IB

Union Calendar No. 395

110TH CONGRESS
2D SESSION

H. R. 4074

[Report No. 110–633]

To authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2007

Mr. COSTA (for himself, Mr. RADANOVICH, Mr. CARDOZA, and Mrs. NAPOLITANO) introduced the following bill; which was referred to the Committee on Natural Resources

MAY 13, 2008

Additional sponsors: Mr. BACA and Mr. MCNERNEY

MAY 13, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

A BILL

To authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

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

TITLE I—THE SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

SECTION 101. SHORT TITLE.

This Act may be cited as the "San Joaquin River Restoration Settlement Act".

SEC. 102. PURPOSE.

The purpose of this Act is to authorize implementation of the Settlement.

SEC. 103. DEFINITIONS.

In this Act—

(1) the terms "Friant Division long-term contractors", "Interim Flows", "Restoration Flows", "Recovered Water Account", "Restoration Goal", and "Water Management Goal" have the meanings given those terms in the Settlement;

(2) the term "Secretary" means the Secretary of the Interior; and

(3) the term "Settlement" means the Stipulation of Settlement dated September 13, 2006, in the litigation titled "Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., United States District Court, Eastern District of California, No. CIV. S–88–1658–LKK/GGH".

SEC. 104. IMPLEMENTATION OF SETTLEMENT.

(a) IN GENERAL.—The Secretary of the Interior is hereby authorized and directed to implement the terms and conditions of the Settlement in cooperation with the State of California, including the following measures as these measures are prescribed in the Settlement:

(1) Design and construct channel and structural improvements as described in paragraph 11 of the Settlement, provided, however, that the Secretary shall not make or fund any such improvements to facilities or property of the State of California without the approval of the State of California and the State's agreement in 1 or more Memoranda of Understanding to participate where appropriate.

(2) Modify Friant Dam operations so as to provide Restoration Flows and Interim Flows.

(3) Acquire water, water rights, or options to acquire water as described in paragraph 13 of the Settlement, provided, however, such acquisitions shall only be made from willing sellers and not through eminent domain.

(4) Implement the terms and conditions of paragraph 16 of the Settlement related to recirculation, recapture, reuse, exchange, or transfer of water released for Restoration Flows or Interim Flows, for

the purpose of accomplishing the Water Management Goal of the Settlement, subject to—

(A) applicable provisions of California water law;

(B) the Secretary's use of Central Valley Project facilities to make Project water (other than water released from Friant Dam pursuant to the Settlement) and water acquired through transfers available to existing south-of-Delta Central Valley Project contractors; and

(C) the Secretary's performance of the Agreement of November 24, 1986, between the United States of America and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project as authorized by Congress in section 2(d) of the Act of August 26, 1937 (50 Stat. 850, 100 Stat. 3051), including any agreement to resolve conflicts arising from said Agreement.

(5) Develop and implement the Recovered Water Account as specified in paragraph 16(b) of the Settlement, including the pricing and payment crediting provisions described in paragraph 16(b)(3)

of the Settlement, provided that all other provisions of Federal reclamation law shall remain applicable.

(b) AGREEMENTS.—

(1) AGREEMENTS WITH THE STATE.—In order to facilitate or expedite implementation of the Settlement, the Secretary is authorized and directed to enter into appropriate agreements, including cost sharing agreements, with the State of California.

(2) OTHER AGREEMENTS.—The Secretary is authorized to enter into contracts, memoranda of understanding, financial assistance agreements, cost sharing agreements, and other appropriate agreements with State, tribal, and local governmental agencies, and with private parties, including agreements related to construction, improvement, and operation and maintenance of facilities, subject to any terms and conditions that the Secretary deems necessary to achieve the purposes of the Settlement.

(c) ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL FUNDS.—The Secretary is authorized to accept and expend non-Federal funds in order to facilitate implementation of the Settlement.

