

- [Sec. 601. Short title.](#)
- [Sec. 602. Definitions.](#)
- [Sec. 603. Acceleration of studies.](#)
- [Sec. 604. Expedited completion of reports.](#)
- [Sec. 605. Project acceleration.](#)
- [Sec. 606. Annual report to Congress.](#)

TITLE VII—ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT

- [Sec. 701. Short title.](#)
- [Sec. 702. Prepayment of certain repayment contracts between the United States and contractors of federally developed water supplies.](#)

TITLE VIII—SAFETY OF DAMS

- [Sec. 801. Authorization of additional project benefits.](#)

TITLE IX—WATER RIGHTS PROTECTION

- [Sec. 901. Short title.](#)
- [Sec. 902. Definition of water right.](#)
- [Sec. 903. Treatment of water rights.](#)
- [Sec. 904. Recognition of State authority.](#)
- [Sec. 905. Effect of title.](#)

**TITLE I—CENTRAL VALLEY PROJECT WATER RELIABILITY****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, 2018, 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 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

(1) by amending subsection (a) 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;”;

(2) in subsection (l), by striking “and,”;

(3) in subsection (m), by striking the period and inserting “; and”; and

(4) by adding at the end the following:

“(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.”.

#### SEC. 103. CONTRACTS.

Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4708) is amended—

(1) in the heading, by striking “**LIMITATION ON CONTRACTING AND CONTRACT REFORM**” and inserting “**CONTRACTS**”; and

(2) 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.

“(b) **ADMINISTRATION OF CONTRACTS.**—Except as expressly provided by this Act, any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project shall be administered pursuant to the Act of July 2, 1956 (70 Stat. 483).

“(c) **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. 4709) 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 this Act or any other provision of Federal reclamation law and the National Environmental Policy Act of 1969.”;

(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 Federal reclamation 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))—

(A) by striking “as a result of the increased repayment” and inserting “that exceed the cost-of-service”;

(B) by inserting “the delivery of ” after “rates applicable to”; and

(C) by striking “, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section.”.

## 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)(B)—

- (i) by striking “is authorized and directed to” and inserting “may”;
- (ii) by inserting “reasonable water” after “to provide”;
- (iii) by striking “anadromous fish, except that such” and inserting “anadromous fish. Such”;
- (iv) by striking “Instream flow” and inserting “Reasonable instream flow”;
- (v) by inserting “and the National Marine Fisheries Service” after “United States Fish and Wildlife Service”; and
- (vi) by striking “California Department of Fish and Game” and inserting “United States Geological Survey”;

(B) in paragraph (2)—

- (i) by striking “primary purpose” and inserting “purposes”;
- (ii) by striking “but not limited to” before “additional obligations”; and
- (iii) by adding after the period the following: “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 activities described in this section, the Secretary shall be deemed to have met the mitigation, protection, restoration, and enhancement purposes of this title.”.

#### SEC. 106. RESTORATION FUND.

(a) IN GENERAL.—Section 3407(a) of the Central Valley Project Improvement Act (106 Stat. 4726) is amended as follows:

(1) By inserting “(1) IN GENERAL.—” before “There is hereby”.

(2) By striking “Not less than 67 percent” and all that follows through “Monies” and inserting “Monies”.

(3) By adding at the end the following:

“(2) PROHIBITIONS.—The Secretary may not directly or indirectly require a donation or other payment to the Restoration Fund—

“(A) or environmental restoration or mitigation fees not otherwise provided by law, as a condition to—

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

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

“(B) for any water that is delivered with the sole intent of groundwater recharge.”.

(b) CERTAIN PAYMENTS.—Section 3407(c)(1) of the Central Valley Project Improvement Act is amended—

(1) by striking “mitigation and restoration”;

(2) by striking “provided for or”; and

(3) by striking “of fish, wildlife” and all that follows through the period and inserting “of carrying out all activities described in this title.”.

(c) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.—Section 3407(d)(2) of the Central Valley Project Improvement Act is amended by inserting “, or after October 1, 2016, \$4 per megawatt-hour for Central Valley Project power sold to power contractors (October 2016 price levels)” after “\$12 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project”.

(d) COMPLETION OF ACTIONS.—Section 3407(d)(2)(A) of the Central Valley Project Improvement Act is amended by inserting “no later than December 31, 2020,” after “That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title,”.

(e) REPORT; ADVISORY BOARD.—Section 3407 of the Central Valley Project Improvement Act (106 Stat. 4714) is amended 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 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.

“(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, 2018, and annually thereafter, to transmit to the Secretary and Congress recommendations required under subparagraph (A).

“(D) Not later than December 31, 2018, and biennially thereafter, to transmit to Congress a report that details the progress made in achieving the actions mandated under section 3406.

“(3) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”.

#### 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 nonproject 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.—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.

“(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 the Committee on 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 as follows:

(1) By redesignating paragraphs (1) through (7) as subparagraphs (A) through (G), respectively.

(2) By striking “In order to minimize adverse effects, if any, upon” and inserting “(1) **IN GENERAL.**—In order to minimize adverse effects upon”.

(3) By striking “needs, the Secretary,” and all that follows through “submit to the Congress, a” and inserting “needs, the Secretary, on a priority basis and not later than September 30, 2018, shall submit to Congress a”.

(4) By striking “increase,” and all that follows through “options:” and inserting “increase, as soon as possible but not later than September 30, 2017 (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. The plan required by this subsection shall include recommendations on appropriate cost-sharing arrangements and authorizing legislation or other measures needed to implement the intent, purposes, and provisions of this subsection and a description of how the Secretary intends to use the following options—”.

(5) In subparagraph (A), by inserting “and construction of new water storage facilities” before the semicolon.

(6) In subparagraph (F), by striking “and” at the end.

(7) In subparagraph (G), by striking the period and all that follows through the end of the subsection and inserting “; and”.

(8) By inserting after subparagraph (G) the following:

“(H) Water banking and recharge.”.

(9) By adding at the end the following:

“(2) **IMPLEMENTATION OF PLAN.**—The Secretary shall implement the plan required by paragraph (1) commencing on October 1, 2017. 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.

“(3) **FAILURE OF THE PLAN.**—Notwithstanding any other provision of Federal reclamation law, if by September 30, 2018, 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.”.

(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)”.

(e) **WATER STORAGE PROJECT CONSTRUCTION.**—The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement 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 additional Federal funds are authorized for the activities authorized in sections 103(d)(1)(A)(i), 103(d)(1)(A)(ii), and 103(d)(1)(A)(iii) of [Public Law 108–361](#). However, each water storage project under sections 103(d)(1)(A)(i), 103(d)(1)(A)(ii), and 103(d)(1)(A)(iii) of [Public Law 108–361](#) is authorized for construction if non-Federal funds are used for financing and constructing the project.

#### 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 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.

(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 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 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.

(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.

(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 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.

#### 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.

#### SEC. 110. REGULATORY STREAMLINING.

(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 therefrom 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.

(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\(2\)\(C\)](#)).

(c) **PROJECT DEFINED.**—For the purposes of this section:

(1) **CVP.**—The term “CVP” means the Central Valley Project.

(2) **PROJECT.**—The term “project”—

(A) means an activity that—

(i) is undertaken by a public agency, funded by a public agency, or that requires an issuance of a permit by a public agency;

(ii) has a potential to result in physical change to the environment; and

(iii) may be subject to several discretionary approvals by governmental agencies;

(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

(C) as defined under the California Environmental Quality Act in section 21065 of the California Public Resource Code.

#### **SEC. 111. ADDITIONAL EMERGENCY CONSULTATION.**

For adjustments to operating criteria other than under section 108 or to take urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner of Reclamation, no mitigation measures shall be required during any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, and any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.

#### **SEC. 112. REGARDING THE OPERATION OF FOLSOM RESERVOIR.**

The Secretary of the Interior, in collaboration with the Sacramento Water Forum, shall expedite evaluation, completion and implementation of the Modified Lower American River Flow Management Standard developed by the Water Forum in 2015 to improve water supply reliability for Central Valley Project American River water contractors and resource protection in the lower American River during consecutive dry years under current and future demand and climate change conditions.

#### **SEC. 113. APPLICANTS.**

In the event that the Bureau of Reclamation or another Federal agency initiates or reinitiates consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service under section 7(a)(2) of the Endangered Species Act of 1973 ([16 U.S.C. 1536\(a\)\(2\)](#)), with respect to construction or operation of the Central Valley Project and State Water Project, or any part thereof, the State Water Project contractors and the Central Valley Project contractors will be accorded all the rights and responsibilities extended to applicants in the consultation process.

#### **SEC. 114. SAN JOAQUIN RIVER SETTLEMENT.**

(a) **CALIFORNIA STATE LAW SATISFIED BY WARM WATER FISHERY.**—

(1) IN GENERAL.—Sections 5930 through 5948 of the California Fish and Game Code, and all applicable Federal laws, including the San Joaquin River Restoration Settlement Act ([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), shall be satisfied by the existence of a warm water fishery in the San Joaquin River below Friant Dam, but upstream of Gravelly Ford.

(2) DEFINITION OF WARM WATER FISHERY.—For the purposes of this section, the term “warm water fishery” means a water system that has an environment suitable for species of fish other than salmon (including all subspecies) and trout (including all subspecies).

(b) REPEAL OF THE SAN JOAQUIN RIVER SETTLEMENT.—As of the date of enactment of this section, the Secretary of the Interior 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).

## **TITLE II—CALFED STORAGE FEASIBILITY STUDIES**

### **SEC. 201. STUDIES.**

The Secretary of the Interior, through the Commissioner of Reclamation, shall—

(1) complete the feasibility studies described in clauses (i)(I) and (ii)(II) of section 103(d)(1)(A) of [Public Law 108–361](#) (118 Stat. 1684) and submit such studies to the appropriate committees of the House of Representatives and the Senate not later than December 31, 2017;

(2) complete the feasibility study described in clause (i)(II) of section 103(d)(1)(A) of [Public Law 108–361](#) and submit such study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2018;

(3) complete a publicly available draft of the feasibility study described in clause (ii)(I) of section 103(d)(1)(A) of [Public Law 108–361](#) and submit such study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2018;

(4) complete the feasibility study described in clause (ii)(I) of section 103(d)(1)(A) of [Public Law 108–361](#) and submit such study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2019;

(5) complete the feasibility study described in section 103(f)(1)(A) of [Public Law 108–361](#) (118 Stat. 1694) and submit such study to the appropriate committees of the House of Representatives and the Senate not later than December 31, 2019;

(6) provide a progress report on the status of the feasibility studies referred to in paragraphs (1) through (3) to the appropriate committees of the House of Representatives and the Senate not later than 90 days after the date of the enactment of this Act and each 180 days thereafter until December 31, 2019, as applicable. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision;

(7) in conducting any feasibility study under this Act, the reclamation laws, the Central Valley Project Improvement Act (title XXXIV of Public Law 102–575; 106 Stat. 4706), the Fish and Wildlife Coordination Act ([16 U.S.C. 661 et seq.](#)), the Endangered Species Act of 1973 ([16 U.S.C. 1531 et seq.](#)), and other applicable law, for the purposes of determining feasibility the Secretary shall document, delineate, and publish costs directly relating to the engineering and construction of a water storage project separately from the costs resulting from regulatory compliance or the construction of auxiliary facilities necessary to achieve regulatory compliance; and

(8) communicate, coordinate and cooperate with public water agencies that contract with the United States for Central Valley Project water and that are expected to participate in the cost pools that will be created for the projects proposed in the feasibility studies under this section.

