

113TH CONGRESS  
1ST SESSION

# H. R. 1927

To provide congressional direction for implementation of the Endangered Species Act as it relates to operation of the Central Valley Project and the California State Water Project and for water relief in the State of California.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2013

Mr. COSTA introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To provide congressional direction for implementation of the Endangered Species Act as it relates to operation of the Central Valley Project and the California State Water Project and for water relief in the State of California.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “More Water and Secu-  
5 rity for Californians Act”.

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

3 (a) FINDINGS.—Congress finds the following:

4 (1) The economy of the San Joaquin Valley in  
5 California is predominantly based on irrigated agri-  
6 culture served water to the Westside and southern  
7 end of the San Joaquin Valley by—

8 (A) the Central Valley Project; and

9 (B) the California State Water Project.

10 (2) The quantity of water available for irrigated  
11 agriculture in these areas of the San Joaquin Valley  
12 served by the Central Valley Project and the Cali-  
13 fornia State Water Project has been reduced signifi-  
14 cantly as a result of restrictions placed on the oper-  
15 ations of the Central Valley Project and the Cali-  
16 fornia State Water Project under the Endangered  
17 Species Act of 1973 (16 U.S.C. 1531 et seq.).

18 (3) California's San Joaquin Valley is one of  
19 the most fertile agricultural regions in the world,  
20 and produces more than 250 different crops with an  
21 estimated value of \$17,000,000,000 per year, sup-  
22 plying about 8 percent of United States agricultural  
23 production and approximately 40 percent of the Na-  
24 tion's fruits and vegetables on less than 1 percent of  
25 United States farmland. Crops grown in the San  
26 Joaquin Valley are exported to 100 countries around

1 the world. The San Joaquin Valley is an essential  
2 source of food supplies for the United States and the  
3 world.

4 (4) Water supply shortages resulting from regu-  
5 latory restrictions on the operations of the Central  
6 Valley Project and the California State Water  
7 Project have greatly exacerbated the economic reces-  
8 sion and contributed to an economic crisis in the  
9 San Joaquin Valley.

10 (5)(A) More than 400,000 acres of highly pro-  
11 ductive farmland in the San Joaquin Valley were  
12 fallowed in 2009.

13 (B) Unemployment rates in small rural commu-  
14 nities in the San Joaquin Valley remain over 25 per-  
15 cent.

16 (C) Food banks throughout the San Joaquin  
17 Valley face unprecedented demand from unemployed  
18 residents.

19 (6) Any water not captured and stored by the  
20 Central Valley Project and the California State  
21 Water Project is water that could have been used to  
22 sustain irrigated agriculture and the many busi-  
23 nesses and communities that rely on it throughout  
24 the Central Valley of California.

1           (7) Deliveries to water agencies that rely on ex-  
2           ports from the Sacramento-San Joaquin Delta (Califor-  
3           nia Bay-Delta) are expected to remain at reduced  
4           levels this year due to pumping restrictions imposed  
5           on operations of the Central Valley Project and the  
6           California State Water Project under the Endan-  
7           gered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
8           in the early part of 2013.

9           (8) Due to reduced surface water supplies, reli-  
10          ance on groundwater has increased, and the with-  
11          drawals from the aquifers are unsustainable and put  
12          significant infrastructure at risk of collapse, includ-  
13          ing the State Water Project’s California Aqueduct,  
14          due to permanent subsidence of land over the over-  
15          drafted aquifers.

16          (9) Significant habitat for a number of native  
17          fish species in the California Bay-Delta (including  
18          tidal marsh and wetlands), and access to spawning  
19          grounds, have been significantly reduced during the  
20          last century.

21          (10) Discharge of pollutants and invasive spe-  
22          cies have dramatically impaired the ecosystem of the  
23          California Bay-Delta.

24          (11) Large-scale and sustained habitat restora-  
25          tion and fish passage improvements are essential—

1 (A) to restore the unique ecosystem of the  
2 California Bay-Delta; and

3 (B) to recover native species in the Cali-  
4 formia Bay-Delta.

5 (12) As of the date of enactment of this Act,  
6 Federal and State agencies, and a number of inter-  
7 ested parties, continue to develop the Bay Delta  
8 Conservation Plan to establish a habitat conserva-  
9 tion plan—

10 (A) to provide ecosystem restoration;

11 (B) to contribute to native species recov-  
12 ery; and

13 (C) to allow for projects to proceed that re-  
14 store and protect water supplies for—

15 (i) the Central Valley Project; and

16 (ii) the California State Water  
17 Project.