(d) MITIGATION OF IMPACTS.—Prior to the implementation of decisions or agreements to construct, improve, operate, or maintain facilities that the Secretary determines are needed to implement the Settlement, the Secretary shall identify—

(1) the impacts associated with such actions; and

(2) the measures which shall be implemented to mitigate impacts on adjacent and downstream water users and landowners.

(e) DESIGN AND ENGINEERING STUDIES.—The Secretary is authorized to conduct any design or engineering studies that are necessary to implement the Settlement.

(f) EFFECT ON CONTRACT WATER ALLOCATIONS.—Except as otherwise provided in this section, the implementation of the Settlement and the reintroduction of California Central Valley Spring Run Chinook salmon pursuant to the Settlement and section 110, shall not result in the involuntary reduction in contract water allocations to Central Valley Project long-term contractors, other than Friant Division long-term contractors.

(g) EFFECT ON EXISTING WATER CONTRACTS.—Except as provided in the Settlement and this Act, nothing in this Act shall modify or amend the rights and obligations of the parties to any existing water service, repayment, purchase or exchange contract.

SEC. 105. ACQUISITION AND DISPOSAL OF PROPERTY; TITLE TO FACILITIES.

(a) TITLE TO FACILITIES.—Unless acquired pursuant to subsection (b), title to any facility or facilities, stream channel, levees, or other real property modified or improved in the course of implementing the Settlement authorized by this Act, and title to any modifications or improvements of such facility or facilities, stream channel, levees, or other real property—

(1) shall remain in the owner of the property; and

(2) shall not be transferred to the United States on account of such modifications or improvements.

(b) ACQUISITION OF PROPERTY.—

(1) IN GENERAL.—The Secretary is authorized to acquire through purchase from willing sellers any property, interests in property, or options to acquire real property needed to implement the Settlement authorized by this Act.

(2) APPLICABLE LAW.—The Secretary is authorized, but not required, to exercise all of the authorities provided in section 102 of the Act of August 26, 1937 (50 Stat. 844, chapter 832), to carry out the measures authorized in this section and section 104.

(c) DISPOSAL OF PROPERTY.—

(1) IN GENERAL.—Upon the Secretary's determination that retention of title to property or interests in property acquired pursuant to this Act is no longer needed to be held by the United States for the furtherance of the Settlement, the Secretary is authorized to dispose of such property or interest in property on such terms and conditions as the Secretary deems appropriate and in the best interest of the United States, including possible transfer of such property to the State of California.

(2) RIGHT OF FIRST REFUSAL.—In the event the Secretary determines that property acquired pursuant to this Act through the exercise of its eminent domain authority is no longer necessary for implementation of the Settlement, the Secretary shall provide a right of first refusal to the property owner from whom the property was initially acquired, or his or her successor in interest, on the same terms and conditions as the property is being offered to other parties.

(3) DISPOSITION OF PROCEEDS.—Proceeds from the disposal by sale or transfer of any such property or interests in such property shall be deposited in the fund established by section 109(c).

SEC. 106. COMPLIANCE WITH APPLICABLE LAW.

(a) APPLICABLE LAW.—

(1) IN GENERAL.—In undertaking the measures authorized by this Act, the Secretary and the Secretary of Commerce shall comply with all applicable Federal and State laws, rules, and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as necessary.

(2) ENVIRONMENTAL REVIEWS.—The Secretary and the Secretary of Commerce are authorized and directed to initiate and expeditiously complete applicable environmental reviews and consultations as may be necessary to effectuate the purposes of the Settlement.

(b) EFFECT ON STATE LAW.—Nothing in this Act shall preempt State law or modify any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law.

(c) USE OF FUNDS FOR ENVIRONMENTAL REVIEWS.—

(1) DEFINITION OF ENVIRONMENTAL REVIEW.—For purposes of this subsection, the term ‘‘environmental review’’ includes any consultation

and planning necessary to comply with subsection (a).