## SEC. 202. TEMPERANCE FLAT.

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

(1) PROJECT.—The term “Project” means the Temperance Flat Reservoir Project on the Upper San Joaquin River.

(2) RMP.—The term “RMP” means the document titled “Bakersfield Field Office, Record of Decision and Approved Resource Management Plan”, dated December 2014.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(b) APPLICABILITY OF RMP.—The RMP and findings related thereto shall have no effect on or applicability to the Secretary’s determination of feasibility of, or on any findings or environmental review documents related to—

(1) the Project; or

(2) actions taken by the Secretary pursuant to section 103(d)(1)(A)(ii)(II) of the Bay-Delta Authorization Act (title I of [Public Law 108–361](#)).

(c) DUTIES OF SECRETARY UPON DETERMINATION OF FEASIBILITY.—If the Secretary finds the Project to be feasible, the Secretary shall manage the land recommended in the RMP for designation under the Wild and Scenic Rivers Act ([16 U.S.C. 1271 et seq.](#)) in a manner that does not impede any environmental reviews, preconstruction, construction, or other activities of the Project, regardless of whether or not the Secretary submits any official recommendation to Congress under the Wild and Scenic Rivers Act.

(d) RESERVED WATER RIGHTS.—Effective December 22, 2017, there shall be no Federal reserved water rights to any segment of the San Joaquin River related to the Project as a result of any designation made under the Wild and Scenic Rivers Act ([16 U.S.C. 1271 et seq.](#)).

## SEC. 203. CALFED STORAGE ACCOUNTABILITY.

If the Secretary of the Interior fails to provide the feasibility studies described in section 201 to the appropriate committees of the House of Representatives and the Senate by the times prescribed, the Secretary shall notify each committee chair individually in person on the status of each project once a month until the feasibility study for that project is provided to Congress.

## SEC. 204. WATER STORAGE PROJECT CONSTRUCTION.

(a) PARTNERSHIP AND AGREEMENTS.—The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement 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 those projects.

(b) AUTHORIZATION FOR PROJECT.—If the Secretary determines a project described in section 202(a)(1) and (2) is feasible, the Secretary is authorized to carry out the project in a manner that is substantially in accordance with the recommended plan, and subject to the conditions described in the feasibility study, provided that no Federal funding shall be used to construct the project.

# **TITLE III—WATER RIGHTS PROTECTIONS**

**SEC. 301. OFFSET FOR STATE WATER PROJECT.**

(a) **IMPLEMENTATION IMPACTS.**—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this title on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) **ADDITIONAL YIELD.**—If, as a result of the application of this title, the California Department of Fish and Wildlife—

(1) revokes the consistency determinations pursuant to California Fish and Game Code section 2080.1 that are applicable to the State Water Project;

(2) amends or issues one or more new consistency determinations pursuant to California Fish and Game Code section 2080.1 in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion; or

(3) requires take authorization under California Fish and Game Code section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action.

(c) **NOTIFICATION RELATED TO ENVIRONMENTAL PROTECTIONS.**—The Secretary of the Interior shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary of the Interior determines that implementation of the smelt biological opinion and the salmonid biological opinion consistent with this title reduces environmental protections for any species covered by the opinions.

**SEC. 302. AREA OF ORIGIN PROTECTIONS.**

(a) **IN GENERAL.**—The Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including any appropriative water rights initiated prior to December 19, 1914, as well as water rights and other priorities perfected or to be perfected pursuant to California Water Code Part 2 of Division 2, Article 1.7 (commencing with section 1215 of chapter 1 of part 2 of division 2, sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and sections 12200 through 12220, inclusive).

(b) **DIVERSIONS.**—Any action undertaken by the Secretary of the Interior and the Secretary of Commerce pursuant to both this title and section 7 of the Endangered Species Act of 1973 ([16 U.S.C. 1531 et seq.](#)) that requires that diversions from the Sacramento River or the San Joaquin River watersheds upstream of the Delta be bypassed shall not be undertaken in a manner that alters the water rights priorities established by California law.

**SEC. 303. NO REDIRECTED ADVERSE IMPACTS.**

(a) **IN GENERAL.**—The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this title, including such actions under section 7 of the Endangered Species Act of 1973 ([16 U.S.C. 1531 et seq.](#)) and other applicable Federal and State laws, shall not directly or indirectly—

(1) result in the involuntary reduction of water supply or fiscal impacts to individuals or districts who receive water from either the State Water Project or the United States under water rights settlement

contracts, exchange contracts, water service contracts, repayment contracts, or water supply contracts; or

(2) cause redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area.

(b) COSTS.—To the extent that costs are incurred solely pursuant to or as a result of this title and would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR AMENDED.—Nothing in this title shall modify or amend the rights and obligations of the parties to any existing—

(1) water service, repayment, settlement, purchase, or exchange contract with the United States, including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other Central Valley Project water; or

(2) State Water Project water supply or settlement contract with the State.

#### SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS.

(a) ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (b), the Secretary of the Interior is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(A) Not less than 100 percent of their contract quantities in a “Wet” year.

(B) Not less than 100 percent of their contract quantities in an “Above Normal” year.

(C) Not less than 100 percent of their contract quantities in a “Below Normal” year that is preceded by an “Above Normal” or a “Wet” year.

(D) Not less than 50 percent of their contract quantities in a “Dry” year that is preceded by a “Below Normal”, an “Above Normal”, or a “Wet” year.

(E) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors.

(2) CONDITIONS.—The Secretary’s actions under paragraph (a) shall be subject to—

(A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;

(B) the United States obligation to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and

(C) the Secretary's obligation to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575).

(b) **PROTECTION OF MUNICIPAL AND INDUSTRIAL SUPPLIES.**—Nothing in subsection (a) shall be deemed to—

- (1) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;
- (2) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies;
- (3) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies; or
- (4) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies.

Neither subsection (a) nor the Secretary's implementation of subsection (a) shall constrain, govern or affect, directly, the operations of the Central Valley Project's American River Division or any deliveries from that Division, its units or facilities.

(c) **NO EFFECT ON ALLOCATIONS.**—This section shall not—

- (1) affect the allocation of water to Friant Division contractors; or
- (2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division.

(d) **PROGRAM FOR WATER RESCHEDULING.**—The Secretary of the Interior shall develop and implement a program, not later than 1 year after the date of the enactment of this Act, to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project water service contracts, from one year to the next.

(e) **DEFINITIONS.**—In this section:

- (1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.
- (2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40–30–30) Index.

#### **SEC. 305. EFFECT ON EXISTING OBLIGATIONS.**

Nothing in this title preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.

### **TITLE IV—MISCELLANEOUS**

#### **SEC. 401. WATER SUPPLY ACCOUNTING.**

(a) **IN GENERAL.**—All Central Valley Project water, except Central Valley Project water released pursuant to U.S. Department of the Interior Record of Decision, Trinity River Mainstem Fishery Restoration Final Environmental Impact Statement/Environmental Impact Report dated December 2000 used to

implement an action undertaken for a fishery beneficial purpose that was not 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, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section; provided, that nothing herein shall affect the Secretary of the Interior's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of Federal or State law.

(b) RECLAMATION POLICIES AND ALLOCATIONS.—Reclamation policies and allocations shall not be based upon any premise or assumption that Central Valley Project contract supplies are supplemental or secondary to any other contractor source of supply.

#### SEC. 402. OPERATIONS OF THE TRINITY RIVER DIVISION.

The Secretary of the Interior, in the operation of the Trinity River Division of the Central Valley Project, shall not make releases from Lewiston Dam in excess of the volume for each water-year type required by the U.S. Department of the Interior Record of Decision, Trinity River Mainstem Fishery Restoration Final Environmental Impact Statement/Environmental Impact Report dated December 2000.

- (1) A maximum of 369,000 acre-feet in a “Critically Dry” year.
- (2) A maximum of 453,000 acre-feet in a “Dry” year.
- (3) A maximum of 647,000 acre-feet in a “Normal” year.
- (4) A maximum of 701,000 acre-feet in a “Wet” year.
- (5) A maximum of 815,000 acre-feet in an “Extremely Wet” year.

#### SEC. 403. REPORT ON RESULTS OF WATER USAGE.

The Secretary of the Interior, in consultation with the Secretary of Commerce and the Secretary of Natural Resources of the State of California, shall publish an annual report detailing instream flow releases from the Central Valley Project and California State Water Project, their explicit purpose and authority, and all measured environmental benefit as a result of the releases.

#### SEC. 404. KLAMATH PROJECT CONSULTATION APPLICANTS.

If the Bureau of Reclamation initiates or reinitiates consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service under section 7(a)(2) of the Endangered Species Act of 1973 ([16 U.S.C. 1536\(a\)\(2\)](#)), with respect to construction or operation of the Klamath Project (or any part thereof), Klamath Project contractors shall be accorded all the rights and responsibilities extended to applicants in the consultation process. Upon request of the Klamath Project contractors, they may be represented through an association or organization.

#### SEC. 405. LOSSES CAUSED BY THE CONSTRUCTION AND OPERATION OF STORAGE PROJECTS.

(a) MARINAS, RECREATIONAL FACILITIES, OTHER BUSINESSES.—If in constructing any new or modified water storage project included in section 103(d)(1)(A) of [Public Law 108–361](#) (118 Stat. 1684), the Bureau of Reclamation destroys or otherwise adversely affects any existing marina, recreational facility, or other water-dependent business when constructing or operating a new or modified water storage project, the Secretaries of the Interior and Agriculture, acting through the Bureau and the Forest Service shall—

- (1) provide compensation otherwise required by law; and
- (2) provide the owner of the affected marina, recreational facility, or other water-dependent business under mutually agreeable terms and conditions with the right of first refusal to construct and operate a replacement marina, recreational facility, or other water-dependent business, as the case may be, on United States land associated with the new or modified water storage project.