18 (b) COMPLIANCE.—

19 (1) IN GENERAL.—All requirements of the En-  
20 dangered Species Act of 1973 (16 U.S.C. 1531 et  
21 seq.) relating to operations of the Central Valley  
22 Project and the California State Water Project  
23 (“Projects”) shall be deemed satisfied with regard to  
24 the species and their critical habitat covered by the  
25 biological opinions for the operations of the Central

1 Valley Project and the California State Water  
2 Project issued by the United States Fish and Wild-  
3 life Service and dated December 15, 2008, and the  
4 National Marine Fisheries Service and dated June 4,  
5 2009 (the “biological opinions”), if—

6 (A) the alternatives described in that por-  
7 tion of the biological opinions entitled “Reason-  
8 able and Prudent Alternatives” are imple-  
9 mented; and

10 (B) the actions described in paragraph (2)  
11 are carried out.

12 (2) MANDATES.—The Secretary of the Interior  
13 and the Secretary of Commerce shall ensure the fol-  
14 lowing:

15 (A) FLOWS.—For each calendar year, dur-  
16 ing the period beginning on December 1 and  
17 ending on June 30, neither biological opinion  
18 described in paragraph (1) shall restrict flow in  
19 Old and Middle Rivers to a 14-day average of  
20 the mean daily flow to achieve flow less negative  
21 than  $-5,000$  cubic feet per second.

22 (B) CONTROL OF PUMPING OPERATIONS.—  
23 For each calendar year, during the period be-  
24 ginning on April 1 and ending on May 31, rates  
25 of pumping at the C.W. “Bill” Jones Pumping

1 Plant and Harvey O. Banks Pumping Plant  
2 shall not be reduced pursuant to the biological  
3 opinion of the National Marine Fisheries Serv-  
4 ice described in paragraph (1), except as re-  
5 quired to implement California State Water Re-  
6 sources Control Board Water Rights Decision  
7 1641 or a superseding water rights decision.

8 (C) FALL x2.—For each calendar year,  
9 during the period beginning September 1 and  
10 ending November 30, monthly average x2 no  
11 greater (more eastward) than 74 km (from the  
12 Golden Gate) shall be maintained only to the  
13 extent that such action does not diminish the  
14 capability of either the Central Valley Project  
15 or the California State Water Project to make  
16 water available for other authorized project pur-  
17 poses.

18 (3) MODIFICATION.—The Secretary of the Inte-  
19 rior may modify the flow and pumping operation  
20 mandates established in paragraph (2) upon rec-  
21 ommendations of the National Research Council  
22 Committee on Sustainable Water and Environmental  
23 Management in the California Bay-Delta, if such  
24 modifications—

1 (A) would provide greater benefits to the  
2 species covered by the biological opinions de-  
3 scribed in paragraph (1); and

4 (B) would not reduce the water delivery  
5 capability of the Central Valley Project or Cali-  
6 fornia State Water Project more than their de-  
7 livery capability allowed under paragraph (2).

8 (c) IMPLEMENTATION OF ACTION PLAN.—As soon as  
9 practicable after the date of enactment of this Act, the  
10 Secretary of the Interior and the Secretary of Commerce  
11 shall—

12 (1) establish a fish hatchery program or refuge  
13 to preserve and restore the delta smelt in collabora-  
14 tion with the Governor of the State of California;  
15 and

16 (2) implement a habitat program under which  
17 each Secretary shall identify, prioritize, and imple-  
18 ment key ecosystem restoration and fish passage  
19 projects in the ecosystem of, and on tributaries to,  
20 the California Bay-Delta to help ensure the viability  
21 of—

22 (A) at-risk species; and

23 (B) species listed as threatened species or  
24 endangered species on the list of threatened  
25 species or the list of endangered species pub-



1 lished under section 4(c)(1) of the Endangered  
2 Species Act of 1973 (16 U.S.C. 1533(c)(1));  
3 and

4 (3) install the Head of Old River Barrier dur-  
5 ing the April–May pulse flow, as set forth in Cali-  
6 fornia State Water Resources Control Board Water  
7 Rights Decision 1641.

8 (d) SAVINGS CLAUSE.—Nothing in this section  
9 shall—

10 (1) diminish or result in a reduction of the  
11 water supply deliveries of the California State Water  
12 Project to its contractors; nor

13 (2) shift an existing obligation of the Central  
14 Valley Project to the California State Water Project  
15 or any other legal user of water.

16 (e) SAN JOAQUIN RIVER RESTORATION SETTLE-  
17 MENT ACT.—Nothing in this Act shall limit or otherwise  
18 affect the implementation of the San Joaquin River Res-  
19 toration Settlement of the San Joaquin River Restoration  
20 Settlement Act (Public Law 111–11), including the Water  
21 Management Goal.

22 (f) NO FURTHER RESTRICTION.—No State or any  
23 political subdivision thereof shall adopt or attempt to en-  
24 force any requirements relating to the impact of the oper-  
25 ation of the Projects on the species and critical habitat

1 covered by the biological opinions that is more restrictive  
2 than the requirements of this section. Any State law that  
3 authorizes the imposition of restrictions on the operation  
4 of the Projects in a manner that is more restrictive than  
5 this section is expressly preempted.

6 (g) TERMINATION.—This section and each authority  
7 and mandate under this section shall terminate upon  
8 March 1, 2020.

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