(2) PARTICIPATION IN ENVIRONMENTAL REVIEW PROCESS.—In undertaking the measures authorized by section 104, and for which environmental review is required, the Secretary may provide funds made available under this Act to affected Federal agencies, State agencies, local agencies, and Indian tribes if the Secretary determines that such funds are necessary to allow the Federal agencies, State agencies, local agencies, or Indian tribes to effectively participate in the environmental review process.

(3) LIMITATION.—Funds may be provided under paragraph (2) only to support activities that directly contribute to the implementation of the terms and conditions of the Settlement.

(d) NONREIMBURSABLE FUNDS.—The United States share of the costs of implementing this Act shall be nonreimbursable under Federal reclamation law, provided that nothing in this subsection shall limit or be construed to limit the use of the funds assessed and collected pursuant to sections 3406(c)(1) and 3407(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4721, 4727), for implementation of the Settlement, nor shall it be construed to limit or modify existing or future Central Valley Project Ratesetting Policies.

SEC. 107. COMPLIANCE WITH CENTRAL VALLEY PROJECT IMPROVEMENT ACT.

Congress hereby finds and declares that the Settlement satisfies and discharges all of the obligations of the Secretary contained in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4721), provided, however, that—

(1) the Secretary shall continue to assess and collect the charges provided in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4721), as provided in the Settlement and section 109(d); and

(2) those assessments and collections shall continue to be counted towards the requirements of the Secretary contained in section 3407(c)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4726).

SEC. 108. NO PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—Nothing in this Act confers upon any person or entity not a party to the Settlement a private right of action or claim for relief to interpret or enforce the provisions of this Act or the Settlement.

(b) APPLICABLE LAW.—This section shall not alter or curtail any right of action or claim for relief under any other applicable law.

SEC. 109. APPROPRIATIONS; SETTLEMENT FUND.

(a) IMPLEMENTATION COSTS.—

(1) IN GENERAL.—The costs of implementing the Settlement shall be covered by payments or in kind contributions made by Friant Division contractors and other non-Federal parties, including the funds provided in paragraphs (1) through (5) of subsection (c), estimated to total $440,000,000, of which the non-Federal payments are estimated to total $200,000,000 (at October 2006 price levels) and the amount from repaid Central Valley Project capital obligations is estimated to total $240,000,000, the additional Federal appropriation of $250,000,000 authorized pursuant to subsection (b)(1), and such additional funds authorized pursuant to subsection (b)(2); provided however, that the costs of implementing the provisions of section 104(a)(1) shall be shared by the State of California pursuant to the terms of a Memorandum of Understanding executed by the State of California and the

Parties to the Settlement on September 13, 2006, which includes at least $110,000,000 of State funds.

(2) ADDITIONAL AGREEMENTS.—

(A) IN GENERAL.—The Secretary shall enter into 1 or more agreements to fund or implement improvements on a project-by-project basis with the State of California.

(B) REQUIREMENTS.—Any agreements entered into under subparagraph (A) shall provide for recognition of either monetary or in-kind contributions toward the State of California's share of the cost of implementing the provisions of section 104(a)(1).

(3) LIMITATION.—Except as provided in the Settlement, to the extent that costs incurred solely to implement this Settlement 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.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to the funds provided in paragraphs (1) through (5) of subsection (c), there are also authorized to be appropriated not

to exceed $250,000,000 (at October 2006 price levels) to implement this Act and the Settlement, to be available until expended; provided however, that the Secretary is authorized to spend such additional appropriations only in amounts equal to the amount of funds deposited in the Fund (not including payments under subsection (c)(2), proceeds under subsection (c)(3) other than an amount equal to what would otherwise have been deposited under subsection (c)(1) in the absence of issuance of the bond, and proceeds under subsection (c)(4)), the amount of in-kind contributions, and other non-Federal payments actually committed to the implementation of this Act or the Settlement.

(2) OTHER FUNDS.—The Secretary is authorized to use monies from the Fund created under section 3407 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4727) for purposes of this Act.