(b) **HYDROELECTRIC PROJECTS.**—If in constructing any new or modified water storage project included in section 103(d)(1)(A) of [Public Law 108–361](#) (118 Stat. 1684), the Bureau of Reclamation reduces or eliminates the capacity or generation of any existing non-Federal hydroelectric project by inundation or otherwise, the Secretary of the Interior shall—

(1) provide compensation otherwise required by law;

(2) provide the owner of the affected hydroelectric project under mutually agreeable terms and conditions with a right of first refusal to construct, operate, and maintain replacement hydroelectric generating facilities at such new or modified water storage project, on federal land associated with the new or modified water storage project or on private land owned by the affected hydroelectric project owner;

(3) provide compensation for the construction of any water conveyance facilities as are necessary to convey water to any new powerhouse constructed by such owner in association with such new hydroelectric generating facilities; and

(4) provide for subsections (b)(1), (b)(2), and (b)(3) at a cost not to exceed the estimated value of the actual impacts to any existing non-Federal hydroelectric project and as estimated for the associated feasibility study, including additional planning, environmental, design, construction, and operations and maintenance costs for existing and replacement facilities.

(c) **COST ALLOCATION.**—Any compensation under this section shall be a project cost and allocated to project beneficiaries.

(d) **APPLICABILITY.**—This section shall only apply to federally owned water storage projects, whether authorized under this Act or some other authority.

(e) **LIMITATION.**—Nothing in this section affects the ability of landowners or tribes to seek compensation or any other remedy otherwise required by law.

#### **SEC. 406. CA STATE WATER RESOURCES CONTROL BOARD.**

(a) **IN GENERAL.**—In carrying out this Act, the Secretaries shall—

(1) recognize Congressional opposition to the violation of private property rights by the California State Water Resources Control Board in their proposal to require a minimum percentage of unimpaired flows in the main tributaries of the San Joaquin River; and

(2) recognize the need to provide reliable water supplies to municipal, industrial, and agricultural users across the State.

### **TITLE V—WATER SUPPLY PERMITTING ACT**

#### **SEC. 501. SHORT TITLE.**

This title may be cited as the “Water Supply Permitting Coordination Act”.

#### **SEC. 502. DEFINITIONS.**

In this title:

(1) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(2) **BUREAU.**—The term “Bureau” means the Bureau of Reclamation.

(3) **QUALIFYING PROJECTS.**—The term “qualifying projects” means new surface water storage projects in the States covered under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts

supplemental to and amendatory of that Act ([43 U.S.C. 371 et seq.](#)) constructed on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.

(4) COOPERATING AGENCIES.—The term “cooperating agency” means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 503(c).

### SEC. 503. ESTABLISHMENT OF LEAD AGENCY AND COOPERATING AGENCIES.

(a) ESTABLISHMENT OF LEAD AGENCY.—The Bureau of Reclamation is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.

(b) IDENTIFICATION AND ESTABLISHMENT OF COOPERATING AGENCIES.—The Commissioner of the Bureau shall—

(1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and

(2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency—

(A) has no jurisdiction or authority with respect to the qualifying project;

(B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or

(C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) STATE AUTHORITY.—A State in which a qualifying project is being considered may choose, consistent with State law—

(1) to participate as a cooperating agency; and

(2) to make subject to the processes of this title all State agencies that—

(A) have jurisdiction over the qualifying project;

(B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or

(C) are required to make a determination on issuing a permit, license, or approval for the qualifying project.

### SEC. 504. BUREAU RESPONSIBILITIES.

(a) IN GENERAL.—The principal responsibilities of the Bureau under this title are to—

(1) serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed qualifying projects;

(2) coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and

(3) coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.

(b) COORDINATION PROCESS.—The Bureau shall have the following coordination responsibilities:

(1) PRE-APPLICATION COORDINATION.—Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes to—

(A) explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the timeframe established; and

(B) establish the schedule for the qualifying project.

(2) CONSULTATION WITH COOPERATING AGENCIES.—Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.

(3) SCHEDULE.—Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors—

(A) the responsibilities of cooperating agencies under applicable laws and regulations;

(B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;

(C) the overall size and complexity of the qualifying project;

(D) the overall schedule for and cost of the qualifying project; and

(E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(4) ENVIRONMENTAL COMPLIANCE.—Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:

(A) Not later than one year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)).

(B) Not later than one year and 30 days after the close of the public comment period for a draft environmental impact statement under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)), when an environmental impact statement is required under the same.

(5) CONSOLIDATED ADMINISTRATIVE RECORD.—Maintain a consolidated administrative record of the information assembled and used by the cooperating agencies as the basis for agency decisions.

(6) PROJECT DATA RECORDS.—To the extent practicable and consistent with Federal law, ensure that all project data is submitted and maintained in generally accessible electronic format, compile, and where authorized under existing law, make available such project data to cooperating agencies, the qualifying project applicant, and to the public.

(7) **PROJECT MANAGER.**—Appoint a project manager for each qualifying project. The project manager shall have authority to oversee the project and to facilitate the issuance of the relevant final authorizing documents, and shall be responsible for ensuring fulfillment of all Bureau responsibilities set forth in this section and all cooperating agency responsibilities under section 505.

#### SEC. 505. COOPERATING AGENCY RESPONSIBILITIES.

(a) **ADHERENCE TO BUREAU SCHEDULE.**—Upon notification of an application for a qualifying project, all cooperating agencies shall submit to the Bureau a timeframe under which the cooperating agency reasonably considers it will be able to complete its authorizing responsibilities. The Bureau shall use the timeframe submitted under this subsection to establish the project schedule under section 504, and the cooperating agencies shall adhere to the project schedule established by the Bureau.

(b) **ENVIRONMENTAL RECORD.**—Cooperating agencies shall submit to the Bureau all environmental review material produced or compiled in the course of carrying out activities required under Federal law consistent with the project schedule established by the Bureau.

(c) **DATA SUBMISSION.**—To the extent practicable and consistent with Federal law, the cooperating agencies shall submit all relevant project data to the Bureau in a generally accessible electronic format subject to the project schedule set forth by the Bureau.

#### SEC. 506. FUNDING TO PROCESS PERMITS.

(a) **IN GENERAL.**—The Secretary, after public notice in accordance with the Administrative Procedures Act ([5 U.S.C. 553](#)), may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project.

(b) **EFFECT ON PERMITTING.**—

(1) **IN GENERAL.**—In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) **EVALUATION OF PERMITS.**—In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall—

(A) be reviewed by the Regional Director of the Bureau, or the Regional Director's designee, of the region in which the qualifying project or activity is located; and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(3) **IMPARTIAL DECISIONMAKING.**—In carrying out this section, the Secretary and the cooperating agencies receiving funds under this section for qualifying projects shall ensure that the use of the funds accepted under this section for such projects shall not—

(A) impact impartial decisionmaking with respect to the issuance of permits, either substantively or procedurally; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

(c) **LIMITATION ON USE OF FUNDS.**—None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) **PUBLIC AVAILABILITY.**—The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

## **TITLE VI—BUREAU OF RECLAMATION PROJECT STREAMLINING**

### **SEC. 601. SHORT TITLE.**

This title may be cited as the “Bureau of Reclamation Project Streamlining Act”.

### **SEC. 602. DEFINITIONS.**

In this title:

(1) **ENVIRONMENTAL IMPACT STATEMENT.**—The term “environmental impact statement” means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)).

(2) **ENVIRONMENTAL REVIEW PROCESS.**—

(A) **IN GENERAL.**—The term “environmental review process” means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) for a project study.

(B) **INCLUSIONS.**—The term “environmental review process” includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)).

(3) **FEDERAL JURISDICTIONAL AGENCY.**—The term “Federal jurisdictional agency” means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).

(4) **FEDERAL LEAD AGENCY.**—The term “Federal lead agency” means the Bureau of Reclamation.

(5) **PROJECT.**—The term “project” means a surface water project, a project under the purview of title XVI of Public Law 102–575, or a rural water supply project investigated under [Public Law 109–451](#) to be carried out, funded or operated in whole or in part by the Secretary pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act ([43 U.S.C. 371 et seq.](#)).

(6) **PROJECT SPONSOR.**—The term “project sponsor” means a State, regional, or local authority or instrumentality or other qualifying entity, such as a water conservation district, irrigation district, water conservancy district, joint powers authority, mutual water company, canal company, rural water district or association, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

(7) **PROJECT STUDY.**—The term “project study” means a feasibility study for a project carried out pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act ([43 U.S.C. 371 et seq.](#)).

(8) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(9) **SURFACE WATER STORAGE.**—The term “surface water storage” means any surface water reservoir or impoundment that would be owned, funded or operated in whole or in part by the Bureau of

Reclamation or that would be integrated into a larger system owned, operated or administered in whole or in part by the Bureau of Reclamation.

#### SEC. 603. ACCELERATION OF STUDIES.

(a) **IN GENERAL.**—To the extent practicable, a project study initiated by the Secretary, after the date of enactment of this Act, under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto, shall—

(1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;

(2) have a maximum Federal cost of \$3,000,000; and

(3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the review required under this section.

(b) **EXTENSION.**—If the Secretary determines that a project study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall—

(1) prepare an updated project study schedule and cost estimate;

(2) notify the non-Federal project cost-sharing partner that the project study has been delayed; and

(3) provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the reasons the requirements of subsection (a) are not attainable.

(c) **EXCEPTION.**—

(1) **IN GENERAL.**—Notwithstanding the requirements of subsection (a), the Secretary may extend the timeline of a project study by a period not to exceed 3 years, if the Secretary determines that the project study is too complex to comply with the requirements of subsection (a).

(2) **FACTORS.**—In making a determination that a study is too complex to comply with the requirements of subsection (a), the Secretary shall consider—

(A) the type, size, location, scope, and overall cost of the project;

(B) whether the project will use any innovative design or construction techniques;

(C) whether the project will require significant action by other Federal, State, or local agencies;

(D) whether there is significant public dispute as to the nature or effects of the project; and

(E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.

(3) **NOTIFICATION.**—Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the results of that determination, including an identification of the specific one or more factors used in making the determination that the project is complex.

(4) **LIMITATION.**—The Secretary shall not extend the timeline for a project study for a period of more than 7 years, and any project study that is not completed before that date shall no longer be

authorized.

(d) **REVIEWS.**—Not later than 90 days after the date of the initiation of a project study described in subsection (a), the Secretary shall—

(1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 805;

(2) convene a meeting of all Federal, tribal, and State agencies identified under section 605(d) that may—

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study; and

(3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

(e) **INTERIM REPORT.**—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes—

(1) the status of the implementation of the planning process under this section, including the number of participating projects;

(2) a review of project delivery schedules, including a description of any delays on those studies initiated prior to the date of the enactment of this Act; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project.

(f) **FINAL REPORT.**—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes—

(1) the status of the implementation of this section, including a description of each project study subject to the requirements of this section;

(2) the amount of time taken to complete each project study; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

#### **SEC. 604. EXPEDITED COMPLETION OF REPORTS.**

The Secretary shall—

(1) expedite the completion of any ongoing project study initiated before the date of enactment of this Act; and

(2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with the Reclamation Act

of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

## SEC. 605. PROJECT ACCELERATION.

### (a) APPLICABILITY.—

#### (1) IN GENERAL.—This section shall apply to—

(A) each project study that is initiated after the date of enactment of this Act and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#));

(B) the extent determined appropriate by the Secretary, to other project studies initiated before the date of enactment of this Act and for which an environmental review process document is prepared under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and

(C) any project study for the development of a nonfederally owned and operated surface water storage project for which the Secretary determines there is a demonstrable Federal interest and the project—

(i) is located in a river basin where other Bureau of Reclamation water projects are located;

(ii) will create additional water supplies that support Bureau of Reclamation water projects; or

(iii) will become integrated into the operation of Bureau of Reclamation water projects.