(c) FUND.—There is hereby established within the Treasury of the United States a fund, to be known as the ‘‘San Joaquin River Restoration Fund’’, into which the following shall be deposited and used solely for the purpose of implementing the Settlement, to be available for expenditure without further appropriation:

(1) At the beginning of the fiscal year following enactment of this Act, all payments received pursuant to section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4721).

(2) The construction cost component (not otherwise needed to cover operation and maintenance costs) of payments made by Friant Division, Hidden Unit, and Buchanan Unit contractors pursuant to long-term water service contracts or pursuant to repayment contracts, including repayment contracts executed pursuant to section 110 of this Act. The construction cost repayment obligation assigned such contractors under such contracts shall be reduced by the amount paid pursuant to this paragraph and the appropriate share of the existing Federal investment in the Central Valley project to be recovered by the Secretary pursuant to Public Law 99–546 (100 Stat. 3050) shall be reduced by an equivalent sum.

(3) Proceeds from the sale of water pursuant to the Settlement, or from the sale of property or interests in property as provided in section 105, to be available without further appropriation.

(4) Any non-Federal funds, including State cost-sharing funds, contributed to the United States

for implementation of the Settlement, which the Secretary may expend without further appropriation for the purposes for which contributed.

(d) LIMITATION ON CONTRIBUTIONS.—Payments made by long-term contractors who receive water from the Friant Division and Hidden and Buchanan Units of the Central Valley Project pursuant to sections 3406(c)(1) and 3407(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4721, 4727) and payments made pursuant to paragraph 16(b)(3) of the Settlement and subsection (c)(2) shall be the limitation of such entities' direct financial contribution to the Settlement, subject to the terms and conditions of paragraph 21 of the Settlement.

(e) NO ADDITIONAL EXPENDITURES REQUIRED.—Nothing in this Act shall be construed to require a Federal official to expend Federal funds not appropriated by Congress, or to seek the appropriation of additional funds by Congress, for the implementation of the Settlement.

(f) REACH 4B.—

(1) STUDY.—

(A) IN GENERAL.—In accordance with the Settlement and the Memorandum of Understanding executed pursuant to paragraph 6 of the Settlement, the Secretary shall conduct a study that specifies—

(i) the costs of undertaking any work required under paragraph 11(a)(3) of the Settlement to increase the capacity of Reach 4B prior to reinitiation of Restoration Flows;

(ii) the impacts associated with reinitiation of such flows; and

(iii) measures that shall be implemented to mitigate impacts.

(B) DEADLINE.—The study under subparagraph (A) shall be completed prior to restoration of any flows other than Interim Flows.

(2) REPORT.—

(A) IN GENERAL.—The Secretary shall file a report with Congress not later than 90 days after issuing a determination, as required by the Settlement, on whether to expand channel conveyance capacity to 4500 cubic feet per second in Reach 4B of the San Joaquin River, or use an alternative route for pulse flows, that—

(i) explains whether the Secretary has decided to expand Reach 4B capacity to 4500 cubic feet per second; and

(ii) addresses the following matters:

(I) The basis for the Secretary's determination, whether set out in environmental review documents or otherwise, as to whether the expansion of Reach 4B would be the preferable means to achieve the Restoration Goal as provided in the Settlement, including how different factors were assessed such as comparative biological and habitat benefits, comparative costs, relative availability of State cost-sharing funds, and the comparative benefits and impacts on water temperature, water supply, private property, and local and downstream flood control.

(II) The Secretary's final cost estimate for expanding Reach 4B capacity to 4500 cubic feet per second, or any alternative route selected, as well as the alternative cost estimates provided by the State, by the Restoration Administrator, and by the other parties to the Settlement.

(III) The Secretary's plan for funding the costs of expanding Reach 4B or any alternative route selected, whether by existing Federal funds provided under this Act, by non-Federal funds, by future Federal appropriations, or some combination of such sources.

(B) DETERMINATION REQUIRED.—The Secretary shall, to the extent feasible, make the determination in subparagraph (A) prior to undertaking any substantial construction work to increase capacity in Reach 4B.

(3) COSTS.—If the Secretary's estimated Federal cost for expanding Reach 4B in paragraph (2), in light of the Secretary's funding plan set out in paragraph (2), would exceed the remaining Federal funding authorized by this Act (including all funds reallocated, all funds dedicated, and all new funds authorized by this Act and separate from all commitments of State and other non-Federal funds and in-kind commitments), then before the Secretary commences actual construction work in Reach 4B (other than planning, design, feasibility, or other preliminary measures) to expand capacity to 4500

cubic feet per second to implement this Settlement, Congress must have increased the applicable authorization ceiling provided by this Act in an amount at least sufficient to cover the higher estimated Federal costs.

SEC. 110. REPAYMENT CONTRACTS AND ACCELERATION OF REPAYMENT OF CONSTRUCTION COSTS.

(a) CONVERSION OF CONTRACTS.—The Secretary is authorized and directed to convert, prior to December 31, 2010, all existing Friant Division, Hidden Unit, and Buchanan Unit long-term contracts entered under subsection (e) of section 109 of the Act of August 4, 1939 (53 Stat. 1196) to a contract under subsection (d) of section 9 of said Act (53 Stat. 1195), under mutually agreeable terms and conditions. Upon request of the contractor, the Secretary is further authorized to convert, prior to December 31, 2010, any existing Friant Division long-term contract entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to a contract under subsection (c)(1) of section 9 of said Act, under mutually agreeable terms and conditions. All such contracts shall—

(1) require the repayment, either in lump sum or by accelerated pre-payment, of the remaining amount of construction cost identified in the Central Valley Project Schedule of Irrigation Capital Rates

by Contractor 2007 Irrigation Water Rates, dated January 25, 2007, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor, no later than January 31, 2011, or if made in approximately equal annual installments, not later than January 31, 2014;

(2) require that, notwithstanding subsection (c)(2), construction costs, including construction costs or other capitalized costs incurred after the effective date of the contract, properly assignable to such contractor but not reflected in the Schedule referenced in paragraph (1) shall be repaid in not more than 5 years after notification of the allocation, unless the Secretary and the contractor agree upon a longer repayment period consistent with applicable law;

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

(4) conform to the Settlement and this Act and shall continue so long as the contractor pays applicable charges, consistent with subsection (c)(2).

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

(c) APPLICABILITY OF CERTAIN PROVISIONS.—Notwithstanding any repayment obligation under subsection (a)(2) or (b), upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs as provided in subsection (a)(1)—

(1) the provisions of section 213(a) and (b) of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to lands in such district; and

(2) the Secretary shall waive the pricing provisions of section 3405(d) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575) for such contractor, provided that such contractor shall continue to pay applicable operation and maintenance costs and other charges applicable to such repayment contracts pursuant to the then-current ratesetting policy and applicable law.

(d) REDUCTION OF CHARGE.—Beginning in 2019, the Secretary shall reduce the charge mandated in section 107(1) of the Act in recognition of the financing costs incurred in making 110(a)(1) payments.

(e) SATISFACTION OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Upon the first release of Interim Flows or Restoration Flows, pursuant to paragraphs 13 or 15 of the Settlement, any short- or long-term agreement to which one or more long-term Friant water service or repayment contractors is a party providing for the transfer or exchange of water not released as Interim Flows or Restoration Flows shall be deemed to satisfy the provisions of subsection 3405(a)(1)(A) and (I) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575) without the further concurrence of the Secretary as to compliance with said

subsections if the contractor provides, not later than 90 days before commencement of such transfer or exchange, written notice to the Secretary stating how the proposed transfer or exchange is intended to reduce, avoid, or mitigate impacts to water deliveries caused by the Interim Flows or Restoration Flows or is intended to otherwise facilitate the Water Management Goal, as described in the Settlement. The Secretary shall promptly make such notice publicly available.