(2) FLEXIBILITY.—Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.

#### (3) LIST OF PROJECT STUDIES.—

(A) IN GENERAL.—The Secretary shall annually prepare, and make publicly available, a list of all project studies that the Secretary has determined—

(i) meets the standards described in paragraph (1); and

(ii) does not have adequate funding to make substantial progress toward the completion of the project study.

(B) INCLUSIONS.—The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

### (b) PROJECT REVIEW PROCESS.—

(1) IN GENERAL.—The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.

(2) COORDINATED REVIEW.—The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.



(3) **TIMING.**—The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under section 705(d), establishes with respect to the project study.

(c) **LEAD AGENCIES.**—

(1) **JOINT LEAD AGENCIES.**—

(A) **IN GENERAL.**—Subject to the requirements of the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) **PROJECT SPONSOR AS JOINT LEAD AGENCY.**—A project sponsor that is a State or local governmental entity may—

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) required in support of any action or approval by the Secretary if—

(I) the Secretary provides guidance in the preparation process and independently evaluates that document;

(II) the project sponsor complies with all requirements applicable to the Secretary under—

(aa) the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#));

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

(III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) **DUTIES.**—The Secretary shall ensure that—

(A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and

(B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

(3) **ADOPTION AND USE OF DOCUMENTS.**—Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under—

(A) the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and

(B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(4) ROLES AND RESPONSIBILITY OF LEAD AGENCY.—With respect to the environmental review process for any project study, the Federal lead agency shall have authority and responsibility—

(A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and

(B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) is completed in accordance with this section and applicable Federal law.

(d) PARTICIPATING AND COOPERATING AGENCIES.—

(1) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may—

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) STATE AUTHORITY.—If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that—

(A) have jurisdiction over the project;

(B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) INVITATION.—

(A) IN GENERAL.—The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.

(B) DEADLINE.—An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) PROCEDURES.—Section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Bureau of Reclamation Project Streamlining Act), shall govern the identification and the participation of a cooperating agency.

(5) FEDERAL COOPERATING AGENCIES.—Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency—

- (A)(i) has no jurisdiction or authority with respect to the project;
  - (ii) has no expertise or information relevant to the project; or
  - (iii) does not have adequate funds to participate in the project; and
- (B) does not intend to submit comments on the project.

(6) ADMINISTRATION.—A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) EFFECT OF DESIGNATION.—Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency—

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) CONCURRENT REVIEWS.—Each participating or cooperating agency shall—

(A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and

(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) NON-FEDERAL PROJECTS INTEGRATED INTO RECLAMATION SYSTEMS.—The Federal lead agency shall serve in that capacity for the entirety of all non-Federal projects that will be integrated into a larger system owned, operated or administered in whole or in part by the Bureau of Reclamation.

(f) NON-FEDERAL PROJECT.—If the Secretary determines that a project can be expedited by a non-Federal sponsor and that there is a demonstrable Federal interest in expediting that project, the Secretary shall take such actions as are necessary to advance such a project as a non-Federal project, including, but not limited to, entering into agreements with the non-Federal sponsor of such project to support the planning, design and permitting of such project as a non-Federal project.

(g) PROGRAMMATIC COMPLIANCE.—

(1) IN GENERAL.—The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that—

- (A) eliminates repetitive discussions of the same issues;
- (B) focuses on the actual issues ripe for analyses at each level of review;
- (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that are needed to carry out an environmental review process; and
- (D) complies with—
  - (i) the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and
  - (ii) all other applicable laws.

(2) REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall—

(A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;

(B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;

(C) ensure that the programmatic reviews—

(i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;

(ii) use accurate and timely information in the environmental review process, including

(I) criteria for determining the general duration of the usefulness of the review; and

(II) the timeline for updating any out-of-date review;

(iii) describe—

(I) the relationship between programmatic analysis and future tiered analysis; and

(II) the role of the public in the creation of future tiered analysis; and

(iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;

(D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and

(E) address any comments received under subparagraph (D).

(h) COORDINATED REVIEWS.—

(1) COORDINATION PLAN.—

(A) ESTABLISHMENT.—The Federal lead agency shall, after consultation with and with the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, establish a plan for coordinating public and agency participation in, and comment on, the environmental review process for a project study or a category of project studies.

(B) SCHEDULE.—

(i) IN GENERAL.—As soon as practicable but not later than 45 days after the close of the public comment period on a draft environmental impact statement, the Federal lead agency, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in subparagraph (A), a schedule for completion of the environmental review process for the project study.

(ii) FACTORS FOR CONSIDERATION.—In establishing a schedule, the Secretary shall consider factors such as—

(I) the responsibilities of participating and cooperating agencies under applicable laws;

(II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;

(III) the overall size and complexity of the project;

(IV) the overall schedule for and cost of the project; and

(V) the sensitivity of the natural and historical resources that could be affected by the project.

(iii) MODIFICATIONS.—The Secretary may—

(I) lengthen a schedule established under clause (i) for good cause; and

(II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.

(iv) DISSEMINATION.—A copy of a schedule established under clause (i) shall be—

(I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and

(II) made available to the public.

(2) COMMENT DEADLINES.—The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

(A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS.—For comments by Federal and State agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless—

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(B) OTHER ENVIRONMENTAL REVIEW PROCESSES.—For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless—

(i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or

(ii) the deadline is extended by the Federal lead agency for good cause.

(3) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—In any case in which a decision under any Federal law relating to a project study, including the issuance or denial of a permit or license, is required to be made by the date described in subsection (i)(5)(B), the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate—

(A) as soon as practicable after the 180-day period described in subsection (i)(5)(B), an initial notice of the failure of the Federal agency to make the decision; and

(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project study have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) INVOLVEMENT OF THE PUBLIC.—Nothing in this subsection reduces any time period provided for public comment in the environmental review process under applicable Federal law (including regulations).

(5) TRANSPARENCY REPORTING.—

(A) REPORTING REQUIREMENTS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish and maintain an electronic database and, in coordination with other Federal and State agencies, issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) and any other Federal, State, or local approval or action required for a project study for which this section is applicable.

(B) PROJECT STUDY TRANSPARENCY.—Consistent with the requirements established under subparagraph (A), the Secretary shall make publicly available the status and progress of any Federal, State, or local decision, action, or approval required under applicable laws for each project study for which this section is applicable.

(i) ISSUE IDENTIFICATION AND RESOLUTION.—

(1) COOPERATION.—The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) FEDERAL LEAD AGENCY RESPONSIBILITIES.—

(A) IN GENERAL.—The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) DATA SOURCES.—The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) COOPERATING AND PARTICIPATING AGENCY RESPONSIBILITIES.—Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION.—

(A) IN GENERAL.—On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may—

(i) delay completion of the environmental review process; or

(ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE.—A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION.—On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION.—If a resolution cannot be achieved within the 30-day period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY.—The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) FINANCIAL PENALTY PROVISIONS.—

(A) IN GENERAL.—A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE.—

(i) IN GENERAL.—

(I) TRANSFER OF FUNDS.—If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the amount specified in item (aa) or (bb) of subclause (II), and those funds shall be made available to the division of the Federal jurisdictional agency charged with rendering the decision by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C).

(II) AMOUNT TO BE TRANSFERRED.—The amount referred to in subclause (I) is—

(aa) \$20,000 for any project study requiring the preparation of an environmental assessment or environmental impact statement; or

(bb) \$10,000 for any project study requiring any type of review under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) other than an environmental assessment or environmental impact statement.

(ii) DESCRIPTION OF DATE.—The date referred to in clause (i) is the later of—

(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)).

(C) LIMITATIONS.—

(i) IN GENERAL.—No transfer of funds under subparagraph (B) relating to an individual project study shall exceed, in any fiscal year, an amount equal to 1 percent of the funds made available for the applicable agency office.

(ii) FAILURE TO DECIDE.—The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5 percent of the funds made available for the applicable agency office for that fiscal year.

(iii) AGGREGATE.—Notwithstanding any other provision of law, for each fiscal year, the aggregate amount of financial penalties assessed against each applicable agency office under this title and any other Federal law as a result of a failure of the agency to make a decision by an applicable deadline for environmental review, including the total amount transferred under this paragraph, shall not exceed an amount equal to 9.5 percent of the funds made available for the agency office for that fiscal year.

(D) NOTIFICATION OF TRANSFERS.—Not later than 10 days after the last date in a fiscal year on which funds of the Federal jurisdictional agency may be transferred under subparagraph (B)(5) with respect to an individual decision, the agency shall submit to the appropriate committees of the House of Representatives and the Senate written notification that includes a description of—

(i) the decision;

(ii) the project study involved;

(iii) the amount of each transfer under subparagraph (B) in that fiscal year relating to the decision;

(iv) the total amount of all transfers under subparagraph (B) in that fiscal year relating to the decision; and

(v) the total amount of all transfers of the agency under subparagraph (B) in that fiscal year.

(E) NO FAULT OF AGENCY.—

(i) IN GENERAL.—A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that—

(I) the agency has not received necessary information or approvals from another entity in a manner that affects the ability of the agency to meet any requirements under Federal, State, or local law;

(II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or

(III) the agency lacks the financial resources to complete the review under the scheduled timeframe, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.



(ii) LACK OF FINANCIAL RESOURCES.—If the agency provides notice under clause (i) (III), the Inspector General of the agency shall—

(I) conduct a financial audit to review the notice; and

(II) not later than 90 days after the date on which the review described in subclause (I) is completed, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate the results of the audit conducted under subclause (I).

(F) LIMITATION.—The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(G) EFFECT OF PARAGRAPH.—Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(j) MEMORANDUM OF AGREEMENTS FOR EARLY COORDINATION.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State and local agencies, and Indian tribes on environmental review and Bureau of Reclamation project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) TECHNICAL ASSISTANCE.—If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) MEMORANDUM OF AGENCY AGREEMENT.—If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribes, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(k) LIMITATIONS.—Nothing in this section preempts or interferes with—

(1) any obligation to comply with the provisions of any Federal law, including—

(A) the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)); and

(B) any other Federal environmental law;

(2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;

(3) any requirement for seeking, considering, or responding to public comment; or

(4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.

(l) TIMING OF CLAIMS.—

(1) TIMING.—

(A) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless the claim is filed not later than 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law that allows judicial review.

(B) APPLICABILITY.—Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) NEW INFORMATION.—

(A) IN GENERAL.—The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations (including successor regulations).

(B) SEPARATE ACTION.—The preparation of a supplemental environmental impact statement or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental environmental impact statement or other environmental document.

(m) CATEGORICAL EXCLUSIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(A) survey the use by the Bureau of Reclamation of categorical exclusions in projects since 2005;

(B) publish a review of the survey that includes a description of—

(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions.

(2) NEW CATEGORICAL EXCLUSIONS.—Not later than 1 year after the date of enactment of this Act, if the Secretary has identified a category of activities that merit establishing a categorical exclusion that did not exist on the day before the date of enactment this Act based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(n) REVIEW OF PROJECT ACCELERATION REFORMS.—

(1) IN GENERAL.—The Comptroller General of the United States shall—

(A) assess the reforms carried out under this section; and

(B) not later than 5 years and not later than 10 years after the date of enactment of this Act, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the assessment.

(2) CONTENTS.—The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on—

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(o) PERFORMANCE MEASUREMENT.—The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(p) CATEGORICAL EXCLUSIONS IN EMERGENCIES.—For the repair, reconstruction, or rehabilitation of a Bureau of Reclamation surface water storage project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121 et seq.](#)), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is—

(1) in the same location with the same capacity, dimensions, and design as the original Bureau of Reclamation surface water storage project as before the declaration described in this section; and

(2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.

#### SEC. 606. ANNUAL REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an annual report, to be entitled “Report to Congress on Future Water Project Development”, that identifies the following:

(1) PROJECT REPORTS.—Each project report that meets the criteria established in subsection (c)(1) (A).

(2) PROPOSED PROJECT STUDIES.—Any proposed project study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1) (A).

(3) PROPOSED MODIFICATIONS.—Any proposed modification to an authorized water project or project study that meets the criteria established in subsection (c)(1)(A) that—

(A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or

(B) is identified by the Secretary for authorization.

(4) EXPEDITED COMPLETION OF REPORT AND DETERMINATIONS.—Any project study that was expedited and any Secretarial determinations under section 804.

(b) REQUESTS FOR PROPOSALS.—

(1) PUBLICATION.—Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed project studies and proposed modifications to authorized projects and project studies to be included in the annual report.

(2) DEADLINE FOR REQUESTS.—The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.

(3) NOTIFICATION.—On the date of publication of each notice required by this subsection, the Secretary shall—

(A) make the notice publicly available, including on the Internet; and

(B) provide written notification of the publication to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) CONTENTS.—

(1) PROJECT REPORTS, PROPOSED PROJECT STUDIES, AND PROPOSED MODIFICATIONS.—

(A) CRITERIA FOR INCLUSION IN REPORT.—The Secretary shall include in the annual report only those project reports, proposed project studies, and proposed modifications to authorized projects and project studies that—

- (i) are related to the missions and authorities of the Bureau of Reclamation;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;
- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Bureau of Reclamation.

(B) DESCRIPTION OF BENEFITS.—

(i) DESCRIPTION.—The Secretary shall describe in the annual report, to the extent applicable and practicable, for each proposed project study and proposed modification to an authorized water resources development project or project study included in the annual report, the benefits, as described in clause (ii), of each such study or proposed modification.

(ii) BENEFITS.—The benefits (or expected benefits, in the case of a proposed project study) described in this clause are benefits to—

- (I) the protection of human life and property;
- (II) improvement to domestic irrigated water and power supplies;
- (III) the national economy;
- (IV) the environment; or
- (V) the national security interests of the United States.

(C) IDENTIFICATION OF OTHER FACTORS.—The Secretary shall identify in the annual report, to the extent practicable—

(i) for each proposed project study included in the annual report, the non-Federal interest that submitted the proposed project study pursuant to subsection (b); and

(ii) for each proposed project study and proposed modification to a project or project study included in the annual report, whether the non-Federal interest has demonstrated—

(I) that local support exists for the proposed project study or proposed modification to an authorized project or project study (including the surface water storage development project that is the subject of the proposed feasibility study or the proposed modification to an authorized project study); and

(II) the financial ability to provide the required non-Federal cost share.

(2) TRANSPARENCY.—The Secretary shall include in the annual report, for each project report, proposed project study, and proposed modification to a project or project study included under paragraph (1)(A)—

(A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of—

(i) the project report;

(ii) the proposed project study;

(iii) the authorized project study for which the modification is proposed; or

(iv) construction of—

(I) the project that is the subject of—

(aa) the water report;

(bb) the proposed project study; or

(cc) the authorized project study for which a modification is proposed; or

(II) the proposed modification to a project;

(B) a letter or statement of support for the water report, proposed project study, or proposed modification to a project or project study from each associated non-Federal interest;

(C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to a project or project study;

(D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of—

(i) the proposed modification to an authorized project study; and

(ii) construction of—

(I) the project that is the subject of—

(aa) the project report; or

(bb) the authorized project study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

(II) the proposed modification to an authorized project; and

(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of—

(i) the project that is the subject of—

(I) the project report; or

(II) the authorized project study for which a modification is proposed, with respect to the benefits of such modification; or

(ii) the proposed modification to an authorized project.

(3) CERTIFICATION.—The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to a project or project study included in the annual report meets the criteria established in paragraph (1)(A).

(4) APPENDIX.—The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

(d) SPECIAL RULE FOR INITIAL ANNUAL REPORT.—Notwithstanding any other deadlines required by this section, the Secretary shall—

(1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a notice required by subsection (b)(1); and

(2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.

(e) PUBLICATION.—Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

(f) DEFINITION.—In this section, the term “project report” means a final feasibility report developed under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

## **TITLE VII—ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT**

### SEC. 701. SHORT TITLE.

This title may be cited as the “Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act”.

### SEC. 702. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS BETWEEN THE UNITED STATES AND CONTRACTORS OF FEDERALLY DEVELOPED WATER SUPPLIES.

(a) CONVERSION AND PREPAYMENT OF CONTRACTS.—

(1) CONVERSION.—Upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this Act and between the United States and a water users’ association to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions. The manner of conversion under this paragraph shall be as follows:

(A) Water service contracts that were entered into under section 9(e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195).

(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).

(2) PREPAYMENT.—Except for those repayment contracts under which the contractor has previously negotiated for prepayment, all repayment contracts under section 9(d) of that Act (53 Stat. 1195) in effect on the date of enactment of this Act at the request of the contractor, and all contracts converted pursuant to paragraph (1)(A) shall—

(A) provide for the repayment, either in lump sum or by accelerated prepayment, of the remaining construction costs identified in water project specific irrigation rate repayment schedules, as adjusted to reflect payment not reflected in such schedule, and properly assignable for ultimate return by the contractor, or if made in approximately equal installments, no later than 3 years after the effective date of the repayment contract, such amount to be discounted by  $\frac{1}{2}$  the Treasury rate. An estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the contractor no later than 90 days following receipt of request of the contractor;

(B) require that construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the rate 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 conversation 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;

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

(D) continue so long as the contractor pays applicable charges, consistent with section 9(d) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.

(3) CONTRACT REQUIREMENTS.—Except for those repayment contracts under which the contractor has previously negotiated for prepayment, the following shall apply with regard to all repayment contracts under subsection (c)(1) of section 9 of that Act (53 Stat. 1195) in effect on the date of enactment of this Act at the request of the contractor, and all contracts converted pursuant to paragraph (1)(B):

(A) Provide for the repayment in lump sum of the remaining construction costs identified in water project specific municipal and industrial rate repayment schedules, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor. An estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the contractor no later than 90 days after receipt of request of contractor.

(B) The contract shall require that construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the rate 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 conversation 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.

(C) Continue so long as the contractor pays applicable charges, consistent with section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.

(4) CONDITIONS.—All contracts entered into pursuant to paragraphs (1), (2), and (3) shall—

(A) not be adjusted on the basis of the type of prepayment financing used by the water users' association;

(B) conform to any other agreements, such as applicable settlement agreements and new constructed appurtenant facilities; and

(C) not modify other water service, repayment, exchange and transfer contractual rights between the water users' association, and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association and their landowners as provided under State law.

(b) ACCOUNTING.—The amounts paid pursuant to subsection (a) shall be subject to adjustment following a final cost allocation by the Secretary of the Interior. 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 not less than one year and not 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 shall credit such overpayment as an offset against any outstanding or future obligation of the contractor.

(c) APPLICABILITY OF CERTAIN PROVISIONS.—

(1) EFFECT OF EXISTING LAW.—Upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs pursuant to a contract entered into pursuant to subsection (a)(2)(A), subsections (a) and (b) of section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

(2) EFFECT OF OTHER OBLIGATIONS.—The obligation of a contractor to repay construction costs or other capitalized costs described in subsection (a)(2)(B), (a)(3)(B), or (b) shall not affect a contractor's status as having repaid all of the construction costs assignable to the contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the amount required to be paid by the contractor under the repayment contract entered into pursuant to subsection (a)(2)(A) have been paid.

(d) EFFECT ON EXISTING LAW NOT ALTERED.—Implementation of the provisions of this title shall not alter—

(1) the repayment obligation of any water service or repayment contractor receiving water from the same water project, or shift any costs that would otherwise have been properly assignable to the water users' association identified in subsections (a)(1), (a)(2), and (a)(3) absent this section, including operation and maintenance costs, construction costs, or other capitalized costs incurred after the date of the enactment of this Act, or to other contractors; and

(2) specific requirements for the disposition of amounts received as repayments by the Secretary under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act ([43 U.S.C. 371 et seq.](#)).

(e) SURFACE WATER STORAGE ENHANCEMENT PROGRAM.—

(1) IN GENERAL.—Except as provided in subsection (d)(2), three years following the date of enactment of this Act, 50 percent of receipts generated from prepayment of contracts under this section beyond amounts necessary to cover the amount of receipts forgone from scheduled payments under current law for the 10-year period following the date of enactment of this Act shall be directed to the Reclamation Surface Water Storage Account under paragraph (2).



(2) **SURFACE STORAGE ACCOUNT.**—The Secretary shall allocate amounts collected under paragraph (1) into the “Reclamation Surface Storage Account” to fund the construction of surface water storage. The Secretary may also enter into cooperative agreements with water users’ associations for the construction of surface water storage and amounts within the Surface Storage Account may be used to fund such construction. Surface water storage projects that are otherwise not federally authorized shall not be considered Federal facilities as a result of any amounts allocated from the Surface Storage Account for part or all of such facilities.

(3) **REPAYMENT.**—Amounts used for surface water storage construction from the Account shall be fully reimbursed to the Account consistent with the requirements under Federal reclamation law (the law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093))) and Acts supplemental to and amendatory of that Act ([43 U.S.C. 371 et seq.](#)) except that all funds reimbursed shall be deposited in the Account established under paragraph (2).

(4) **AVAILABILITY OF AMOUNTS.**—Amounts deposited in the Account under this subsection shall

—

(A) be made available in accordance with this section, subject to appropriation; and

(B) be in addition to amounts appropriated for such purposes under any other provision of law.