(2) DETERMINATION OF REDUCTIONS TO WATER DELIVERIES.—Water transferred or exchanged under an agreement that meets the terms of this subsection shall not be counted as a replacement or an offset for purposes of determining reductions to water deliveries to any Friant Division long-term contractor except as provided in paragraph 16(b) of the Settlement. The Secretary shall, at least annually, make publicly available a compilation of the number of transfer or exchange agreements exercising the provisions of this subsection to reduce, avoid, or mitigate impacts to water deliveries caused by the Interim Flows or Restoration Flows or to facilitate the Water Management Goal, as well as the

volume of water transferred or exchanged under such agreements.

(3) STATE LAW.—Nothing in this subsection alters State law or permit conditions, including any applicable geographical restrictions on the place of use of water transferred or exchanged pursuant to this subsection.

(f) CERTAIN REPAYMENT OBLIGATIONS NOT ALTERED.—Implementation of the provisions of this section shall not alter the repayment obligation of any other long-term water contractor receiving water from the Central Valley Project.

(g) STATUTORY INTERPRETATION.—Nothing in this Act shall be construed to affect the right of any Friant Division long-term contractor to use a particular type of financing to make the payments required in subsection (a)(1).

SEC. 111. CALIFORNIA CENTRAL VALLEY SPRING RUN CHINOOK SALMON.

(a) FINDING.—Congress finds that the implementation of the Settlement to resolve 18 years of contentious litigation regarding restoration of the San Joaquin River and the reintroduction of the California Central Valley Spring Run Chinook salmon is a unique and unprecedented circumstance that requires clear expressions of

Congressional intent regarding how the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) are utilized to achieve the goals of restoration of the San Joaquin River and the successful reintroduction of California Central Valley Spring Run Chinook salmon.

(b) REINTRODUCTION IN THE SAN JOAQUIN RIVER.—California Central Valley Spring Run Chinook salmon shall be reintroduced in the San Joaquin River below Friant Dam pursuant to section 10(j) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)) and the Settlement, provided that the Secretary of Commerce finds that a permit for the reintroduction of California Central Valley Spring Run Chinook salmon may be issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(A)).

(c) FINAL RULE.—

(1) DEFINITION OF THIRD PARTY.—For the purpose of this subsection, the term ‘‘third party’’ means persons or entities diverting or receiving water pursuant to applicable State and Federal law and shall include Central Valley Project contractors outside of the Friant Division of the Central Valley Project and the State Water Project.

(2) ISSUANCE.—The Secretary of Commerce shall issue a final rule pursuant to section 4(d) of

the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) governing the incidental take of reintroduced California Central Valley Spring Run Chinook salmon prior to the reintroduction.

(3) REQUIRED COMPONENTS.—The rule issued under paragraph (2) shall provide that the reintroduction will not impose more than de minimus: water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction.

(4) APPLICABLE LAW.—Nothing in this section—

(A) diminishes the statutory or regulatory protections provided in the Endangered Species Act for any species listed pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) other than the reintroduced population of California Central Valley Spring Run Chinook salmon, including protections pursuant to existing biological opinions or new biological opinions issued by the Secretary or Secretary of Commerce; or

(B) precludes the Secretary or Secretary of Commerce from imposing protections under the Endangered Species Act of 1973 (16 U.S.C.

1531 et seq.) for other species listed pursuant to section 4 of that Act (16 U.S.C. 1533) because those protections provide incidental benefits to such reintroduced California Central Valley Spring Run Chinook salmon.

(d) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2024, the Secretary of Commerce shall report to Congress on the progress made on the reintroduction set forth in this section and the Secretary's plans for future implementation of this section.

(2) INCLUSIONS.—The report under paragraph (1) shall include—

(A) an assessment of the major challenges, if any, to successful reintroduction;

(B) an evaluation of the effect, if any, of the reintroduction on the existing population of California Central Valley Spring Run Chinook salmon existing on the Sacramento River or its tributaries; and

(C) an assessment regarding the future of the reintroduction.