(5) **PURPOSES OF SURFACE WATER STORAGE.**—Construction of surface water storage under this section shall be made for the following purposes:

(A) Increased municipal and industrial water supply.

(B) Agricultural floodwater, erosion, and sedimentation reduction.

(C) Agricultural drainage improvements.

(D) Agricultural irrigation.

(E) Increased recreation opportunities.

(F) Reduced adverse impacts to fish and wildlife from water storage or diversion projects within watersheds associated with water storage projects funded under this section.

(G) Any other purposes consistent with reclamation laws or other Federal law.

(f) **DEFINITIONS.**—For the purposes of this title, the following definitions apply:

(1) **ACCOUNT.**—The term “Account” means the Reclamation Surface Water Storage Account established under subsection (e)(2).

(2) **CONSTRUCTION.**—The term “construction” means the designing, materials engineering and testing, surveying, and building of surface water storage including additions to existing surface water storage and construction of new surface water storage facilities, exclusive of any Federal statutory or regulatory obligations relating to any permit, review, approval, or other such requirement.

(3) **SURFACE WATER STORAGE.**—The term “surface water storage” means any federally owned facility under the jurisdiction of the Bureau of Reclamation or any non-Federal facility used for the surface storage and supply of water resources.

(4) **TREASURY RATE.**—The term “Treasury rate” means the 20-year Constant Maturity Treasury (CMT) rate published by the United States Department of the Treasury existing on the effective date of the contract.

(5) WATER USERS' ASSOCIATION.—The term “water users’ association” means—

(A) an entity organized and recognized under State laws that is eligible to enter into contracts with reclamation to receive contract water for delivery to and users of the water and to pay applicable charges; and

(B) includes a variety of entities with different names and differing functions, such as associations, conservatory district, irrigation district, municipality, and water project contract unit.

## **TITLE VIII—SAFETY OF DAMS**

### **SEC. 801. AUTHORIZATION OF ADDITIONAL PROJECT BENEFITS.**

The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3, by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A ([43 U.S.C. 509](#)) the following:

#### **“SEC. 5B. AUTHORIZATION OF ADDITIONAL PROJECT BENEFITS.**

“Notwithstanding section 3, if the Secretary determines that additional project benefits, including but not limited to additional conservation storage capacity, are feasible and not inconsistent with the purposes of this Act, the Secretary is authorized to develop additional project benefits through the construction of new or supplementary works on a project in conjunction with the Secretary’s activities under section 2 and subject to the conditions described in the feasibility study, provided—

“(1) the Secretary determines that developing additional project benefits through the construction of new or supplementary works on a project will promote more efficient management of water and water-related facilities;

“(2) the feasibility study pertaining to additional project benefits has been authorized pursuant to section 8 of the Federal Water Project Recreation Act of 1965 ([16 U.S.C. 4601–18](#)); and

“(3) the costs associated with developing the additional project benefits are agreed to in writing between the Secretary and project proponents and shall be allocated to the authorized purposes of the structure and repaid consistent with all provisions of Federal Reclamation law (the Act of June 17, 1902, [43 U.S.C. 371 et seq.](#)) and Acts supplemental to and amendatory of that Act.”.

## **TITLE IX—WATER RIGHTS PROTECTION**

### **SEC. 901. SHORT TITLE.**

This title may be cited as the “Water Rights Protection Act”.

### **SEC. 902. DEFINITION OF WATER RIGHT.**

In this title, the term “water right” means any surface or groundwater right filed, permitted, certified, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts the water to beneficial use, including water rights for federally recognized Indian tribes.

### **SEC. 903. TREATMENT OF WATER RIGHTS.**

The Secretary of the Interior and the Secretary of Agriculture shall not—

(1) condition or withhold, in whole or in part, the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on—

(A) limitation or encumbrance of any water right, or the transfer of any water right (including joint and sole ownership), directly or indirectly to the United States or any other designee; or

(B) any other impairment of any water right, in whole or in part, granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact;

(2) require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement;

(3) assert jurisdiction over groundwater withdrawals or impacts on groundwater resources, unless jurisdiction is asserted, and any regulatory or policy actions taken pursuant to such assertion are, consistent with, and impose no greater restrictions or regulatory requirements than, applicable State laws (including regulations) and policies governing the protection and use of groundwater resources; or

(4) infringe on the rights and obligations of a State in evaluating, allocating, and adjudicating the waters of the State originating on or under, or flowing from, land owned or managed by the Federal Government.

#### SEC. 904. RECOGNITION OF STATE AUTHORITY.

(a) **IN GENERAL.**—In carrying out section 903, the Secretary of the Interior and the Secretary of Agriculture shall—

(1) recognize the longstanding authority of the States relating to evaluating, protecting, allocating, regulating, and adjudicating groundwater by any means, including a rulemaking, permitting, directive, water court adjudication, resource management planning, regional authority, or other policy; and

(2) coordinate with the States in the adoption and implementation by the Secretary of the Interior or the Secretary of Agriculture of any rulemaking, policy, directive, management plan, or other similar Federal action so as to ensure that such actions are consistent with, and impose no greater restrictions or regulatory requirements than, State groundwater laws and programs.

(b) **EFFECT ON STATE WATER RIGHTS.**—In carrying out this title, the Secretary of the Interior and the Secretary of Agriculture shall not take any action that adversely affects—

(1) any water rights granted by a State;

(2) the authority of a State in adjudicating water rights;

(3) definitions established by a State with respect to the term “beneficial use”, “priority of water rights”, or “terms of use”;

(4) terms and conditions of groundwater withdrawal, guidance and reporting procedures, and conservation and source protection measures established by a State;

(5) the use of groundwater in accordance with State law; or

(6) any other rights and obligations of a State established under State law.

#### SEC. 905. EFFECT OF TITLE.

(a) EFFECT ON EXISTING AUTHORITY.—Nothing in this title limits or expands any existing legally recognized authority of the Secretary of the Interior or the Secretary of Agriculture to issue, grant, or condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal land subject to the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture, respectively.

(b) EFFECT ON RECLAMATION CONTRACTS.—Nothing in this title interferes with Bureau of Reclamation contracts entered into pursuant to the reclamation laws.

(c) EFFECT ON ENDANGERED SPECIES ACT.—Nothing in this title affects the implementation of the Endangered Species Act of 1973 ([16 U.S.C. 1531 et seq.](#)).

(d) EFFECT ON FEDERAL RESERVED WATER RIGHTS.—Nothing in this title limits or expands any existing or claimed reserved water rights of the Federal Government on land administered by the Secretary of the Interior or the Secretary of Agriculture.

(e) EFFECT ON FEDERAL POWER ACT.—Nothing in this title limits or expands authorities under sections 4(e), 10(j), or 18 of the Federal Power Act ([16 U.S.C. 797\(e\)](#), 803(j), 811).

(f) EFFECT ON INDIAN WATER RIGHTS.—Nothing in this title limits or expands any water right or treaty right of any federally recognized Indian tribe.

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ATTACHMENTS  
IV. A-F

# Fish and Wildlife accepting proposals for grant programs

By News-Sentinel Staff | Posted: Tuesday, June 6, 2017 4:30 pm

The California Department of Fish and Wildlife is accepting proposals for ecosystem restoration and protection projects that fulfill the objectives of Proposition 1.

For the 2017-18 fiscal year, \$31 million in Proposition 1 funds will be made available through two programs. The Watershed Restoration Grant Program will fund up to \$24 million in projects of statewide importance outside of the Sacramento-San Joaquin Delta, while the Delta Water Quality and Ecosystem Restoration Grant Program will fund up to \$7 million in projects that specifically benefit the Delta.

Application instructions and other information about the Restoration Grant Programs are available at [www.wildlife.ca.gov/conservation/watersheds/restoration-grants](http://www.wildlife.ca.gov/conservation/watersheds/restoration-grants).

Proposals must be submitted online at [soar.resources.ca.gov](http://soar.resources.ca.gov) by 4 p.m. July 14.

Approved projects will contribute to the objectives of California Water Action Plan and State Wildlife Action Plan, the Delta Plan, California EcoRestore and the fulfillment of CDFW's mission.



## WaterNews

# California Hones Drinking Water Affordability Plan

June 8, 2017 / in Water Management, Water News, Water Pricing / by Brett Walton

*State considers four options as it designs nation's first statewide affordability program.*



Juan Diego Hernandez, 9, bathes at his family's home in Alpaugh, California. The small farmworker community in the Central Valley suffers from high levels of arsenic and other contaminants in its water. Photo © Matt Black for Circle of Blue

**By Brett Walton, Circle of Blue**

Nearly five years ago, the California Legislature declared that the state's residents have a right to "safe, clean, affordable, and accessible water." Passage of the landmark law provoked a practical question that has always dogged the noble ideals of the right-to-water movement: how does a state government or municipal utility ensure clean and affordable water for all?

The need in California appears urgent. Water bills are a large and growing burden on the state's poor. The price of water in San Francisco increased by double digits in six of the last seven years, according to the latest national assessment by Circle of Blue [<http://www.circleofblue.org/2017/water-management/pricing/price-water-2017-four-percent-increase-30-large-u-s-cities/>]. In Fresno, the state's most destitute big city, water rates rose 15 percent in the last year. San Diego water users paid more than 6 percent more for water in 2017 than the year before, a price increase much larger than the rate of inflation.

When evaluating the cost of drinking water treatment at the utility level, the U.S. Environmental Protection Agency defines affordability as no more than 2.5 percent of median household income. But this broad metric obscures hardship among the poor. A 2013 study [<http://pacinst.org/publication/assessing-water-affordability/>] found that 23 percent of households in the Sacramento metropolitan region had monthly water bills that exceeded 2 percent of income.

Bit by bit, California lawmakers have chipped at the affordability problem. In 2014 they passed a water bond, approved by voters, that directs \$US 260 million in grants and loans for drinking water systems. Two years ago legislators set up a process for consolidating small, financially struggling systems with larger, better managed utilities. They mapped utilities that fail water quality standards and are exploring ways to use state funds to subsidize system operations and maintenance in rural areas.

Staff members at the California Water Resources Control Board are now taking a full swing at the affordability component of the right-to-water legislation. At the direction of the Legislature, they are developing an approach that has never been attempted in the United States: a state-run financial aid program to offset the rising cost of drinking water for households.

As it fills in the details, California, along with a few other jurisdictions, is on the leading edge of the national movement for affordable water [<http://www.circleofblue.org/2016/water-policy-politics/water-rights-access/water-affordability-new-civil-rights-movement-united-states/>]. Like Philadelphia, which, on July 1, will introduce the nation's first water rate based on household income [<http://www.circleofblue.org/2017/water-management/pricing/philadelphia-water-rate-links-payments-household-income/>], California is trying something new in an effort to



bridge the gap between slow wage growth for the nation's poor and the huge water infrastructure bill that is coming due as century-old pipes and inadequate treatment facilities are repaired and replaced.

The development of California's program began with a public meeting last October [<http://www.circleofblue.org/2016/world/california-designs-first-statewide-water-affordability-program/>]. The state, with help from the Luskin Center for Innovation at the University of California, Los Angeles, identified four options for structuring the program. A round of public meetings that begins on June 20 will allow the public to offer recommendations.

## Simple But Complex

AB 401 [[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB401](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB401)], the law that ordered the Water Board to develop an affordability program, was signed by Gov. Jerry Brown on October 9, 2015. The law outlines questions that the Water Board needs to answer. The only clear detail in the law is a definition of "low-income" as a household earning 200 percent or less of federal poverty level. At the moment, that equals \$US 49,200 a year for a family of four.

What the Legislature has directed is "descriptively simple, but a highly technically complex task," Max Gomberg, the Water Resources Control Board official who is managing the effort, told Circle of Blue.

Simple in concept but complex in execution — it's an accurate description of the affordable water movement in general. The water board must determine who is eligible, how to fund the program, what level of benefits to provide, and how the benefits will be disbursed to recipients.

The Water Board contracted with UCLA's Luskin Center to run an economic analysis and help develop the options for the program structure. The board turned to the Wheeler Center at the University of California, Berkeley, for an analysis of legal obstacles. One obvious hurdle is Prop 218, which, in effect, prevents public utilities (but not investor-owned utilities) from charging higher rates on one set of customers in order to subsidize others. Prop 218 is one reason why few utilities have a low-income assistance program, Greg Pierce, senior researcher in the Luskin Center, told Circle of Blue.

The four options developed by the Luskin Center

[[http://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/](http://www.waterboards.ca.gov/water_issues/programs/conservation_portal/)]

range from basic to intricate, and they are based on examples from three state energy assistance programs, which distributed nearly \$US 1.9 billion in aid to households in 2015.

The Water Board's most straightforward approach is for water utilities to enroll all eligible households — those below 200 percent of the federal poverty level — in a state-run program that would provide a 20 percent bill discount. Existing aid programs would be cancelled. Estimated annual cost to the state: \$US 580 million.

A second option, also an entirely state-run program, offers a tiered benefit. Households whose bills average less than \$US 100 per month receive a 20 percent discount while those with larger monthly water bills receive a 35 percent discount. Estimated cost: \$US 619 million.

The third and fourth options take into account existing utility aid programs. Option three allows investor-owned utilities to continue their aid programs while all public utilities would be covered by the state plan. Estimated cost: \$US 488 million. Option four allows all existing aid programs to continue, as long as they deliver a minimum level of benefits. Estimated cost: \$US 277 million.

Each option has arguments in favor and against, says Gomberg. In simple terms, those arguments center on the ease of administration, cost, and the delivery mechanism for the benefits. The larger question is how to pay for it, which will likely be a tax or fee.

The complexity that Gomberg spoke of comes from the various ways in which people pay for water and receive state welfare. Renters might not see their water bill, which goes to the landlord. How will aid reach them? Should the benefit be a water bill discount or a tax rebate? Or should it be appended to an existing state program, such as CalFresh, which assists with food purchases?

All told, the state is aiming for consistency, Gomberg said: "We don't want a state-run program with certain benefits and a local program that is so different that it is not fair. The equity consideration is key there."

A state program is necessary for several reasons, proponents argue. One, it would fill a gap. More than half of Californians — 56 percent — get water from a utility that does not offer low-income assistance, according to Water Board figures. The numbers are strikingly similar

nationwide. A survey published this spring from the American Water Works Association, the leading water utility trade group, found that 56 percent of the 567 utilities

[[https://www.awwa.org/Portals/0/files/resources/water utility management/sotwi/AWWA2017SOTWI.pdf](https://www.awwa.org/Portals/0/files/resources/water%20utility%20management/sotwi/AWWA2017SOTWI.pdf)] that responded do not have rate assistance.

Water groups and social organizations praise the state's open, methodical approach. Jack Hawks, executive director of the California Water Association, which represents investor-owned utilities, told Circle of Blue that the Water Board has had "constructive dialogues" and the board sent an official to the association's spring conference to discuss the matter. The association, at this point, is not advocating for a specific scenario but Hawks said it does not want its customers to be "double-dipped" — paying into a state-run program while also contributing money to their own utility aid programs.

The Community Water Center, a leading advocate of clean drinking water in California, is still evaluating the four options, according to Jonathan Nelson, the group's policy director. But the universal coverage goal is worthwhile, he said. "We need to get access [to assistance programs] up to 100 percent, and then make sure the ability to access and navigate the program is as simple as possible," he told Circle of Blue.

The State Water Board will hold five public meetings [[http://www.circleofblue.org/wp-content/uploads/2017/06/AB-401-Public-Notice-Round-2\\_Final\\_Amended-LA-Date.pdf](http://www.circleofblue.org/wp-content/uploads/2017/06/AB-401-Public-Notice-Round-2_Final_Amended-LA-Date.pdf)] to discuss the scenarios. The meetings will be June 20 in Riverside, June 27 in Salinas, June 28 in Oakland, July 10 in Sacramento, and July 12 in Los Angeles.

Pierce said that suggestions from meeting attendees and written comments will help UCLA and the Water Board inform and refine the options. "Where the public discussion goes will influence the second round of scenarios," he said.

The final plan for funding and implementing the program is due to the Legislature by February 1, 2018.

*Note: This story has been updated since first published to clarify the U.S. Environmental Protection Agency's definition of affordability.*

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# 12 dead this season in torrential Sierra snow melt, Yosemite's Merced, other CA rivers dangerous

More deaths across the West reported from drownings as massive snowpack melts

SCOTT SMITH AND HALLIE GOLDEN, ASSOCIATED PRESS |

June 12, 2017 | Updated: June 12, 2017 5:29pm

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Officials fear a surge in drownings following record snowfall this winter as the weather heats up in California and other U.S. western states. The Yosemite National Park Rescue Team recently conducted training drills as a reminder of the risks. (June 12)

Media: Associated Press

YOSEMITE NATIONAL PARK, Calif. (AP) — Massive waterfalls in Yosemite National Park and rivers raging in mountains throughout the western United States are thundering with greater force than they have for years — and proving deadly as warm weather melts the deepest mountain snowpack in recent memory.

Record snowfall on towering Western peaks this winter virtually eliminated California's five-year drought and it is now melting rapidly.



Photo: Scott Smith, AP

IMAGE 1 OF 7

In this photo taken May 25, 2017, a woman braces herself at Yosemite National Park, Calif., while photographing a rushing creek below Bridalveil Fall. Officials fear a surge in drownings following record ... [more](#)

But it has contributed to at least 14 river deaths and prompted officials to close sections of rivers popular with swimmers, rafters and fishing enthusiasts.

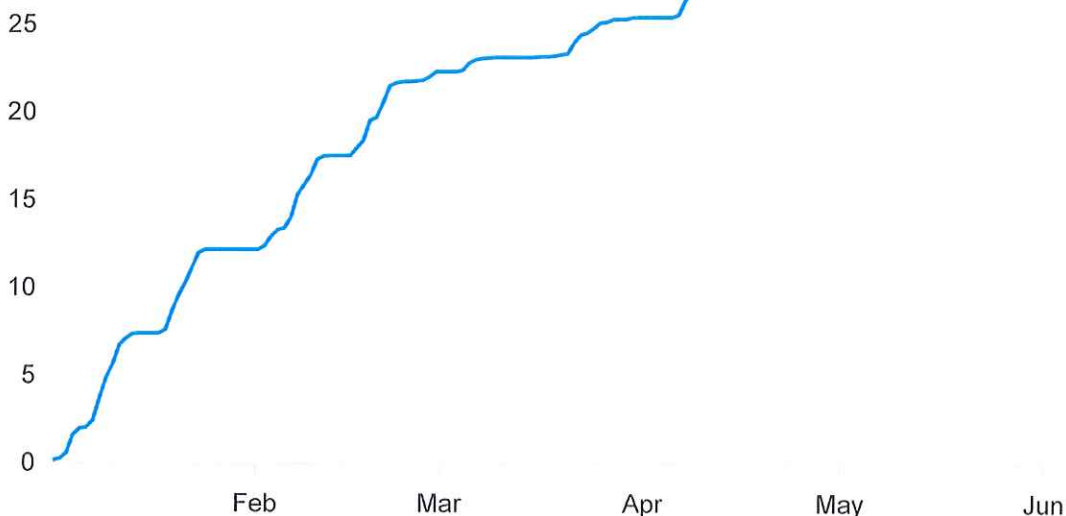
In Utah and Wyoming, some rivers gorged by heavy winter snowfall have overflowed their banks, and rivers in Utah are expected to remain dangerously swollen with icy mountain runoff for several more weeks.

## California Year-To-Date Precipitation



Note: Due to delay in data reporting, data from previous few days is subject to update and change

30 Year-To-Date Precipitation



Source: NOAA. As of June 12, 2017; refreshed daily. [Show details](#) ^

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GRAPHIQ

The sheer beauty of the rivers is their draw — and represents a big danger to people who decide to beat the heat by swimming or rafting with little awareness of the risks posed by the raging water.

This year's velocity and force of the Merced River that runs through Yosemite Valley is similar to a runaway freight train, said Moose Mutlow of the Yosemite Swift Water Rescue Team.

"You step out in front of it, it's going to take you," he said. "You're not going to stop that, and that's what people need to get their heads around."

Heavy storms this winter covered the central Sierra Nevada mountains with snow that remains at twice its normal level for this time of year.

While officials celebrated an end to drought in much of California, the snowmelt is so dangerous that park rangers fear its impact on the crowded park that drew a record five million people last year, when four people drowned.

So far this year, one 50-year-old man is believed to have drowned at Yosemite after falling into the Merced River from a winding trail. His body has not been found.

One of Yosemite's deadliest days was in 2011, when three young church group visitors were swept to their deaths over the 317-foot (97-meter) Vernal Fall.

Elsewhere in California, there have been at least 11 drownings since the snowpack started melting in May.

At the San Joaquin River near Fresno, 18-year-old Neng Thao drowned last month swimming in the river during a picnic with his family days before he was set to graduate as the valedictorian of his high school.

And six people have died in the rugged Tule River south of Yosemite. Some drowned, but others suffered injuries suggesting their bodies were beaten to death by the river water slamming them against the riverbed.

"The force of that water pounds people into rocks and sends them over waterfalls," said Eric LaPrice, a U.S. Forest Service district ranger at the Giant Sequoia National Monument in central California.

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#### RELATED



**Winter in June? Rare fresh powder falls at Lake Tahoe**

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At the Kern River in central California, officials last month updated a sign warning that that 280 people have died in it since 1968. The sign is already outdated, with four more drownings since then.

And in northern Utah, a 4-year-old girl playing at the side of the Provo River fell from a boulder into the water last month. Her mother and a man who was nearby jumped in to try to save the girl. All three drowned, illustrating how quickly one tragedy can multiply.

"As little as six inches of water can actually sweep an adult away at the rate of speed that the water is traveling," said Chris Crowley, emergency manager for the county where Park City is located.

In Reno, Nevada, rising temperatures that have accelerated snowpack melting prompted officials to erect a sign next to the Truckee River warning people to stay away from it.

In Idaho, snowpack at double normal levels have prompted warnings from officials that densely populated areas near the Boise River could flood.

And in Wyoming, officials have placed sandbags and flood barriers to protect homes and public infrastructure from rivers and streams swollen with the snowmelt.

On his first trip to Yosemite, cartoonist Andy Runton, 42, steered clear of the turbulent Merced River.

He took a selfie at a safe distance from a grassy meadow with Yosemite Falls far behind him. Within a few hours of entering the park, Runton said the sweeping vistas and raging waterfalls had left a lifelong impression.

"You can see the power of the water," Runton said. "You can feel it. Nature doesn't slow down."

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Golden reported from Salt Lake City, Utah. Associated Press writers Scott Sonner in Reno, Nevada, and Bob Moen in Cheyenne, Wyoming, contributed to this report.





LOCAL

JUNE 13, 2017 2:19 PM

## Why years of waiting may be over on Delta tunnels

BY RYAN SABALOW AND DALE KASLER

*rsabalow@sacbee.com*

Love it or hate it, the Delta tunnels project is reaching a decision point.

The state's most powerful water agencies have set a September goal to decide whether they're going pay for the biggest and most controversial water project California has undertaken since the 1960s: overhauling the plumbing system that pumps billions of gallons of water through the Sacramento-San Joaquin Delta to the Bay Area, Southern California and one of the nation's most productive farm belts.

After more than a decade and nearly a quarter billion dollars of study and planning, the Metropolitan Water District of Southern California and other agencies will vote in September on whether to pay for Gov. Jerry Brown's \$15.5 billion plan for re-engineering the fragile estuary on Sacramento's doorstep.

ADVERTISING

“Now we’re within 90 days of actually making a decision on whether the project is going to go forward or not,” said Roger Patterson, assistant general manager at Metropolitan, the influential water wholesaler serving half of the state’s population from its headquarters in Los Angeles.

What Metropolitan and water agencies in Silicon Valley, Fresno, Bakersfield and beyond decide is going to have sweeping ramifications across California. Ratepayers in Southern California and Silicon Valley could see a hit in their monthly water bills. In the San Joaquin Valley, farmers who’ve seen their water supplies decline sharply over the decades to protect endangered Delta fish will decide whether Brown’s promise of more reliable deliveries is worth cutting into their profits. Brown’s administration said the tunnels will improve the Delta ecosystem. That will allow the Delta water pumps to operate with fewer interruptions, even though the total volume of deliveries isn’t expected to increase.

In greater Sacramento and throughout the Delta, farmers, environmental groups and elected officials remain deeply mistrustful of the proposal. They call it a “water grab” by moneyed and politically powerful interests bent on siphoning more of Northern California’s water. By routing some of the Sacramento River’s flow directly to massive government pumping stations in the south Delta, they say the tunnels will cut into north state water supplies and do greater harm to native fish species on the brink of extinction.

Delta-area attorneys have promised a nasty court fight if the tunnels, known officially as California WaterFix, get the go-ahead.

“Hopefully, somebody will figure out that this isn’t worth it and it doesn’t solve the problems, but we’ll see,” said John Herrick, a Stockton attorney for the South Delta Water Agency. “This is the year a lot of big decisions will be made. We’re still hoping it will collapse.”

The timetables for a decision firmed up after Brown’s chief of staff, Nancy McFadden, recently told representatives of the water agencies that they need to decide soon whether they’re willing to pay for the tunnels. Brown leaves office next year.

Her message found a receptive audience. Officials with urban and agricultural water districts say they’re ready soon to render a verdict on a project that would be costly but is advertised as the antidote to unreliable water deliveries out of the Delta.

“There’s a lot of frustration with 10-plus years of work, (but) there’s also optimism that we’re looking at a once-in-a-lifetime opportunity,” said Jason Peltier of the San Luis & Delta-Mendota Water Authority, which serves farmers throughout much of the San Joaquin Valley and urban customers in Silicon Valley. “Momentum is definitely building.”

Officials with the Santa Clara Valley Water District in San Jose and the Kern County Water Agency in Bakersfield said they, too, plan to have their boards of directors vote in September on the plan.

Santa Clara spokesman Marty Grimes said the board is scheduled to get a briefing in early July on “water supply benefits and uncertainties,” followed in August by an analysis of design, construction and governance of the twin tunnels. In early September, the agency’s staff will deliver details on cost, financing and water allocation, along with a recommendation on whether or not Santa Clara should participate in the project.

“We are confident that the boards of directors of the public water agencies that depend upon the projects will have sufficient information to decide this summer and fall whether to invest in WaterFix,” said Nancy Vogel, spokeswoman for the California Natural Resources Agency.

The countdown toward a decision could start as early as next week. That’s when two federal agencies in charge of safeguarding the estuary’s dwindling populations of Delta smelt and other fish are expected to release the official “biological opinions” on the projected environmental impacts of the tunnels, and whether the project needs to be reworked.

The data from those two scientific reports will allow the state to provide more detail about how much water the tunnels are expected to deliver. Preliminary versions of the opinions, released earlier this year, cast some doubt on Brown’s argument that the tunnels will improve the lives of smelt, Chinook salmon and other fish.



## See where the proposed Delta tunnels would go

The twin tunnels would take water from the Sacramento River and transport it under the Delta. See which islands and rivers they would cross.

Sharon Okada - sokada@sacbee.com

Although the plan could improve fish ecosystems in some respects, the tunnels could still “decrease the abundance of Delta smelt,” the U.S. Fish & Wildlife Service wrote. The National Marine Fisheries Service said the tunnels could create “numerous adverse impacts” to salmon habitat.

Brown’s plan is the most significant rework of California’s water-delivery network since his father, Gov. Pat Brown, built the State Water Project in the 1960s. The project calls for altering how water from the Sacramento River reaches the giant pumping stations operated by the federal and state governments near Tracy.

The pumps are so powerful that they can reverse the flow of crucial Delta river channels, pulling fish toward the pumps and hungry predatory fish that await them at the intakes. Water deliveries are often curtailed to reduce fish kills, a huge point of contention during California’s epic five-year drought that Brown declared over this winter.

The tunnels plan calls for burrowing two 40-foot-wide tunnels, starting just south of Sacramento near Courtland, to divert a portion of the river’s flow and ship it directly to the Tracy pumps.

That would significantly reduce the “reverse flow” caused by the pumps, state officials say. Should the agencies agree to pay for the tunnels, there are several other regulatory steps that are still looming. The State Water Resources Control Board currently is overseeing a months-long set of hearings over whether the project harms water users and the environment. The board’s votes remain months away.

Ryan Sabalow: 916-321-1264, @ryansabalow





A fruit-packing plant near Walnut Grove in the Sacramento-San Joaquin Delta. California's plan to re-engineer the Delta's water system with a pair of tunnels is nearing a decision. **Randall Benton** - Sacramento Bee file

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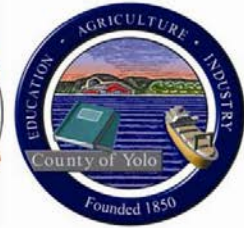
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**Shelby Williams**

1 day ago

These tunnels will be approved and will happen. Don't waste your time complaining. I'm sorry for the Sacramento water wasters but it will pass.



**Delta Counties Coalition**

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County  
"Working together on water and Delta issues"

June 13, 2017

The Honorable Jim Frazier  
State Capitol, Room 3091  
Sacramento, CA 95814

RE: AB 732 (Frazier). Delta Levee Maintenance.  
Support (As Amended on May 23, 2017)

Dear Assembly Member Frazier:

The Delta Counties Coalition is pleased to support Assembly Bill 732, which postpones the operation date for the current Delta levee maintenance program cost-share ratio. This would authorize continued reimbursement of up to 75 percent of costs incurred in any year for the maintenance or improvement of levees in excess of \$1,000 per mile of levee.

Levee improvements have reduced the risk of flood within the Delta since the inception of the Delta levee maintenance program. Continued levels of program funding to improve and maintain Delta levees is critical to flood control and water supply functions of Delta Counties, cities, and local districts that also benefit the entire state. For these reasons, the Delta Counties Coalition supports AB 732. Please feel free to contact Natasha Drane at (916) 874-4627 or [dranen@saccounty.net](mailto:dranen@saccounty.net) if you have questions.

Sincerely,

Don Nottoli  
Supervisor, Sacramento County

Skip Thomson  
Supervisor, Solano County

Karen Mitchoff  
Supervisor, Contra Costa County

Jim Provenza  
Supervisor, Yolo County

Chuck Winn  
Supervisor, San Joaquin County

cc: DCC State Delegation



### **Delta Counties Coalition**

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

*"Working together on water and Delta issues"*

June 15, 2017

John Watts  
Office of Senator Dianne Feinstein  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Mr. Watts:

The Delta Counties Coalition (DCC) thanks you for meeting with us last month. In light of the significance and complexity of the water management challenges our region and the State face, the DCC very much appreciates an ongoing dialogue with you.

California's historic flooding and multi-year drought demonstrate the urgent need to develop a shared solution to the problems of an inadequate State water supply, poor Delta water quality, and a threatened Delta ecosystem. Unfortunately, the State's twin tunnels project (CA WaterFix) is not representative of the type of shared solution that California desperately needs, as it provides no guarantee of "new" water and would only serve to increase the demands on an already stressed and fragile Delta environment. As such, if the Senator elects to take a position on the WaterFix, we hope it will be in opposition.

As we discussed during our meeting, the DCC is focused on developing a comprehensive water-management plan that produces performance based, multiple-benefit projects that would be more practical and pragmatic for the future of California and the Delta. There are dozens of projects that are readily identified and that are simply in need of funding to proceed with planning, design, and construction, including projects that improve water supply, protect Delta levees, restore environmental habitat both in the Delta and upstream, and help meet clean water goals in both the near-term and long-term timeframes. The DCC strongly believes that the massive commitment of funds that would be needed by the State to re-plumb the Delta would be far better spent on these and other multi-benefit projects, many of which could be implemented at a cumulative cost to the State and its taxpayers/ratepayers at far less cost than the WaterFix.

In order to further analyze and quantify the benefits of the alternative projects, the DCC is currently working with Dr. Jeffrey Michael with the University of the Pacific. We will share Dr. Michael's analysis with you once completed.

John Watts  
June 15, 2017  
2

Thank you again for meeting with the DCC. We look forward to working with you and Senator Feinstein on shared solutions to California's water challenges.


Sincerely,



Don Nottoli  
Supervisor, Sacramento County



Skip Thomson  
Supervisor, Solano County



Karen Mitchoff  
Supervisor, Contra Costa  
County



Oscar Villegas  
Supervisor, Yolo County



Chuck Winn  
Supervisor, San Joaquin County