(e) FERC PROJECTS.—

(1) IN GENERAL.—With regard to California Central Valley Spring Run Chinook salmon reintro-

duced pursuant to the Settlement, the Secretary of Commerce shall exercise its authority under section 18 of the Federal Power Act (16 U.S.C. 811) by reserving its right to file prescriptions in proceedings for projects licensed by the Federal Energy Regulatory Commission on the Calaveras, Stanislaus, Tuolumne, Merced, and San Joaquin rivers and otherwise consistent with subsection (c) until after the expiration of the term of the Settlement, December 31, 2025, or the expiration of the designation made pursuant to subsection (b), whichever ends first.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection shall preclude the Secretary of Commerce from imposing prescriptions pursuant to section 18 of the Federal Power Act (16 U.S.C. 811) solely for other anadromous fish species because those prescriptions provide incidental benefits to such reintroduced California Central Valley Spring Run Chinook salmon.

(f) EFFECT OF SECTION.—Nothing in this section is intended or shall be construed—

(1) to modify the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C. 791a et seq.); or

(2) to establish a precedent with respect to any other application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C. 791a et seq.).

SEC. 112. OFFSETTING RECEIPTS.

(a) CONSERVATION OF RESOURCES FEE FOR NONPRODUCING FEDERAL OIL AND GAS LEASES IN THE GULF OF MEXICO.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Interior by regulation shall establish a conservation of resources fee for nonproducing Federal oil and gas leases in the Gulf of Mexico.

(b) NONPRODUCING LEASE FEE TERMS.—The fee under subsection (a)—

(1) subject to paragraph (3), shall apply to leases that are nonproducing leases;

(2) shall be set at $3.75 per acre per year in 2005 dollars; and

(3) shall apply on and after October 1, 2006.

(c) TREATMENT OF RECEIPTS.—Amounts received by the United States as fees under this section shall be treated as offsetting receipts.

TITLE II—STUDY TO DEVELOP WATER PLAN; REPORT

SEC. 201. STUDY TO DEVELOP WATER PLAN; REPORT.

(a) PLAN.—

(1) GRANT.—To the extent that funds are made available in advance for this purpose, the Secretary of the Interior, acting through the Bureau of Reclamation, shall provide direct financial assistance to the California Water Institute, located at California State University, Fresno, California, to conduct a study regarding the coordination and integration of sub-regional integrated regional water management plans into a unified Integrated Regional Water Management Plan for the subject counties in the hydrologic basins that would address issues related to—

(A) water quality;

(B) water supply (both surface, groundwater banking, and brackish water desalination);

(C) water conveyance;

(D) water reliability;

(E) flood control;

(F) water resource-related environmental enhancement; and

(G) population growth.

(2) STUDY AREA.—The study area referred to in paragraph (1) is the proposed study area of the San Joaquin River Hydrologic Region and Tulare Lake Hydrologic Region, as defined by California Department of Water Resources Bulletin 160–05, Volume 3, Chapters 7 and 8, including Kern, Tulare, Kings, Fresno, Madera, Merced, Stanislaus, and San Joaquin counties in California.

(b) USE OF PLAN.—The Integrated Regional Water Management Plan developed for the 2 hydrologic basins under subsection (a) shall serve as a guide for the 8 counties in the study area described in subsection (a)(2) to use as a mechanism to address and solve long-term water needs in a sustainable and equitable manner.

(c) REPORT.—The Secretary shall ensure that a report containing the results of the Integrated Regional Water Management Plan for the hydrologic regions is submitted to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 24 months after financial assistance is made available to the California Water Institute under subsection (a)(1).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 to remain available until expended.

Union Calendar No. 395

110TH CONGRESS
2D SESSION

H. R. 4074

[Report No. 110–633]

A BILL

To authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

MAY 13, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed