

112TH CONGRESS  
2D SESSION

# S. 2365

To promote the economic and energy security of the United States, and  
for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 25, 2012

Mr. HATCH (for himself, Mr. BARRASSO, Mr. MORAN, Mr. CRAPO, and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To promote the economic and energy security of the United  
States, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Western Economic Security Today Act” or the “WEST  
6 Act”.

7 (b) TABLE OF CONTENTS.—The table of contents of  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUTTING THE GULF OF MEXICO BACK TO WORK

- Sec. 101. Short title.
- Sec. 102. Definitions.

#### Subtitle A—Outer Continental Shelf Land

- Sec. 111. Drilling permits.

#### Subtitle B—Judicial Review of Agency Actions Relating to Outer Continental Shelf Activities in Gulf of Mexico

- Sec. 122. Exclusive venue for certain civil actions relating to covered energy projects in Gulf of Mexico.
- Sec. 123. Time limitation on filing.
- Sec. 124. Expedition in hearing and determining action.
- Sec. 125. Standard of review.
- Sec. 126. Limitation on prospective relief.
- Sec. 127. Limitation on attorneys' fees.

### TITLE II—RESTARTING AMERICAN OFFSHORE LEASING NOW

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Requirement to conduct proposed oil and gas Lease Sale 216 in Central Gulf of Mexico.
- Sec. 204. Requirement to conduct proposed oil and gas Lease Sale 220 on Outer Continental Shelf offshore Virginia.
- Sec. 205. Requirement to conduct proposed oil and gas Lease Sale 222 in Central Gulf of Mexico.

### TITLE III—REVERSING PRESIDENT OBAMA'S OFFSHORE MORATORIUM

- Sec. 301. Short title.
- Sec. 302. Outer Continental Shelf leasing program.
- Sec. 303. Domestic oil and natural gas production goal.

### TITLE IV—JOBS AND ENERGY PERMITTING

- Sec. 401. Short title.
- Sec. 402. Air quality measurement.
- Sec. 403. OCS source.
- Sec. 404. Permits.

### TITLE V—SACRAMENTO-SAN JOAQUIN VALLEY WATER RELIABILITY

- Sec. 501. Short title.

#### Subtitle A—Central Valley Project Water Reliability

- Sec. 511. Amendment to purposes.
- Sec. 512. Amendment to definition.
- Sec. 513. Contracts.
- Sec. 514. Water transfers, improved water management, and conservation.
- Sec. 515. Fish, wildlife, and habitat restoration.
- Sec. 516. Restoration Fund.
- Sec. 517. Additional authorities.
- Sec. 518. Bay-Delta Accord.

- Sec. 519. Natural and artificially spawned species.
- Sec. 520. Authorized service area.
- Sec. 521. Regulatory streamlining.

#### Subtitle B—San Joaquin River Restoration

- Sec. 531. Repeal of the San Joaquin River settlement.
- Sec. 532. Purpose.
- Sec. 533. Definitions.
- Sec. 534. Implementation of restoration.
- Sec. 535. Disposal of property; title to facilities.
- Sec. 536. Compliance with applicable law.
- Sec. 537. Compliance with Central Valley Project Improvement Act.
- Sec. 538. No private right of action.
- Sec. 539. Implementation.
- Sec. 540. Repayment contracts and acceleration of repayment of construction costs.
- Sec. 541. Repeal.
- Sec. 542. Water supply mitigation.
- Sec. 543. Additional authorities.

#### Subtitle C—Repayment Contracts and Acceleration of Repayment of Construction Costs

- Sec. 551. Repayment contracts and acceleration of repayment of construction costs.

#### Subtitle D—Bay-Delta Watershed Water Rights Preservation and Protection

- Sec. 561. Water rights and area-of-origin protections.
- Sec. 562. Sacramento River settlement contracts.
- Sec. 563. Sacramento River Watershed water service contractors.
- Sec. 564. No redirected adverse impacts.

#### Subtitle E—Miscellaneous

- Sec. 571. Precedent.

### TITLE VI—REDUCING REGULATORY BURDENS

- Sec. 601. Short title.
- Sec. 602. Use of authorized pesticides.
- Sec. 603. Discharges of pesticides.

### TITLE VII—FARM DUST REGULATION PREVENTION

- Sec. 701. Short title.
- Sec. 702. Temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter.
- Sec. 703. Nuisance dust.
- Sec. 704. Sense of Congress.
- Sec. 705. Impacts of EPA regulatory activity on employment and economic activity in agriculture community.

### TITLE VIII—ENERGY TAX PREVENTION

- Sec. 801. Short title.

Sec. 802. No regulation of emissions of greenhouse gases.

Sec. 803. Preserving one national standard for automobiles.

# **1 TITLE I—PUTTING THE GULF OF 2 MEXICO BACK TO WORK**

## **3 SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Putting the Gulf of  
5 Mexico Back to Work Act”.

## **6 SEC. 102. DEFINITIONS.**

7 In this title:

8 (1) COVERED CIVIL ACTION.—The term “cov-  
9 ered civil action” means a civil action containing a  
10 claim under section 702 of title 5, United States  
11 Code, regarding agency action (as defined for the  
12 purposes of that section) affecting a covered energy  
13 project in the Gulf of Mexico.

14 (2) COVERED ENERGY PROJECT.—

15 (A) IN GENERAL.—The term “covered en-  
16 ergy project” means the leasing of Federal land  
17 of the outer Continental Shelf for the explo-  
18 ration, development, production, processing, or  
19 transmission of oil, natural gas, wind, or any  
20 other source of energy in the Gulf of Mexico,  
21 and any action under a lease.

22 (B) EXCLUSION.—The term “covered en-  
23 ergy project” does not include any dispute be-  
24 tween the parties to a lease regarding the obli-

1           gations under the lease, including any alleged  
2           breach of the lease.

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

5           **Subtitle A—Outer Continental**  
6           **Shelf Land**

7           **SEC. 111. DRILLING PERMITS.**

8           Section 11 of the Outer Continental Shelf Lands Act  
9           (43 U.S.C. 1340) is amended by striking subsection (d)  
10          and inserting the following:

11          “(d) DRILLING PERMITS.—

12                  “(1) IN GENERAL.—The Secretary shall by reg-  
13                  ulation require that any lessee operating under an  
14                  approved exploration plan—

15                          “(A) obtain a permit before drilling any  
16                          well in accordance with the plan; and

17                          “(B) obtain a new permit before drilling  
18                          any well of a design that is significantly dif-  
19                          ferent than the design for which the existing  
20                          permit was issued.

21                  “(2) SAFETY REVIEW REQUIRED.—The Sec-  
22                  retary shall not issue a permit under paragraph (1)  
23                  without ensuring that the proposed drilling oper-  
24                  ations meet all—

1           “(A) critical safety system requirements,  
2 including blowout prevention; and

3           “(B) oil spill response and containment re-  
4 quirements.

5           “(3) TIMELINE.—

6           “(A) IN GENERAL.—The Secretary shall  
7 determine whether to issue a permit under  
8 paragraph (1) not later than 30 days after the  
9 date on which the Secretary receives the appli-  
10 cation for a permit.

11           “(B) EXTENSION OF TIME.—

12           “(i) IN GENERAL.—The Secretary  
13 may extend the period in which to consider  
14 an application for a permit for up to 2 pe-  
15 riods of 15 days each if the Secretary has  
16 given written notice of the delay to the ap-  
17 plicant.

18           “(ii) NOTICE.—The notice described  
19 in clause (i) shall—

20           “(I) be in the form of a letter  
21 from the Secretary or a designee of  
22 the Secretary; and

23           “(II) include—

1 “(aa) the name and title of  
2 each individual processing the ap-  
3 plication;

4 “(bb) the reason for the  
5 delay; and

6 “(cc) the date on which the  
7 Secretary expects to make a final  
8 decision on the application.

9 “(4) DENIAL OF APPLICATION.—If the Sec-  
10 retary denies the application, the Secretary shall  
11 provide the applicant—

12 “(A) a written statement that provides  
13 clear and comprehensive reasons why the appli-  
14 cation was not accepted and detailed informa-  
15 tion concerning any deficiency; and

16 “(B) an opportunity to remedy any defi-  
17 ciencies.

18 “(5) FAILURE TO MAKE DECISION WITHIN 60  
19 DAYS.—If the Secretary does not make a decision on  
20 the application by the date that is 60 days from the  
21 date on which the Secretary receives the application,  
22 the application shall be considered approved.”.

1 **Subtitle B—Judicial Review of**  
 2 **Agency Actions Relating to**  
 3 **Outer Continental Shelf Activi-**  
 4 **ties in Gulf of Mexico**

5 **SEC. 122. EXCLUSIVE VENUE FOR CERTAIN CIVIL ACTIONS**  
 6 **RELATING TO COVERED ENERGY PROJECTS**  
 7 **IN GULF OF MEXICO.**

8 A covered civil action shall be brought only in a judi-  
 9 cial district in the Fifth Circuit unless there is no district  
 10 in that circuit in which the action may be brought.

11 **SEC. 123. TIME LIMITATION ON FILING.**

12 A covered civil action is barred unless the action is  
 13 filed not later than the date that is 60 days after the date  
 14 of the final Federal agency action.

15 **SEC. 124. EXPEDITION IN HEARING AND DETERMINING AC-**  
 16 **TION.**

17 A court shall endeavor to hear and determine any  
 18 covered civil action as expeditiously as practicable.

19 **SEC. 125. STANDARD OF REVIEW.**

20 (a) IN GENERAL.—In any judicial review of a covered  
 21 civil action, administrative findings and conclusions relat-  
 22 ing to the challenged Federal action or decision shall be  
 23 presumed to be correct.



1 (b) STANDARD.—The presumption described in sub-  
 2 section (a) may be rebutted only by a preponderance of  
 3 the evidence contained in the administrative record.

4 **SEC. 126. LIMITATION ON PROSPECTIVE RELIEF.**

5 In a covered civil action, a court shall not grant or  
 6 approve any prospective relief unless the court finds that  
 7 the relief is narrowly drawn, extends no further than nec-  
 8 essary to correct the violation of a legal requirement, and  
 9 is the least intrusive means necessary to correct that viola-  
 10 tion.

11 **SEC. 127. LIMITATION ON ATTORNEYS' FEES.**

12 (a) IN GENERAL.—Sections 504 of title 5 and 2412  
 13 of title 28, United States Code, do not apply to a covered  
 14 civil action.

15 (b) PAYMENT FROM FEDERAL GOVERNMENT.—No  
 16 party to a covered civil action shall receive from the Fed-  
 17 eral Government payment for attorneys' fees, expenses,  
 18 and other court costs.

19 **TITLE II—RESTARTING AMER-**  
 20 **ICAN OFFSHORE LEASING**  
 21 **NOW**

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Restarting American  
 24 Offshore Leasing Now Act”.

1 **SEC. 202. DEFINITIONS.**

2 In this title:

3 (1) ENVIRONMENTAL IMPACT STATEMENT FOR  
4 THE 2007–2012 5-YEAR OCS PLAN.—The term “envi-  
5 ronmental impact statement for the 2007–2012 5-  
6 Year OCS plan” means the final environmental im-  
7 pact statement prepared by the Secretary entitled  
8 “Outer Continental Shelf Oil and Gas Leasing Pro-  
9 gram: 2007–2012”, and dated April 2007.

10 (2) MULTISALE ENVIRONMENTAL IMPACT  
11 STATEMENT.—The term “multisale environmental  
12 impact statement” means the environmental impact  
13 statement prepared by the Secretary relating to pro-  
14 posed Western Gulf of Mexico OCS Oil and Gas  
15 Lease Sales 204, 207, 210, 215, and 218, and pro-  
16 posed Central Gulf of Mexico OCS Oil and Gas  
17 Lease Sales 205, 206, 208, 213, 216, and 222, and  
18 dated September 2008.

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

21 **SEC. 203. REQUIREMENT TO CONDUCT PROPOSED OIL AND**  
22 **GAS LEASE SALE 216 IN CENTRAL GULF OF**  
23 **MEXICO.**

24 (a) IN GENERAL.—As soon as practicable, but not  
25 later than 60 days after the date of enactment of this Act,  
26 the Secretary shall conduct offshore oil and gas Lease Sale

1 216 under section 8 of the Outer Continental Shelf Lands  
2 Act (33 U.S.C. 1337).

3 (b) ENVIRONMENTAL REVIEW.—For the purposes of  
4 the lease sale described in subsection (a), the environ-  
5 mental impact statement for the 2007–2012 5-Year OCS  
6 plan and the multisale environmental impact statement  
7 shall be considered to satisfy the requirements of the Na-  
8 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
9 et seq.).

10 **SEC. 204. REQUIREMENT TO CONDUCT PROPOSED OIL AND**  
11 **GAS LEASE SALE 220 ON OUTER CONTI-**  
12 **NENTAL SHELF OFFSHORE VIRGINIA.**

13 (a) IN GENERAL.—As soon as practicable, but not  
14 later than 1 year after the date of enactment of this Act,  
15 the Secretary shall conduct offshore oil and gas Lease Sale  
16 220 under section 8 of the Outer Continental Shelf Lands  
17 Act (33 U.S.C. 1337).

18 (b) ENVIRONMENTAL REVIEW.—For the purposes of  
19 the lease sale described in subsection (a), the environ-  
20 mental impact statement for the 2007–2012 5-Year OCS  
21 plan and the multisale environmental impact statement  
22 shall be considered to satisfy the requirements of the Na-  
23 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
24 et seq.).

1 **SEC. 205. REQUIREMENT TO CONDUCT PROPOSED OIL AND**  
 2 **GAS LEASE SALE 222 IN CENTRAL GULF OF**  
 3 **MEXICO.**

4 (a) IN GENERAL.—As soon as practicable, but not  
 5 later than 60 days after the date of enactment of this Act,  
 6 the Secretary shall conduct offshore oil and gas Lease Sale  
 7 222 under section 8 of the Outer Continental Shelf Lands  
 8 Act (33 U.S.C. 1337).

9 (b) ENVIRONMENTAL REVIEW.—For the purposes of  
 10 the lease sale described in subsection (a), the environ-  
 11 mental impact statement for the 2007–2012 5-Year OCS  
 12 plan and the multisale environmental impact statement  
 13 shall be considered to satisfy the requirements of the Na-  
 14 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
 15 et seq.).

16 **TITLE III—REVERSING PRESI-**  
 17 **DENT OBAMA’S OFFSHORE**  
 18 **MORATORIUM**

19 **SEC. 301. SHORT TITLE.**

20 This title may be cited as the “Reversing President  
 21 Obama’s Offshore Moratorium Act”.

22 **SEC. 302. OUTER CONTINENTAL SHELF LEASING PROGRAM.**

23 Section 18(a) of the Outer Continental Shelf Lands  
 24 Act (43 U.S.C. 1344(a)) is amended by adding at the end  
 25 the following:

1           “(5)(A) In each oil and gas leasing program  
2           under this section, the Secretary shall make avail-  
3           able for leasing and conduct lease sales that in-  
4           clude—

5                   “(i) at least 50 percent of the available un-  
6           leased acreage within each outer Continental  
7           Shelf planning area considered to have the larg-  
8           est undiscovered, technically recoverable oil and  
9           gas resources (on a total btu basis) based upon  
10          the most recent national geological assessment  
11          of the outer Continental Shelf, with an empha-  
12          sis on offering the most geologically prospective  
13          parts of the planning area; and

14                   “(ii) any State subdivision of an outer  
15          Continental Shelf planning area that the Gov-  
16          ernor of the State that represents that subdivi-  
17          sion requests be made available for leasing.

18           “(B) In this paragraph, the term ‘available un-  
19          leased acreage’ means that portion of the outer Con-  
20          tinental Shelf that is not under lease at the time of  
21          a proposed lease sale, and that has not otherwise  
22          been made unavailable for leasing by law.

23           “(6)(A) For the 2012–2017 5-year oil and gas  
24          leasing program, the Secretary shall make available

1 for leasing any outer Continental Shelf planning  
 2 areas that are estimated to contain more than—

3 “(i) 2,500,000,000 barrels of oil; or

4 “(ii) 7,500,000,000,000 cubic feet of nat-  
 5 ural gas.

6 “(B) To determine the planning areas described  
 7 in subparagraph (A), the Secretary shall use the  
 8 document entitled ‘Minerals Management Service  
 9 Assessment of Undiscovered Technically Recoverable  
 10 Oil and Gas Resources of the Nation’s Outer Conti-  
 11 nental Shelf, 2006’.”.

12 **SEC. 303. DOMESTIC OIL AND NATURAL GAS PRODUCTION**

13 **GOAL.**

14 Section 18 of the Outer Continental Shelf Lands Act  
 15 (43 U.S.C. 1344) is amended by striking subsection (b)  
 16 and inserting the following:

17 “(b) DOMESTIC OIL AND NATURAL GAS PRODUC-  
 18 TION GOAL.—

19 “(1) IN GENERAL.—In developing a 5-year oil  
 20 and gas leasing program, subject to paragraph (2),  
 21 the Secretary shall determine a domestic strategic  
 22 production goal for the development of oil and nat-  
 23 ural gas as a result of that program, which goal  
 24 shall be—

1           “(A) the best estimate of the practicable  
2           increase in domestic production of oil and nat-  
3           ural gas from the outer Continental Shelf;

4           “(B) focused on meeting domestic demand  
5           for oil and natural gas and reducing the de-  
6           pendence of the United States on foreign en-  
7           ergy; and

8           “(C) focused on the production increases  
9           achieved by the leasing program at the end of  
10          the 15-year period beginning on the effective  
11          date of the program.

12          “(2) 2012–2017 PROGRAM GOAL.—For pur-  
13          poses of the 2012–2017 5-year oil and gas leasing  
14          program, the production goal referred to in para-  
15          graph (1) shall be an increase by 2027 of not less  
16          than—

17               “(A) 3,000,000 barrels in the quantity of  
18               oil produced per day; and

19               “(B) 10,000,000,000 cubic feet in the  
20               quantity of natural gas produced per day.

21          “(3) REPORTING.—Beginning at the end of the  
22          5-year period for which the program applies and an-  
23          nually thereafter, the Secretary shall submit to the  
24          Committee on Natural Resources of the House of  
25          Representatives and the Committee on Energy and

1 Natural Resources of the Senate a report on the  
 2 progress of the program in meeting the production  
 3 goal that includes an identification of projections for  
 4 production and any problems with leasing, permit-  
 5 ting, or production that will prevent meeting the  
 6 goal.”.

## 7 **TITLE IV—JOBS AND ENERGY** 8 **PERMITTING**

### 9 **SEC. 401. SHORT TITLE.**

10 This title may be cited as the “Jobs and Energy Per-  
 11 mitting Act of 2012”.

### 12 **SEC. 402. AIR QUALITY MEASUREMENT.**

13 Section 328(a)(1) of the Clean Air Act (42 U.S.C.  
 14 7627(a)(1)) is amended in the second sentence by insert-  
 15 ing before the period at the end the following: “, except  
 16 that any air quality impact of any OCS source shall be  
 17 measured or modeled, as appropriate, and determined  
 18 solely with respect to the impacts in the corresponding on-  
 19 shore area”.

### 20 **SEC. 403. OCS SOURCE.**

21 Section 328(a)(4)(C) of the Clean Air Act (42 U.S.C.  
 22 7627(a)(4)(C)) is amended in the second sentence of the  
 23 matter following clause (iii) by striking “shall be consid-  
 24 ered direct emissions from the OCS source” and inserting  
 25 “shall be considered direct emissions from the OCS source



1 but shall not be subject to any emission control require-  
 2 ment applicable to the source under subpart 1 of part C  
 3 of title I of this Act. For platform or drill ship exploration,  
 4 an OCS source is established at the point in time when  
 5 drilling commences at a location and ceases to exist when  
 6 drilling activity ends at the location or is temporarily in-  
 7 terrupted because the platform or drill ship relocates for  
 8 weather or other reasons”.

9 **SEC. 404. PERMITS.**

10 (a) PERMITS.—Section 328 of the Clean Air Act (42  
 11 U.S.C. 7627) is amended by adding at the end the fol-  
 12 lowing:

13 “(d) PERMIT APPLICATION.—In the case of a com-  
 14 pleted application for a permit under this Act for platform  
 15 or drill ship exploration for an OCS source—

16 “(1) final agency action (including any recon-  
 17 sideration of the issuance or denial of such a permit)  
 18 shall be taken not later than 180 days after the date  
 19 on which the completed application is filed;

20 “(2) the Environmental Appeals Board of the  
 21 Environmental Protection Agency shall have no au-  
 22 thority to consider any matter regarding the consid-  
 23 eration, issuance, or denial of the permit;

24 “(3) no administrative stay of the effectiveness  
 25 of the permit may extend beyond the date that is

1 180 days after the date on which the completed ap-  
 2 plication is filed;

3 “(4) that final agency action shall be considered  
 4 to be nationally applicable under section 307(b); and

5 “(5) judicial review of that final agency action  
 6 shall be available only in accordance with section  
 7 307(b) without additional administrative review or  
 8 adjudication.”.

9 (b) CONFORMING AMENDMENT.—Section 328(a)(4)  
 10 of the Clean Air Act (42 U.S.C. 7627(a)(4)) is amended  
 11 by striking “For purposes of subsections (a) and (b) of  
 12 this section—” and inserting “For purposes of subsections  
 13 (a), (b), and (d):”.

14 **TITLE V—SACRAMENTO-SAN**  
 15 **JOAQUIN VALLEY WATER RE-**  
 16 **LIABILITY**

17 **SEC. 501. SHORT TITLE.**

18 This title may be cited as the “Sacramento-San Joa-  
 19 quin Valley Water Reliability Act”.

20 **Subtitle A—Central Valley Project**  
 21 **Water Reliability**

22 **SEC. 511. AMENDMENT TO PURPOSES.**

23 Section 3402 of the Central Valley Project Improve-  
 24 ment Act (Public Law 102–575; 106 Stat. 4706) is  
 25 amended—

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

3           (2) by adding at the end the following:

4           “(g) to ensure that water dedicated to fish and wild-  
5 life purposes by this title is replaced and provided to Cen-  
6 tral Valley Project water contractors not later than De-  
7 cember 31, 2016, at the lowest cost reasonably achievable;  
8 and

9           “(h) to facilitate and expedite water transfers in ac-  
10 cordance with this title.”.

11 **SEC. 512. AMENDMENT TO DEFINITION.**

12           Section 3403 of the Central Valley Project Improve-  
13 ment Act (Public Law 102–575; 106 Stat. 4707) is  
14 amended—

15           (1) by striking subsection (a) and inserting the  
16 following:

17           “(a) the term ‘anadromous fish’ means those native  
18 stocks of salmon (including steelhead) and sturgeon  
19 that—

20           “(1) as of October 30, 1992, were present in  
21 the Sacramento and San Joaquin Rivers and the  
22 tributaries of the Sacramento and San Joaquin Riv-  
23 ers; and

1           “(2) ascend those rivers and tributaries to re-  
 2           produce after maturing in San Francisco Bay or the  
 3           Pacific Ocean;”;

4           (2) by redesignating subsections (i) through  
 5           (m) as subsections (j) through (n), respectively; and

6           (3) by inserting after subsection (h) the fol-  
 7           lowing:

8           “(i) the term ‘reasonable flows’ means water flows  
 9           capable of being maintained taking into account com-  
 10          peting consumptive uses of water and economic, environ-  
 11          mental, and social factors.”.

12   **SEC. 513. CONTRACTS.**

13          Section 3404 of the Central Valley Project Improve-  
 14          ment Act (Public Law 102–575; 106 Stat. 4708) is  
 15          amended to read as follows:

16   **“SEC. 3404. CONTRACTS.**

17          “(a) RENEWAL OF EXISTING LONG-TERM CON-  
 18          TRACTS.—On request of the contractor, the Secretary  
 19          shall renew any existing long-term repayment or water  
 20          service contract that provides for the delivery of water  
 21          from the Central Valley Project for a period of 40 years.

22          “(b) ADMINISTRATION OF CONTRACTS.—Except as  
 23          expressly provided by this title, any existing long-term re-  
 24          payment or water service contract for the delivery of water  
 25          from the Central Valley Project shall be administered pur-

1 suant to the Act of July 2, 1956 (chapter 492; 70 Stat.  
2 483).

3 “(c) DELIVERY CHARGE.—Beginning on the date of  
4 enactment of this Act, a contract entered into or renewed  
5 pursuant to this section shall include a provision that re-  
6 quires the Secretary to charge any other party to the con-  
7 tract only for water actually delivered by the Secretary.”.

8 **SEC. 514. WATER TRANSFERS, IMPROVED WATER MANAGE-**  
9 **MENT, AND CONSERVATION.**

10 Section 3405 of the Central Valley Project Improve-  
11 ment Act (Public Law 102–575; 106 Stat. 4709) is  
12 amended—

13 (1) in subsection (a)—

14 (A) in the second sentence, by striking  
15 “Except as provided herein” and inserting “The  
16 Secretary shall take all actions necessary to fa-  
17 cilitate and expedite transfers of Central Valley  
18 Project water in accordance with this title or  
19 any other provision of Federal reclamation law  
20 and the National Environmental Policy Act of  
21 1969 (42 U.S.C. 4321 et seq.). Except as pro-  
22 vided in this subsection,”;

23 (B) in paragraph (1)(A), by striking “to  
24 combination” and inserting “or combination”;

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

3 “(E) WRITTEN TRANSFER PROPOSALS.—

4 “(i) IN GENERAL.—The contracting  
5 district from which the water is supplied,  
6 the agency, or the Secretary, as applicable,  
7 shall determine whether a written transfer  
8 proposal is complete not later than 45 days  
9 after the date on which the proposal is  
10 submitted.

11 “(ii) DETERMINATION.—If the con-  
12 tracting district, the agency, or the Sec-  
13 retary determines that the proposal de-  
14 scribed in clause (i) is incomplete, the con-  
15 tracting district, agency, or Secretary shall  
16 state, in writing and with specificity, the  
17 conditions under which the proposal would  
18 be considered complete.

19 “(F) NO MITIGATION REQUIREMENTS.—

20 “(i) IN GENERAL.—Except as pro-  
21 vided in this section, the Secretary shall  
22 not impose mitigation or other require-  
23 ments on a proposed transfer.

24 “(ii) APPLICABILITY.—This section  
25 shall have no effect on the authority of the

1           contracting district from which the water  
 2           is supplied or the agency under State law  
 3           to approve or condition a proposed trans-  
 4           fer.”; and

5           (D) by adding at the end the following:

6           “(4) APPLICABILITY.—Notwithstanding any  
 7           other provision of Federal reclamation law—

8           “(A) the authority to transfer, exchange,  
 9           bank, or make recharging arrangements using  
 10          Central Valley Project water that could have  
 11          been carried out before October 30, 1992, is  
 12          valid, and those transfers, exchanges, or ar-  
 13          rangements shall not be subject to, limited, or  
 14          conditioned by this title; and

15          “(B) this title does not supersede or revoke  
 16          the authority to transfer, exchange, bank, or re-  
 17          charge Central Valley Project water in effect  
 18          before October 30, 1992.”;

19          (2) in subsection (b)—

20                (A) in the heading, by striking “METER-  
 21                ING” and inserting “MEASUREMENT”;

22                (B) in the first sentence, by striking “All  
 23                Central Valley” and inserting the following:

24                “(1) IN GENERAL.—All Central Valley”;

1 (C) in the second sentence, by striking  
2 “The contracting district” and inserting the fol-  
3 lowing:

4 “(3) ANNUAL REPORT.—The contracting dis-  
5 trict”; and

6 (D) by inserting after paragraph (1) (as  
7 designated by subparagraph (B)) the following:

8 “(2) MEASUREMENT REQUIREMENTS.—The  
9 contracting district or agency, not including con-  
10 tracting districts serving multiple agencies with sep-  
11 arate governing boards, shall ensure that all con-  
12 tractor-owned water delivery systems within the  
13 boundaries of the contracting district or agency  
14 measure surface water at the facilities of the con-  
15 tracting district or agency up to the point at which  
16 the surface water is commingled with other water  
17 supplies.”;

18 (3) by striking subsection (d);

19 (4) by redesignating subsections (e) and (f) as  
20 subsections (d) and (e), respectively; and

21 (5) by striking subsection (e) (as redesignated  
22 by paragraph (4)) and inserting the following:

23 “(e) INCREASED REVENUES.—All revenues received  
24 by the Secretary that exceed the cost-of-service rates ap-  
25 plicable to the delivery of water transferred from irrigation



1 use to municipal and industrial use under subsection (a)  
 2 shall be covered to the Restoration Fund.”.

3 **SEC. 515. FISH, WILDLIFE, AND HABITAT RESTORATION.**

4 Section 3406 of the Central Valley Project Improve-  
 5 ment Act (Public Law 102–575; 106 Stat. 4714) is  
 6 amended—

7 (1) in subsection (b)—

8 (A) by striking paragraph (1)(B) and in-  
 9 serting the following:

10 “(B) ADMINISTRATION.—

11 “(i) IN GENERAL.—As needed to  
 12 carry out the goals of the Central Valley  
 13 Project, the Secretary may modify Central  
 14 Valley Project operations to provide rea-  
 15 sonable flows of suitable quality, quantity,  
 16 and timing to protect all life stages of  
 17 anadromous fish.

18 “(ii) REQUIREMENTS.—The flows  
 19 under clause (i) shall be provided from the  
 20 quantity of water dedicated to fish, wild-  
 21 life, and habitat restoration purposes  
 22 under paragraph (2) from the water sup-  
 23 plies acquired pursuant to paragraph (3)  
 24 and from other sources which do not con-  
 25 flict with fulfillment of the remaining con-

tractual obligations of the Secretary to provide Central Valley Project water for other authorized purposes.

“(iii) DETERMINATION OF NEEDS.—

The Secretary shall determine the instream reasonable flow needs for all Central Valley Project controlled streams and rivers based on recommendations of the United States Fish and Wildlife Service and the National Marine Fisheries Service after consultation with the United States Geological Survey.”; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A)—

(I) in the first sentence, by striking “primary purpose” and inserting “purposes”;

(II) by striking “but not limited to additional obligations under the Federal Endangered Species Act” and inserting “additional obligations under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)”; and

1 (III) by adding at the end the  
 2 following: “All Central Valley Project  
 3 water used for the purposes specified  
 4 in this paragraph shall be credited to  
 5 the quantity of Central Valley Project  
 6 yield dedicated and managed under  
 7 this paragraph by determining how  
 8 the dedication and management of  
 9 that water would affect the delivery  
 10 capability of the Central Valley  
 11 Project yield. To the maximum extent  
 12 practicable and in accordance with  
 13 section 3411, Central Valley Project  
 14 water dedicated and managed pursu-  
 15 ant to this paragraph shall be reused  
 16 to fulfill the remaining contractual ob-  
 17 ligations of the Secretary to provide  
 18 Central Valley Project water for agri-  
 19 cultural or municipal and industrial  
 20 purposes.”; and

21 (ii) by striking subparagraph (C) and  
 22 inserting the following:

23 “(C) MANDATORY REDUCTION.—If on  
 24 March 15 of a given year, the quantity of Cen-  
 25 tral Valley Project water forecasted to be made

1           available to water service or repayment contrac-  
 2           tors in the Delta Division of the Central Valley  
 3           Project is less than 75 percent of the total  
 4           quantity of water to be made available under  
 5           those contracts, the quantity of Central Valley  
 6           Project yield dedicated and managed for that  
 7           year under this paragraph shall be reduced by  
 8           25 percent.”; and

9           (2) by adding at the end the following:

10          “(i) SATISFACTION OF PURPOSES.—In carrying out  
 11 this section, the Secretary shall be considered to have met  
 12 the mitigation, protection, restoration, and enhancement  
 13 purposes of this title.”.

14 **SEC. 516. RESTORATION FUND.**

15          (a) IN GENERAL.—Section 3407(a) of the Central  
 16 Valley Project Improvement Act (Public Law 102–575;  
 17 106 Stat. 4726) is amended—

18           (1) by striking “There is hereby” and inserting  
 19           the following:

20           “(1) ESTABLISHMENT.—

21           “(A) IN GENERAL.—There is”;

22           (2) in paragraph (1)(A) (as designated by para-  
 23 graph (1)), by striking “Not less than 67 percent”  
 24 and all that follows through “Monies” and inserting  
 25           the following:

1                   “(B) USE OF DONATED AMOUNTS.—  
2                   Amounts”; and

3                   (3) by adding at the end the following:

4                   “(2) RESTRICTIONS.—The Secretary may not  
5                   directly or indirectly require a donation or other  
6                   payment (including environmental restoration or  
7                   mitigation fees not otherwise provided by law) to the  
8                   Restoration Fund—

9                   “(A) as a condition of—

10                   “(i) providing for the storage or con-  
11                   veyance of non-Central Valley Project  
12                   water pursuant to Federal reclamation  
13                   laws; or

14                   “(ii) the delivery of water pursuant to  
15                   section 215 of the Reclamation Reform Act  
16                   of 1982 (Public Law 97–293; 96 Stat.  
17                   1270); or

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

20                   (b) CERTAIN PAYMENTS.—Section 3407(c)(1) of the  
21                   Central Valley Project Improvement Act (Public Law  
22                   102–575; 106 Stat. 4726) is amended—

23                   (1) by striking “mitigation and restoration pay-  
24                   ments, in addition to charges provided for or” and  
25                   inserting “payments, in addition to charges”; and

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

4           (c) ADJUSTMENT AND ASSESSMENT OF MITIGATION  
 5 AND RESTORATION PAYMENTS.—Section 3407(d) of the  
 6 Central Valley Project Improvement Act (Public Law  
 7 102–575; 106 Stat. 4727) is amended—

8           (1) in paragraph (2)(A)—

9                   (A) by striking “, and \$12 per acre-foot  
 10 (October 1992 price levels) for municipal and  
 11 industrial water sold and delivered by the Cen-  
 12 tral Valley Project” and inserting “\$12 per  
 13 acre-foot (October 1992 price levels) for munic-  
 14 ipal and industrial water sold and delivered by  
 15 the Central Valley Project, and after October 1,  
 16 2013, \$4 per megawatt-hour for Central Valley  
 17 Project power sold to power contractors (Octo-  
 18 ber 2013 price levels)”;

19                   (B) by inserting “ but not later than De-  
 20 cember 31, 2020,” after “That upon the com-  
 21 pletion of the fish, wildlife, and habitat mitiga-  
 22 tion and restoration actions mandated under  
 23 section 3406 of this title,”;

24           (2) by adding at the end the following:

25           “(g) REPORT ON EXPENDITURE OF FUNDS.—

1           “(1) IN GENERAL.—For each fiscal year, the  
 2           Secretary, in consultation with the Advisory Board,  
 3           shall submit to Congress a plan for the expenditure  
 4           of all of the funds deposited in the Restoration Fund  
 5           during the preceding fiscal year.

6           “(2) CONTENTS.—The plan shall include an  
 7           analysis of the cost-effectiveness of each expenditure.

8           “(h) ADVISORY BOARD.—

9           “(1) ESTABLISHMENT.—There is established  
 10          the Restoration Fund Advisory Board (referred to in  
 11          this section as the ‘Advisory Board’), which shall be  
 12          composed of 12 members appointed by the Sec-  
 13          retary.

14          “(2) MEMBERSHIP.—

15               “(A) IN GENERAL.—The Secretary shall  
 16               appoint members to the Advisory Board that  
 17               represent the various Central Valley Project  
 18               stakeholders, of whom—

19                       “(i) 4 members shall be agricultural  
 20                       users of the Central Valley Project;

21                       “(ii) 3 members shall be municipal  
 22                       and industrial users of the Central Valley  
 23                       Project;

24                       “(iii) 3 members shall be power con-  
 25                       tractors of the Central Valley Project; and

1                   “(iv) 2 members shall be appointed at  
2                   the discretion of the Secretary.

3                   “(B) OBSERVERS.—The Secretary and the  
4                   Secretary of Commerce may each designate a  
5                   representative to act as an observer of the Advi-  
6                   sory Board.

7                   “(C) CHAIRMAN.—The Secretary shall ap-  
8                   point 1 of the members described in subpara-  
9                   graph (A) to serve as Chairman of the Advisory  
10                  Board.

11                  “(3) TERMS.—The term of each member of the  
12                  Advisory Board shall be for a period of 4 years.

13                  “(4) DUTIES.—The duties of the Advisory  
14                  Board are—

15                       “(A) to meet not less frequently than semi-  
16                       annually to develop and make recommendations  
17                       to the Secretary regarding priorities and spend-  
18                       ing levels on projects and programs carried out  
19                       under this title;

20                       “(B) to ensure that any advice given or  
21                       recommendation made by the Advisory Board  
22                       reflects the independent judgment of the Advi-  
23                       sory Board;

24                       “(C) not later than December 31, 2013,  
25                       and annually thereafter, to submit to the Sec-



1           retary and Congress the recommendations  
2           under subparagraph (A); and

3           “(D) not later than December 31, 2013,  
4           and biennially thereafter, to submit to Congress  
5           a report that details the progress made in  
6           achieving the actions required under section  
7           3406.

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

12 **SEC. 517. ADDITIONAL AUTHORITIES.**

13          (a) AUTHORITY FOR CERTAIN ACTIVITIES.—Section  
14          3408 of the Central Valley Project Improvement Act  
15          (Public Law 102–575; 106 Stat. 4728) is amended by  
16          striking subsection (c) and inserting the following:

17          “(c) CONTRACTS FOR ADDITIONAL STORAGE AND  
18          DELIVERY OF WATER.—

19                 “(1) IN GENERAL.—The Secretary may enter  
20          into contracts under the reclamation laws and this  
21          title with any Federal agency, California water user  
22          or water agency, State agency, or private organiza-  
23          tion for the exchange, impoundment, storage, car-  
24          riage, and delivery of nonproject water for domestic,

1       municipal, industrial, fish and wildlife, and any  
2       other beneficial purpose.

3           “(2) LIMITATION.—Nothing in this subsection  
4       supersedes section 2(d) of the Act of August 26,  
5       1937 (chapter 832; 50 Stat. 850; 100 Stat. 3051).

6           “(3) AUTHORITY FOR CERTAIN ACTIVITIES.—  
7       The Secretary shall use the authority granted by  
8       this subsection in connection with requests to ex-  
9       change, impound, store, carry, or deliver nonproject  
10      water using Central Valley Project facilities for any  
11      beneficial purpose.

12          “(4) RATES.—

13           “(A) IN GENERAL.—The Secretary shall  
14       develop rates not to exceed the amount required  
15       to recover the reasonable costs incurred by the  
16       Secretary in connection with a beneficial pur-  
17       pose under this subsection.

18           “(B) ADMINISTRATION.—The rates shall  
19       be charged to a party using Central Valley  
20       Project facilities for a beneficial purpose, but  
21       the costs described in subparagraph (A) shall  
22       not include any donation or other payment to  
23       the Restoration Fund.

24           “(5) CONSTRUCTION.—This subsection shall be  
25       construed and implemented to facilitate and encour-

1       age the use of Central Valley Project facilities to ex-  
2       change, impound, store, carry, or deliver nonproject  
3       water for any beneficial purpose.”.

4       (b) REPORTING REQUIREMENTS.—Section 3408(f) of  
5       the Central Valley Project Improvement Act (Public Law  
6       102–575; 106 Stat. 4729) is amended—

7               (1) in the first sentence, by striking “Interior  
8       and Insular Affairs and the Committee on Merchant  
9       Marine and Fisheries” and inserting “Natural Re-  
10      sources”;

11              (2) in the second sentence, by inserting “, in-  
12      cluding progress on the plan under subsection (j)”  
13      before the period at the end; and

14              (3) by adding at the end the following: “The fil-  
15      ing and adequacy of the report shall be personally  
16      certified to the Committees by the Regional Director  
17      of the Mid-Pacific Region of the Bureau of Reclama-  
18      tion.”.

19       (c) PROJECT YIELD INCREASE.—Section 3408(j) of  
20       the Central Valley Project Improvement Act (Public Law  
21       102–575; 106 Stat. 4730) is amended—

22              (1) by redesignating paragraphs (1) through  
23       (7) as subparagraphs (A) through (G), respectively,  
24       and indenting appropriately;

1           (2) by striking “In order to minimize adverse  
2       effects, if any, upon” and inserting the following:

3           “(1) IN GENERAL.—In order to minimize ad-  
4       verse effects upon”;

5           (3) in the second sentence, by striking “The  
6       plan” and all that follows through “options:” and in-  
7       serting the following:

8           “(2) CONTENTS.—The plan shall include rec-  
9       ommendations on appropriate cost-sharing arrange-  
10      ments and authorizing legislation or other measures  
11      needed to implement the intent, purposes, and provi-  
12      sions of this subsection, as well as a description of  
13      how the Secretary intends to use—”;

14          (4) in paragraph (1) (as designated by para-  
15      graph (2))—

16           (A) by striking “needs, the Secretary,  
17      shall” and all that follows through “to the Con-  
18      gress,” and inserting “needs, the Secretary, on  
19      a priority basis and not later than September  
20      30, 2013, shall submit to Congress”; and

21           (B) by striking “increase,” and all that fol-  
22      lows through “under this title” and inserting  
23      “increase, as soon as practicable, but not later  
24      than September 30, 2016 (except that the con-  
25      struction of new facilities shall not be limited by

1           that deadline), the water of the Central Valley  
 2           Project by the quantity dedicated and managed  
 3           for fish and wildlife purposes under this title  
 4           and otherwise required to meet the purposes of  
 5           the Central Valley Project, including satisfying  
 6           contractual obligations”;

7           (5) in paragraph (2)(A) (as designated by para-  
 8           graph (1)), by inserting “and construction of new  
 9           water storage facilities” before the semicolon;

10          (6) in paragraph (2)(F) (as designated by para-  
 11          graph (1)), by striking “and” at the end;

12          (7) in paragraph (2)(G) (as designated by para-  
 13          graph (1)), by striking the period and all that fol-  
 14          lows through the end of the subsection and inserting  
 15          “; and”; and

16          (8) by adding after paragraph (2)(G) the fol-  
 17          lowing:

18                 “(H) water banking and recharge.

19                 “(3) IMPLEMENTATION OF PLAN.—

20                         “(A) IN GENERAL.—The Secretary shall  
 21                         implement the plan under paragraph (1) begin-  
 22                         ning on October 1, 2013.

23                         “(B) COORDINATION.—In carrying out this  
 24                         subsection, the Secretary shall coordinate with  
 25                         the State of California in implementing meas-

ures for the long-term resolution of problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

“(4) FAILURE OF PLAN.—Notwithstanding any other provision of the reclamation laws, if by September 30, 2016, the plan under paragraph (1) fails to increase the annual delivery capability of the Central Valley Project by 800,000 acre-feet, implementation of any nonmandatory action under section 3406(b)(2) shall be suspended until the date on which the plan achieves an increase in the annual delivery capability of the Central Valley Project of 800,000 acre-feet.”.

(d) TECHNICAL CORRECTIONS.—Section 3408(h) of the Central Valley Project Improvement Act (Public Law 102–575; 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.—

(1) IN GENERAL.—The Secretary of the Interior, acting through the Commissioner of Reclamation, may partner or enter into an agreement relating to the water storage projects described in section

1 103(d)(1) of the Water Supply, Reliability, and En-  
 2 vironmental Improvement Act (Public Law 108–361;  
 3 118 Stat. 1684) with local joint powers authorities  
 4 formed under State law by irrigation districts and  
 5 other local governments or water districts within the  
 6 applicable hydrological region to advance those water  
 7 storage projects.

8 (2) NO ADDITIONAL FEDERAL AMOUNTS.—

9 (A) IN GENERAL.—Subject to subpara-  
 10 graph (B), no additional Federal amounts are  
 11 authorized to be appropriated to carry out the  
 12 activities described in clauses (i) through (iii) of  
 13 sections 103(d)(1)(A) of the Water Supply, Re-  
 14 liability, and Environmental Improvement Act  
 15 (Public Law 108–361; 118 Stat. 1684) Public  
 16 Law 108–361.

17 (B) EXCEPTION.—Additional Federal  
 18 amounts may be appropriated for construction  
 19 of a project described in subparagraph (A) if  
 20 non-Federal amounts are used to finance and  
 21 construct the project.

22 **SEC. 518. BAY-DELTA ACCORD.**

23 (a) CONGRESSIONAL DIRECTION REGARDING CEN-  
 24 TRAL VALLEY PROJECT AND CALIFORNIA STATE WATER  
 25 PROJECT OPERATIONS.—

1           (1) IN GENERAL.—The Central Valley Project  
2           and the California State Water Project shall be op-  
3           erated strictly in accordance with the water quality  
4           standards and operational constraints described in  
5           the “Principles for Agreement on the Bay-Delta  
6           Standards Between the State of California and the  
7           Federal Government” dated December 15, 1994.

8           (2) APPLICABILITY OF OTHER LAW.—The En-  
9           dangered Species Act of 1973 (16 U.S.C. 1531 et  
10          seq.) and other applicable law shall not apply to op-  
11          erations described in paragraph (1).

12          (3) IMPLEMENTATION.—Implementation of the  
13          “Principles for Agreement on the Bay-Delta Stand-  
14          ards Between the State of California and the Fed-  
15          eral Government” dated December 15, 1994, shall  
16          be in strict compliance with the water rights priority  
17          system and statutory protections for areas of origin.

18          (b) APPLICATION OF LAWS TO OTHERS.—

19               (1) IN GENERAL.—As a condition of the receipt  
20               of Federal amounts for the Central Valley Project  
21               and the California State Water Project, the State of  
22               California (including any agency or board of the  
23               State of California), on any water right obtained  
24               pursuant to State law, including a pre-1914 appro-  
25               priative right, shall not—



1           (A) impose any condition that restricts the  
 2           exercise of that water right that is affected by  
 3           operations of the Central Valley Project or Cali-  
 4           fornia State Water Project; or

5           (B) restrict under the Public Trust Doc-  
 6           trine any public trust value imposed in order to  
 7           conserve, enhance, recover, or otherwise protect  
 8           any species.

9           (2) FEDERAL AGENCIES.—The prohibition  
 10          under paragraph (1)(A) shall apply to Federal agen-  
 11          cies.

12          (c) COSTS.—No cost associated with the implementa-  
 13          tion of this section shall be imposed directly or indirectly  
 14          on any Central Valley Project contractor, or any other per-  
 15          son or entity, unless those costs are incurred on a vol-  
 16          untary basis.

17          (d) NATIVE SPECIES PROTECTION.—This section  
 18          preempts any law of the State California law restricting  
 19          the quantity or size of a nonnative fish that is taken or  
 20          harvested that preys on 1 or more native fish species that  
 21          occupy the Sacramento and San Joaquin Rivers and the  
 22          tributaries of those rivers or the Sacramento-San Joaquin  
 23          Rivers Delta.

1 **SEC. 519. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

2       After the date of enactment of this Act, and regard-  
3 less of the date of listing, the Secretaries of the Interior  
4 and Commerce shall not distinguish between natural-  
5 spawned and hatchery-spawned (or otherwise artificially  
6 propagated strains of a species) in making any determina-  
7 tion under the Endangered Species Act of 1973 (16  
8 U.S.C. 1531 et seq.) that relates to an anadromous fish  
9 species present in the Sacramento and San Joaquin Rivers  
10 or the tributaries of those rivers and that ascends those  
11 rivers and tributaries to reproduce after maturing in San  
12 Francisco Bay or the Pacific Ocean.

13 **SEC. 520. AUTHORIZED SERVICE AREA.**

14       (a) IN GENERAL.—The Secretary of the Interior, act-  
15 ing through the Commissioner of Reclamation, shall in-  
16 clude in the service area of the Central Valley Project au-  
17 thorized under the Central Valley Project Improvement  
18 Act (Public Law 102–575; 106 Stat. 4706) the area with-  
19 in the boundaries of the Kettleman City Community Serv-  
20 ices District, California, as those boundaries are defined  
21 as of the date of enactment of this Act.

22       (b) LONG-TERM CONTRACT.—

23               (1) IN GENERAL.—Notwithstanding the Central  
24 Valley Project Improvement Act (Public Law 102–  
25 575; 106 Stat. 4706) and subject to paragraph (2),  
26 the Secretary, in accordance with the reclamation

1 laws, shall enter into a long-term contract with the  
 2 Kettleman City Community Services District or the  
 3 delivery of not more than 900 acre-feet of Central  
 4 Valley Project water for municipal and industrial  
 5 use.

6 (2) REDUCTION IN CONTRACT.—The Secretary  
 7 may temporarily reduce deliveries of the quantity of  
 8 water made available under paragraph (1) by not  
 9 more than 25 percent of the total whenever reduc-  
 10 tions due to hydrologic circumstances are imposed  
 11 on agricultural deliveries of Central Valley Project  
 12 water.

13 (c) ADDITIONAL COST.—If any additional infrastruc-  
 14 ture or related costs are needed to implement this section,  
 15 those costs shall be the responsibility of the non-Federal  
 16 entity.

17 **SEC. 521. REGULATORY STREAMLINING.**

18 (a) DEFINITIONS.—In this section:

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

21 (2) PROJECT.—The term “project”—

22 (A) means an activity that—

23 (i) is undertaken by a public agency,  
 24 funded by a public agency, or requires the  
 25 issuance of a permit by a public agency;

1 (ii) has a potential to result in a phys-  
 2 ical change to the environment; and

3 (iii) may be subject to several discre-  
 4 tionary approvals by governmental agen-  
 5 cies;

6 (B) may include construction activities,  
 7 clearing or grading of land, improvements to  
 8 existing structures, and activities or equipment  
 9 involving the issuance of a permit; or

10 (C) has the meaning given the term de-  
 11 fined in section 21065 of the California Public  
 12 Resource Code.

13 (b) APPLICABILITY OF CERTAIN LAWS.—The filing  
 14 of a notice of determination or a notice of exemption for  
 15 any project, including the issuance of a permit under State  
 16 law, for any project of the CVP or the delivery of water  
 17 from the CVP in accordance with the California Environ-  
 18 mental Quality Act shall be considered to meet the re-  
 19 quirements for that project or permit under section  
 20 102(2)(C) of the National Environmental Protection Act  
 21 of 1969 (42 U.S.C. 4332(2)(C)).

22 (c) CONTINUATION OF PROJECT.—The Bureau of  
 23 Reclamation shall not be required to cease or modify any  
 24 major Federal action or other activity for any project of  
 25 the CVP or the delivery of water from the CVP pending

1 completion of judicial review of any determination made  
 2 under the National Environmental Protection Act of 1969  
 3 (42 U.S.C. 4321 et seq.).

## 4       **Subtitle B—San Joaquin River** 5                   **Restoration**

### 6   **SEC. 531. REPEAL OF THE SAN JOAQUIN RIVER SETTLE-** 7                   **MENT.**

8       As of the date of enactment of this Act, the Secretary  
 9 shall cease any action to implement the Stipulation of Set-  
 10 tlement, Natural Resources Defense Council, Inc. v. Rod-  
 11 gers, No. Civ. S–88–1658 LKK/GGH (E.D. Cal. Sept. 13,  
 12 2006).

### 13   **SEC. 532. PURPOSE.**

14       Section 10002 of the San Joaquin River Restoration  
 15 Settlement Act (Public Law 111–11; 123 Stat. 1349) is  
 16 amended by striking “implementation of the Settlement”  
 17 and inserting “restoration of the San Joaquin River”.

### 18   **SEC. 533. DEFINITIONS.**

19       Section 10003 of the San Joaquin River Restoration  
 20 Settlement Act (Public Law 111–11; 123 Stat. 1349) is  
 21 amended—

22               (1) by redesignating paragraphs (2) and (3) as  
 23 paragraphs (3) and (4), respectively;

24               (2) by striking paragraph (1) and inserting the  
 25 following:

1           “(1) CRITICAL WATER YEAR.—The term ‘crit-  
 2       ical water year’ means a year in which the total  
 3       unimpaired runoff at Friant Dam is less than  
 4       400,000 acre-feet, as forecasted as of March 1 of  
 5       that water year by the California Department of  
 6       Water Resources.

7           “(2) RESTORATION FLOWS.—The term ‘Res-  
 8       toration Flows’ means the additional water released  
 9       or bypassed from Friant Dam to ensure that the  
 10      target flow entering Mendota Pool, located approxi-  
 11      mately 62 river miles downstream from Friant Dam,  
 12      does not fall below a speed of 50 cubic feet per sec-  
 13      ond.”; and

14           (3) by striking paragraph (4) (as redesignated  
 15      by paragraph (1)) and inserting the following:

16           “(4) WATER YEAR.—The term ‘water year’  
 17      means the period beginning March 1 of a given year  
 18      and ending on the last day of February of the fol-  
 19      lowing calendar year.”.

20   **SEC. 534. IMPLEMENTATION OF RESTORATION.**

21       Section 10004 of the San Joaquin River Restoration  
 22   Settlement Act (Public Law 111–11; 123 Stat. 1350) is  
 23   amended—

24           (1) in subsection (a)—

1 (A) by striking “hereby authorized and di-  
2 rected” and all that follows through “in the  
3 Settlement:” and inserting “may carry out the  
4 following:”;

5 (B) by striking paragraphs (1), (2), (4),  
6 and (5);

7 (C) by redesignating paragraph (3) as  
8 paragraph (1);

9 (D) in paragraph (1) (as redesignated by  
10 subparagraph (C)), by striking “paragraph 13  
11 of the Settlement” and inserting “this part”;  
12 and

13 (E) by adding at the end the following :

14 “(2) In each water year, beginning in the water  
15 year commencing on March 1, 2013, the Secretary—

16 “(A) shall modify Friant Dam operations  
17 to release the Restoration Flows for that water  
18 year, unless the year is a critical water year;

19 “(B) shall ensure that—

20 “(i) the release of Restoration Flows  
21 are maintained at the level prescribed by  
22 this part; and

23 “(ii) Restoration Flows do not reach  
24 downstream of Mendota Pool;

1           “(C) shall release the Restoration Flows in  
2           a manner that improves the fishery in the San  
3           Joaquin River below Friant Dam and upstream  
4           of Gravelly Ford, Nevada, as in existence on the  
5           date of the enactment of the Sacramento and  
6           San Joaquin Valleys Water Reliability Act, in-  
7           cluding the associated riparian habitat; and

8           “(D) may, without limiting the actions re-  
9           quired under subparagraphs (A) and (C) and  
10          subject to paragraph (3) and subsection (l), use  
11          the Restoration Flows to enhance or restore a  
12          warm water fishery downstream of Gravelly  
13          Ford, Nevada, including to Mendota Pool, if the  
14          Secretary determines that the action is reason-  
15          able, prudent, and feasible.

16          “(3) Not later than 1 year after the date of en-  
17          actment of the Sacramento and San Joaquin Valleys  
18          Water Reliability Act, the Secretary shall develop  
19          and implement, in cooperation with the State of  
20          California, a reasonable plan—

21               “(A) to fully recirculate, recapture, reuse,  
22               exchange, or transfer all Restoration Flows;  
23               and

24               “(B) to provide the recirculated, recap-  
25               tured, reused, exchanged, or transferred flows



1 to those contractors within the Friant Division,  
2 Hidden Unit, and Buchanan Unit of the Cen-  
3 tral Valley Project that relinquished the Res-  
4 toration Flows that were recirculated, recap-  
5 tured, reused, exchanged, or transferred.

6 “(4) The plan described in paragraph (3)  
7 shall—

8 “(A) address any impact on groundwater  
9 resources within the service area of the Friant  
10 Division, Hidden Unit, and Buchanan Unit of  
11 the Central Valley Project and mitigation may  
12 include groundwater banking and recharge  
13 projects;

14 “(B) not impact the water supply or water  
15 rights of any entity outside the Friant Division,  
16 Hidden Unit, and Buchanan Unit of the Cen-  
17 tral Valley Project; and

18 “(C) be subject to applicable provisions of  
19 California water law and the use by the Sec-  
20 retary of the Interior of Central Valley Project  
21 facilities to make Project water (other than  
22 water released from Friant Dam under this  
23 part) and water acquired through transfers  
24 available to existing south of Delta Central Val-  
25 ley Project contractors.”;

1 (2) in subsection (b)—

2 (A) in paragraph (1), by striking “the Set-  
3 tlement” and inserting “this part”; and

4 (B) in paragraph (2), by striking “the Set-  
5 tlement” and inserting “this part”;

6 (3) in subsection (c), by striking “the Settle-  
7 ment” and inserting “this part”;

8 (4) by striking subsection (d) and inserting the  
9 following:

10 “(d) MITIGATION OF IMPACTS.—

11 “(1) IN GENERAL.—Not later than October 1,  
12 2013 and subject to paragraph (2), the Secretary  
13 shall identify—

14 “(A) the impacts associated with the re-  
15 lease of Restoration Flows prescribed in this  
16 part; and

17 “(B) the measures to be implemented to  
18 mitigate impacts on adjacent and downstream  
19 water users, landowners, and agencies as a re-  
20 sult of Restoration Flows.

21 “(2) MITIGATION MEASURES.—Before imple-  
22 menting a decision or agreement to construct, im-  
23 prove, operate, or maintain a facility that the Sec-  
24 retary determines is necessary to implement this  
25 part, the Secretary shall implement all mitigation

1 measures identified in paragraph (1)(B) before the  
 2 date on which Restoration Flows are commenced.”;

3 (5) in subsection (e), by striking “the Settle-  
 4 ment” and inserting “this part”;

5 (6) in subsection (f), by striking “the Settle-  
 6 ment and section 10011” and inserting “this part”;

7 (7) in subsection (g)—

8 (A) by striking “the Settlement and”; and

9 (B) by striking “or exchange contract” and  
 10 inserting “exchange contract, water rights set-  
 11 tlement, or holding contract”;

12 (8) in subsection (h)—

13 (A) by striking “INTERIM” in the header;

14 (B) in paragraph (1)—

15 (i) in the matter preceding subpara-  
 16 graph (A), by striking “Interim Flows  
 17 under the Settlement” and inserting “Res-  
 18 toration Flows under this part”;

19 (ii) in subparagraph (C)—

20 (I) in clause (i), by striking “In-  
 21 terim” and inserting “Restoration”;  
 22 and

23 (II) in clause (ii), by inserting  
 24 “and” after the semicolon;

1 (iii) in subparagraph (D), by striking  
2 “and” at the end; and

3 (iv) by striking subparagraph (E);  
4 (C) by striking paragraph (2) and insert-  
5 ing the following:

6 “(2) CONDITIONS FOR RELEASE.—The Sec-  
7 retary may release Restoration Flows to the extent  
8 that the flows would not exceed existing downstream  
9 channel capacities.”;

10 (D) in paragraph (3), by striking “In-  
11 terim” and inserting “Restoration”; and

12 (E) by striking paragraph (4) and insert-  
13 ing the following:

14 “(4) CLAIMS.—Not later than 60 days after the  
15 date of enactment of the Sacramento and San Joa-  
16 quin Valleys Water Reliability Act, the Secretary  
17 shall issue, by regulation, a claims process to ad-  
18 dress claims, including groundwater seepage, flood-  
19 ing, or levee instability damages caused as a result  
20 of, arising out of, or related to implementation of  
21 this subtitle.”;

22 (9) in subsection (i)—

23 (A) in paragraph (1)—

1 (i) in the matter preceding subpara-  
 2 graph (A), by striking “the Settlement and  
 3 parts I and III” and inserting “this part”;

4 (ii) in subparagraph (A), by inserting  
 5 “and” after the semicolon;

6 (iii) in subparagraph (B)—

7 (I) by striking “additional  
 8 amounts authorized to be appro-  
 9 priated, including the”; and

10 (II) by striking “; and” and in-  
 11 serting a period; and

12 (iv) by striking subparagraph (C); and  
 13 (B) by striking paragraph (3); and

14 (10) by adding at the end the following:

15 “(k) NO IMPACTS ON OTHER INTERESTS.—

16 “(1) IN GENERAL.—No Central Valley Project  
 17 or other water (other than San Joaquin River water  
 18 impounded by or bypassed from Friant Dam) shall  
 19 be used to implement subsection (a)(2) unless the  
 20 use is on a voluntary basis.

21 “(2) INVOLUNTARY COSTS.—No cost associated  
 22 with the implementation of this section shall be im-  
 23 posed directly or indirectly on any Central Valley  
 24 Project contractor, or any other person or entity,  
 25 outside the Friant Division, the Hidden Unit, or the

1 Buchanan Unit, unless the cost is incurred on a vol-  
2 untary basis.

3 “(3) REDUCTION IN WATER SUPPLIES.—The  
4 implementation of this part shall not directly or indi-  
5 rectly reduce any water supply or water reliability on  
6 any Central Valley Project contractor, any State  
7 Water Project contractor, or any other person or en-  
8 tity, outside the Friant Division, the Hidden Unit,  
9 or the Buchanan Unit, unless the reduction or cost  
10 is incurred on a voluntary basis.

11 “(1) PRIORITY.—Each action taken under this part  
12 shall be subordinate to the use by the Secretary of Central  
13 Valley Project facilities to make Project water available  
14 to Project contractors, other than water released from the  
15 Friant Dam under this part.

16 “(m) APPLICABILITY.—

17 “(1) IN GENERAL.—Notwithstanding section 8  
18 of the Act of June 17, 1902 (32 Stat. 390, chapter  
19 1093), except as provided in this part and subtitle  
20 D of the Sacramento and San Joaquin Valleys  
21 Water Reliability Act, this part—

22 “(A) preempts and supersedes any State  
23 law, regulation, or requirement that imposes  
24 more restrictive requirements or regulations on  
25 the activities authorized under this part; and

1           “(B) does not alter or modify any obliga-  
 2           tion of the Friant Division, Hidden Unit, and  
 3           Buchanan Unit of the Central Valley Project,  
 4           or other water users on the San Joaquin River,  
 5           or tributaries of the San Joaquin River, under  
 6           any order issued by the State Water Resources  
 7           Control Board under the Porter-Cologne Water  
 8           Quality Control Act (California Water Code sec-  
 9           tion 13000 et seq.).

10          “(2) APPLICABILITY.—An order described in  
 11          paragraph (1)(B) shall be consistent with any con-  
 12          gressional authorization for any affected Federal fa-  
 13          cility relating to the Central Valley Project.

14          “(n) PROJECT IMPLEMENTATION.—Any project to  
 15          implement this part shall be phased such that each project  
 16          shall include—

17               “(1) the project purpose and need;

18               “(2) identification of mitigation measures;

19               “(3) appropriate environmental review; and

20               “(4) prior to releasing Restoration Flows under  
 21          this part the completion of the any required mitiga-  
 22          tion measures and the completion of the project.”.

1 **SEC. 535. DISPOSAL OF PROPERTY; TITLE TO FACILITIES.**

2 Section 10005 of the San Joaquin River Restoration  
3 Settlement Act (Public Law 111–11; 123 Stat. 1353) is  
4 amended—

5 (1) in subsection (a), by striking “the Settle-  
6 ment authorized by this part” and inserting “this  
7 part”;

8 (2) in subsection (b)—

9 (A) in paragraph (1)—

10 (i) by striking “(1) IN GENERAL.—  
11 The Secretary” and inserting “The Sec-  
12 retary”; and

13 (ii) by striking “the Settlement au-  
14 thorized by this part” and inserting “this  
15 part”; and

16 (B) by striking paragraph (2); and

17 (3) in subsection (c)—

18 (A) in paragraph (1), by striking “the Set-  
19 tlement” and inserting “this part”;

20 (B) in paragraph (2)—

21 (i) by striking “through the exercise  
22 of its eminent domain authority”; and

23 (ii) by striking “the Settlement” and  
24 inserting “this part”; and

25 (C) in paragraph (3), by striking “section  
26 10009(c)” and inserting “section 10009”.



1 **SEC. 536. COMPLIANCE WITH APPLICABLE LAW.**

2 Section 10006 of the San Joaquin River Restoration  
3 Settlement Act (Public Law 111–11; 123 Stat. 1354) is  
4 amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1), by inserting “, un-  
7 less otherwise provided by this part” before the  
8 period at the end; and

9 (B) in paragraph (2), by striking “the Set-  
10 tlement” and inserting “this part”;

11 (2) in subsection (b), by inserting “, unless oth-  
12 erwise provided by this part” before the period at  
13 the end;

14 (3) in subsection (c)—

15 (A) in paragraph (2), by striking “section  
16 10004” and inserting “this part”; and

17 (B) in paragraph (3), by striking “the Set-  
18 tlement” and inserting “this part”; and

19 (4) in subsection (d)—

20 (A) by inserting “, including, without limi-  
21 tation, the costs of implementing subsections  
22 (d) and (h)(4) of section 10004,” after “imple-  
23 menting this part”; and

24 (B) by striking “for implementation of the  
25 Settlement,”.

1 **SEC. 537. COMPLIANCE WITH CENTRAL VALLEY PROJECT**  
2 **IMPROVEMENT ACT.**

3 Section 10007 of the San Joaquin River Restoration  
4 Settlement Act (Public Law 111–11; 123 Stat. 1354) is  
5 amended—

6 (1) in the matter preceding paragraph (1)—

7 (A) by striking “the Settlement” and in-  
8 serting “the enactment of this part”; and

9 (B) by inserting: “and the obligations of  
10 the Secretary and all other parties to protect  
11 and keep in good condition any fish that may  
12 be planted or exist below Friant Dam, including  
13 any obligations under section 5937 of the Cali-  
14 fornia Fish and Game Code and the public  
15 trust doctrine, and those of the Secretary and  
16 all other parties under the Endangered Species  
17 Act of 1973 (16 U.S.C. 1531 et seq.)” before  
18 “, provided”; and

19 (2) in paragraph (1), by striking “, as provided  
20 in the Settlement”.

21 **SEC. 538. NO PRIVATE RIGHT OF ACTION.**

22 Section 10008(a) of the San Joaquin River Restora-  
23 tion Settlement Act (Public Law 111–11; 123 Stat. 1355)  
24 is amended—

25 (1) by striking “not a party to the Settlement”;  
26 and

1           (2) by striking “or the Settlement” and insert-  
 2           ing “unless otherwise provided by this part, but any  
 3           Central Valley Project long-term water service or re-  
 4           payment contractor within the Friant Division, Hid-  
 5           den unit, or Buchanan unit adversely affected by the  
 6           failure of the Secretary to comply with section  
 7           10004(a)(3) may bring an action against the Sec-  
 8           retary for injunctive relief, damages, or both.”.

9   **SEC. 539. IMPLEMENTATION.**

10          Section 10009 of the San Joaquin River Restoration  
 11   Settlement Act (Public Law 111–11; 123 Stat. 1355) is  
 12   amended—

13           (1) in the section heading, by striking “; **SET-**  
 14   **TLEMENT FUND**”;

15           (2) in subsection (a)—

16                (A) in paragraph (1)—

17                   (i) by striking “the Settlement” the  
 18                   first place it appears and inserting “this  
 19                   part”;

20                   (ii) by striking “, estimated to total”  
 21                   and all that follows through “subsection  
 22                   (b)(1),”; and

23                   (iii) by striking “; provided however,”  
 24                   and all that follows through  
 25                   “\$110,000,000 of State funds”;

1 (B) in paragraph (2)—

2 (i) in subparagraph (A), by striking  
3 “(A) IN GENERAL.—The Secretary” and  
4 inserting “The Secretary”; and

5 (ii) by striking subparagraph (B); and  
6 (C) in paragraph (3)—

7 (i) by striking “Except as provided in  
8 the Settlement, to” and inserting “To”;  
9 and

10 (ii) by striking “this Settlement” and  
11 inserting “this part”;

12 (3) in subsection (b)(1)—

13 (A) by striking “In addition” and all that  
14 follows through “however, that the” and insert-  
15 ing “The”;

16 (B) by striking “such additional appropria-  
17 tions only in amounts equal to”; and

18 (C) by striking “or the Settlement”;

19 (4) in subsection (c)—

20 (A) in paragraph (1)—

21 (i) in the matter preceding subpara-  
22 graph (A), by striking “the Settlement”  
23 and inserting “this part”;

1 (ii) in subparagraph (C), by striking  
 2 “from the sale of water pursuant to the  
 3 Settlement, or”; and

4 (iii) in subparagraph (D), by striking  
 5 “the Settlement” and inserting “this  
 6 part”; and

7 (B) in paragraph (2), by striking “the Set-  
 8 tlement and”; and  
 9 (5) by striking subsections (d) through (f).

10 **SEC. 540. REPAYMENT CONTRACTS AND ACCELERATION OF**  
 11 **REPAYMENT OF CONSTRUCTION COSTS.**

12 Section 10010 of the San Joaquin River Restoration  
 13 Settlement Act (Public Law 111–11; 123 Stat. 1358) is  
 14 amended—

15 (1) in paragraphs (3)(D) and (4)(C) of sub-  
 16 section (a), by striking “the Settlement and” each  
 17 place it appears;

18 (2) in subsection (c), by striking paragraph (3);

19 (3) in subsection (d)(1), by striking “the Settle-  
 20 ment” each place it appears and inserting “this  
 21 part”; and

22 (4) in subsection (e)—

23 (A) in paragraph (1)—

24 (i) by striking “Interim Flows or Res-  
 25 toration Flows, pursuant to paragraphs 13

1 or 15 of the Settlement” and inserting  
 2 “Restoration Flows, pursuant to this  
 3 part”;

4 (ii) by striking “Interim Flows or” be-  
 5 fore “Restoration Flows”; and

6 (iii) by striking “the Interim Flows or  
 7 Restoration Flows or is intended to other-  
 8 wise facilitate the Water Management  
 9 Goal, as described in the Settlement” and  
 10 inserting “Restoration Flows”; and

11 (B) in paragraph (2)—

12 (i) by striking “except as provided in  
 13 paragraph 16(b) of the Settlement”; and

14 (ii) by striking “the Interim Flows or  
 15 Restoration Flows or to facilitate the  
 16 Water Management Goal” and inserting  
 17 “Restoration Flows”.

18 **SEC. 541. REPEAL.**

19 Section 10011 of the San Joaquin River Restoration  
 20 Settlement Act (Public Law 111–11; 123 Stat. 1362) is  
 21 repealed.

22 **SEC. 542. WATER SUPPLY MITIGATION.**

23 Section 10202(b) of the San Joaquin River Restora-  
 24 tion Settlement Act (Public Law 111–11; 123 Stat. 1365)  
 25 is amended—

1           (1) in paragraph (1), by striking “the Interim  
2           or Restoration Flows authorized in part I of this  
3           subtitle” and inserting “Restoration Flows author-  
4           ized in this part”;

5           (2) in paragraph (2), by striking “the Interim  
6           or Restoration Flows authorized in part I of this  
7           subtitle” and inserting “Restoration Flows author-  
8           ized in this part”; and

9           (3) in paragraph (3)—

10           (A) in subparagraph (A), by striking  
11           “meet the Restoration Goal as described in part  
12           I of this subtitle” and inserting “recover Res-  
13           toration Flows as described in this part”; and

14           (B) in subparagraph (C)—

15           (i) by striking “the Interim or Res-  
16           toration Flows authorized in part I of this  
17           subtitle” and inserting “Restoration Flows  
18           authorized in this part”; and

19           (ii) by striking “, and for ensuring ap-  
20           propriate adjustment in the recovered  
21           water account pursuant to section  
22           10004(a)(5)”.

1 **SEC. 543. ADDITIONAL AUTHORITIES.**

2 Section 10203 of the San Joaquin River Restoration  
3 Settlement Act (Public Law 111–11; 123 Stat. 1367) is  
4 amended—

5 (1) in subsection (b)—

6 (A) by striking “section 10004(a)(4)” and  
7 inserting “section 10004(a)(3)”; and

8 (B) by striking “, provided” and all that  
9 follows through “section 10009(f)(2)”; and

10 (2) by striking subsection (c).

11 **Subtitle C—Repayment Contracts**  
12 **and Acceleration of Repayment**  
13 **of Construction Costs**

14 **SEC. 551. REPAYMENT CONTRACTS AND ACCELERATION OF**  
15 **REPAYMENT OF CONSTRUCTION COSTS.**

16 (a) **CONVERSION OF CONTRACTS.—**

17 (1) **CERTAIN CONTRACTS.—**

18 (A) **IN GENERAL.—**Not later than 1 year  
19 after the date enactment of this Act, the Sec-  
20 retary of the Interior, on the request of a con-  
21 tractor, shall convert all existing long-term Cen-  
22 tral Valley Project contracts entered into under  
23 section 9(e) of the Act of August 4, 1939 (53  
24 Stat. 1196, chapter 418), to a contract under  
25 section 9(d) of that Act (53 Stat. 1195), under  
26 mutually agreeable terms and conditions.



1 (B) RESTRICTIONS.—A contract converted  
2 under subparagraph (A) shall—

3 (i) require the repayment, either in  
4 lump sum or by accelerated prepayment, of  
5 the remaining amount of construction costs  
6 identified in the most current version of  
7 the Central Valley Project Schedule of Irrigation  
8 Capital Allocations by Contractor,  
9 as adjusted to reflect payments not re-  
10 flected in that schedule and properly as-  
11 signable for ultimate return by the con-  
12 tractor, not later than January 31, 2013  
13 (or if made in approximately equal annual  
14 installments, not later than January 31,  
15 2016), which amount shall be discounted  
16 by the Treasury rate (defined as the 20-  
17 year Constant Maturity Treasury rate pub-  
18 lished by the Department of the Treasury  
19 as of October 1, 2012);

20 (ii) require that, notwithstanding sub-  
21 section (c)(2), construction costs or other  
22 capitalized costs incurred after the effec-  
23 tive date of the converted contract or not  
24 reflected in the schedule described in

1 clause (i) and properly assignable to that  
2 contractor, shall be repaid—

3 (I) in not more than 5 years  
4 after the date on which the contractor  
5 is notified of the allocation if that  
6 amount is a result of a collective an-  
7 nual allocation of capital costs to the  
8 contractors exercising contract conver-  
9 sions under this subsection of less  
10 than \$5,000,000; or

11 (II) if the allocation of capital  
12 costs described in subclause (I) equal  
13 \$5,000,000 or more, as provided by  
14 applicable reclamation law, subject to  
15 the condition that the reference to the  
16 amount of \$5,000,000 shall not be a  
17 precedent in any other context; and

18 (iii) provide that power revenues will  
19 not be available to aid in the repayment of  
20 construction costs allocated to irrigation  
21 under the contract.

22 (C) ESTIMATE.—Not later than 180 days  
23 after the date of enactment of this Act, the Sec-  
24 retary of the Interior shall provide to each con-  
25 tractor an estimate of the remaining amount of

1 construction costs under subparagraph (B)(i) as  
2 of January 31, 2013, as adjusted.

3 (2) OTHER CONTRACTS.—

4 (A) IN GENERAL.—Not later than 1 year  
5 after the date of enactment of this Act, on the  
6 request of a contractor, the Secretary may con-  
7 vert any Central Valley Project long-term con-  
8 tract entered into under section 9(c)(2) of the  
9 Act of August 4, 1939 (chapter 418; 53 Stat.  
10 1194) to a contract under section 9(c)(1) of  
11 that Act, under mutually agreeable terms and  
12 conditions.

13 (B) RESTRICTIONS.—A contract converted  
14 under subparagraph (A) shall—

15 (i) require the repayment in lump sum  
16 of the remaining amount of construction  
17 costs identified in the most current version  
18 of the Central Valley Project Schedule of  
19 Municipal and Industrial Water Rates, as  
20 adjusted to reflect payments not reflected  
21 in that schedule and properly assignable  
22 for ultimate return by the contractor, not  
23 later than January 31, 2016; and

24 (ii) require that, notwithstanding sub-  
25 section (c)(2), construction costs or other

1 capitalized costs incurred after the effective date of the contract or not reflected in  
2 the Schedule described in clause (i), and  
3 properly assignable to that contractor,  
4 shall be repaid—

5  
6 (I) in not more than 5 years  
7 after the date on which the contractor  
8 is notified of the allocation if the  
9 amount is a result of a collective annual allocation of capital costs to the  
10 contractors exercising contract conversions under this subsection of less  
11 than \$5,000,000; or  
12

13  
14 (II) if the allocation of capital  
15 costs described in subclause (I) equal  
16 \$5,000,000 or more, as provided by  
17 applicable reclamation law, subject to  
18 the condition that the reference to the  
19 amount of \$5,000,000 shall not be a  
20 precedent in any other context.

21 (C) ESTIMATE.—Not later than 180 days  
22 after the date of enactment of this Act, the Secretary of the Interior shall provide to each contractor an estimate of the remaining amount of  
23  
24

1 construction costs under subparagraph (B)(i) as  
2 of January 31, 2016, as adjusted.

3 (b) FINAL ADJUSTMENT.—

4 (1) IN GENERAL.—The amounts paid pursuant  
5 to subsection (a) shall be subject to adjustment fol-  
6 lowing a final cost allocation by the Secretary of the  
7 Interior on completion of the construction of the  
8 Central Valley Project.

9 (2) REPAYMENT OBLIGATION.—

10 (A) IN GENERAL.—If the final cost alloca-  
11 tion indicates that the costs properly assignable  
12 to the contractor are greater than the amount  
13 that has been paid by the contractor, the con-  
14 tractor shall pay the remaining allocated costs.

15 (B) TERMS.—The term of an additional  
16 repayment contract described in subparagraph  
17 (A) shall be—

18 (i) for not less than 1 year and not  
19 more than 10 years; and

20 (ii) based on mutually agreeable provi-  
21 sions regarding the rate of repayment of  
22 the amount developed by the parties.

23 (3) CREDITS.—If the final cost allocation indi-  
24 cates that the costs properly assignable to the con-  
25 tractor are less than the amount that the contractor

1       has paid, the Secretary of the Interior shall credit  
2       the amount of the overpayment as an offset against  
3       any outstanding or future obligation of the con-  
4       tractor.

5       (c) APPLICABILITY OF CERTAIN PROVISIONS.—

6           (1) IN GENERAL.—Notwithstanding any repay-  
7       ment obligation under subsection (a)(1)(B)(ii) or  
8       subsection (b), on the compliance of a contractor  
9       with and discharge of the obligation of repayment of  
10      the construction costs under that subsection, the  
11      ownership and full-cost pricing limitations of any  
12      provision of the reclamation laws shall not apply to  
13      land in that district.

14          (2) OTHER CONTRACTS.—Notwithstanding any  
15      repayment obligation under paragraph (1)(B)(ii) or  
16      (2)(B)(ii) of subsection (a) or subsection (b), on the  
17      compliance of a contractor with and discharge of the  
18      obligation of repayment of the construction costs  
19      under that subsection, the contractor shall continue  
20      to pay applicable operation and maintenance costs  
21      and other charges applicable to the repayment con-  
22      tracts pursuant to then-current rate-setting policy  
23      and applicable law.

24      (d) CERTAIN REPAYMENT OBLIGATIONS NOT AL-  
25      TERED.—This section does not—

1           (1) alter the repayment obligation of any other  
2           long-term water service or repayment contractor re-  
3           ceiving water from the Central Valley Project; or

4           (2) shift any costs that would otherwise have  
5           been properly assignable to a contractor absent this  
6           section, including operations and maintenance costs,  
7           construction costs, or other capitalized costs in-  
8           curred after the date of enactment of this Act, to  
9           other contractors.

10          (e) STATUTORY INTERPRETATION.—Nothing in this  
11         subtitle affects the right of any long-term contractor to  
12         use a particular type of financing to make the payments  
13         required in paragraph (1)(B)(i) or (2)(B)(i) of subsection  
14         (a).

15         **Subtitle D—Bay-Delta Watershed**  
16         **Water Rights Preservation and**  
17         **Protection**

18         **SEC. 561. WATER RIGHTS AND AREA-OF-ORIGIN PROTEC-**  
19         **TIONS.**

20                 Notwithstanding the provisions of this title, Federal  
21         reclamation law, or the Endangered Species Act of 1973  
22         (16 U.S.C. 1531 et seq.)—

23                 (1) the Secretary of the Interior shall, in the  
24         operation of the Central Valley Project—

1 (A) strictly adhere to State water rights  
 2 law governing water rights priorities by hon-  
 3 oring water rights senior to those belonging to  
 4 the Central Valley Project, regardless of the  
 5 source of priority; and

6 (B) strictly adhere to and honor water  
 7 rights and other priorities that are obtained or  
 8 exist pursuant to the California Water Code, in-  
 9 cluding sections 10505, 10505:5, 11128,  
 10 11460, 11463, and 12220; and

11 (2) any action that affects the diversion of  
 12 water or involves the release of water from any Cen-  
 13 tral Valley Project water storage facility taken by  
 14 the Secretary of the Interior or the Secretary of  
 15 Commerce to conserve, enhance, recover, or other-  
 16 wise protect any species listed under the Endangered  
 17 Species Act of 1973 (16 U.S.C. 1531 et seq.) shall  
 18 be applied in a manner that is consistent with water  
 19 right priorities established by State law.

20 **SEC. 562. SACRAMENTO RIVER SETTLEMENT CONTRACTS.**

21 (a) IN GENERAL.—In carrying out the Endangered  
 22 Species Act of 1973 (16 U.S.C. 1531 et seq.) in the Bay-  
 23 Delta and on the Sacramento River, the Secretary of the  
 24 Interior and the Secretary of Commerce shall apply any  
 25 limitations on the operation of the Central Valley Project



1 or relating to the formulation of any reasonable prudent  
 2 alternative associated with the operation of the Central  
 3 Valley Project in a manner that strictly adheres to and  
 4 applies the water rights priorities for project water and  
 5 base supply as provided in the Sacramento River Settle-  
 6 ment Contracts.

7 (b) APPLICABILITY.—Article 3(i) of the Sacramento  
 8 River Settlement Contracts shall not be used by the Sec-  
 9 retary of the Interior or any other Federal agency head  
 10 as means to provide shortages that are different from  
 11 those provided for in Article 5(a) of the Sacramento River  
 12 Settlement Contracts.

13 **SEC. 563. SACRAMENTO RIVER WATERSHED WATER SERV-**  
 14 **ICE CONTRACTORS.**

15 (a) EXISTING CENTRAL VALLEY PROJECT AGRICUL-  
 16 TURAL WATER SERVICE CONTRACTORS WITHIN SAC-  
 17 RAMENTO RIVER WATERSHED.—In this section, the term  
 18 “existing Central Valley Project agricultural water service  
 19 contractors within the Sacramento River Watershed”  
 20 means water service contractors within the Shasta, Trin-  
 21 ity, and Sacramento River Divisions of the Central Valley  
 22 Project that have a water service contract in effect on the  
 23 date of enactment of this Act that provides water for irri-  
 24 gation.

1 (b) ALLOCATION OF WATER.—Subject to subsection  
2 (c) and the absolute priority of the Sacramento River Set-  
3 tlement Contractors to Sacramento River supplies over  
4 Central Valley Project diversions and deliveries to other  
5 contractors, the Secretary of the Interior shall, in the op-  
6 eration of the Central Valley Project, allocate water pro-  
7 vided for irrigation purposes to existing Central Valley  
8 Project agricultural water service contractors within the  
9 Sacramento River Watershed as follows:

10 (1) Not less than 100 percent of the contract  
11 quantities in a “Wet” year (as that term is defined  
12 in the Sacramento Valley Water Year Type (40–30–  
13 30) Index).

14 (2) Not less than 100 percent of the contract  
15 quantities in an “Above Normal” year (as that term  
16 is defined in the Sacramento Valley Water Year  
17 Type (40–30–30) Index).

18 (3) Not less than 100 percent of the contract  
19 quantities in a “Below Normal” year (as that term  
20 is defined in the Sacramento Valley Water Year  
21 Type (40–30–30) Index).

22 (4) Not less than 75 percent of the contract  
23 quantities in a “Dry” year (as that term is defined  
24 in the Sacramento Valley Water Year Type (40–30–  
25 30) Index).

1           (5) Not less than 50 percent of the contract  
 2           quantities in a “Critically Dry” year (as that term  
 3           is defined in the Sacramento Valley Water Year  
 4           Type (40–30–30) Index).

5           (c) PROTECTION OF MUNICIPAL AND INDUSTRIAL  
 6           SUPPLIES.—

7           (1) IN GENERAL.—Nothing in this section—

8                   (A) modifies any provision of a water serv-  
 9                   ice contract that addresses municipal and in-  
 10                   dustrial water shortage policies of the Secretary  
 11                   of the Interior;

12                   (B) affects or limits the authority of the  
 13                   Secretary of the Interior—

14                           (i) to adopt or modify municipal and  
 15                           industrial water shortage policies; or

16                           (ii) to implement municipal and indus-  
 17                           trial water shortage policies; or

18                   (C) affects allocations to Central Valley  
 19                   Project municipal and industrial contractors  
 20                   pursuant to the water shortage policies of the  
 21                   Secretary of the Interior.

22           (2) APPLICABILITY.—This section does not con-  
 23           strain, govern, or affect, directly or indirectly, the  
 24           operations of the American River Division of the  
 25           Central Valley Project or any deliveries from that

1 Division, including the units and facilities of that  
2 Division.

3 **SEC. 564. NO REDIRECTED ADVERSE IMPACTS.**

4 The Secretary of the Interior shall ensure that there  
5 are no redirected adverse water supply or fiscal impacts  
6 to the State Water Project or to individuals within the  
7 Sacramento River or San Joaquin River watershed arising  
8 from the operation of the Secretary of the Central Valley  
9 Project to meet legal obligations imposed by or through  
10 any Federal or State agency, including—

11 (1) the Endangered Species Act of 1973 (16  
12 U.S.C. 1531 et seq.);

13 (2) this title; and

14 (3) actions or activities implemented to meet  
15 the twin goals of improving water supply and ad-  
16 dressing the environmental needs of the Bay-Delta.

17 **Subtitle E—Miscellaneous**

18 **SEC. 571. PRECEDENT.**

19 Congress finds that—

20 (1) coordinated operations between the Central  
21 Valley Project and the State Water Project, as con-  
22 sented to and requested by the State of California  
23 and the Federal Government, require the assertion  
24 of Federal supremacy to protect existing water

1 rights throughout the system, a circumstance that is  
 2 unique to the State of California; and

3 (2) this title should not serve as precedent for  
 4 similar operations in any other State.

## 5 **TITLE VI—REDUCING** 6 **REGULATORY BURDENS**

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

8 This title may be cited as the “Reducing Regulatory  
 9 Burdens Act of 2012”.

### 10 **SEC. 602. USE OF AUTHORIZED PESTICIDES.**

11 Section 3(f) of the Federal Insecticide, Fungicide,  
 12 and Rodenticide Act (7 U.S.C. 136a(f)) is amended by  
 13 adding at the end the following:

14 “(5) USE OF AUTHORIZED PESTICIDES.—Ex-  
 15 cept as provided in section 402(s) of the Federal  
 16 Water Pollution Control Act (33 U.S.C. 1342(s)),  
 17 the Administrator or a State may not require a per-  
 18 mit under that Act for a discharge from a point  
 19 source into navigable waters of a pesticide author-  
 20 ized for sale, distribution, or use under this Act, or  
 21 the residue of the pesticide, resulting from the appli-  
 22 cation of the pesticide.”.

1 **SEC. 603. DISCHARGES OF PESTICIDES.**

2 Section 402 of the Federal Water Pollution Control  
3 Act (33 U.S.C. 1342) is amended by adding at the end  
4 the following:

5 “(s) DISCHARGES OF PESTICIDES.—

6 “(1) NO PERMIT REQUIREMENT.—Except as  
7 provided in paragraph (2), a permit shall not be re-  
8 quired by the Administrator or a State under this  
9 Act for a discharge from a point source into navi-  
10 gable waters of a pesticide authorized for sale, dis-  
11 tribution, or use under the Federal Insecticide, Fun-  
12 gicide, and Rodenticide Act (7 U.S.C. 136 et seq.),  
13 or the residue of the pesticide, resulting from the ap-  
14 plication of the pesticide.

15 “(2) EXCEPTIONS.—Paragraph (1) shall not  
16 apply to the following discharges of a pesticide or  
17 pesticide residue:

18 “(A) A discharge resulting from the appli-  
19 cation of a pesticide in violation of a provision  
20 of the Federal Insecticide, Fungicide, and  
21 Rodenticide Act (7 U.S.C. 136 et seq.) that is  
22 relevant to protecting water quality, if—

23 “(i) the discharge would not have oc-  
24 curred but for the violation; or

25 “(ii) the quantity of a pesticide or  
26 pesticide residue in the discharge is greater

1           than would have occurred without the vio-  
2           lation.

3           “(B) Stormwater discharges subject to reg-  
4           ulation under subsection (p).

5           “(C) The following discharges subject to  
6           regulation under this section:

7                   “(i) Manufacturing or industrial efflu-  
8                   ent.

9                   “(ii) Treatment works effluent.

10                   “(iii) Discharges incidental to the nor-  
11                   mal operation of a vessel, including a dis-  
12                   charge resulting from ballasting operations  
13                   or vessel biofouling prevention.”.

## 14           **TITLE VII—FARM DUST** 15           **REGULATION PREVENTION**

### 16   **SEC. 701. SHORT TITLE.**

17           This title may be cited as the “Farm Dust Regulation  
18   Prevention Act of 2012”.

### 19   **SEC. 702. TEMPORARY PROHIBITION AGAINST REVISING** 20                   **ANY NATIONAL AMBIENT AIR QUALITY** 21                   **STANDARD APPLICABLE TO COARSE PARTIC-** 22                   **ULATE MATTER.**

23           Before the date that is 1 year after the date of enact-  
24   ment of this Act, the Administrator of the Environmental  
25   Protection Agency (referred to in this title as the “Admin-

1   istrator”) may not propose, finalize, implement, or enforce  
 2   any regulation revising the national primary ambient air  
 3   quality standard or the national secondary ambient air  
 4   quality standard applicable to particulate matter with an  
 5   aerodynamic diameter greater than 2.5 micrometers under  
 6   section 109 of the Clean Air Act (42 U.S.C. 7409).

7   **SEC. 703. NUISANCE DUST.**

8       Part A of title I of the Clean Air Act (42 U.S.C. 7401  
 9   et seq.) is amended by adding at the end the following:  
 10   **“SEC. 132. REGULATION OF NUISANCE DUST PRIMARILY BY**  
 11                   **STATE, TRIBAL, AND LOCAL GOVERNMENTS.**

12       “(a) DEFINITION OF NUISANCE DUST.—In this sec-  
 13   tion:

14               “(1) IN GENERAL.—The term ‘nuisance dust’  
 15   means particulate matter that—

16                   “(A) is generated primarily from natural  
 17                   sources, unpaved roads, agricultural activities,  
 18                   earth moving, or other activities typically con-  
 19                   ducted in rural areas;

20                   “(B) consists primarily of soil, other nat-  
 21                   ural or biological materials, or some combina-  
 22                   tion of those materials;

23                   “(C) is not emitted directly into the ambi-  
 24                   ent air from combustion, such as exhaust from



1 combustion engines and emissions from sta-  
 2 tionary combustion processes; and

3 “(D) is not comprised of residuals from  
 4 the combustion of coal.

5 “(2) EXCLUSION.—The term ‘nuisance dust’  
 6 does not include radioactive particulate matter pro-  
 7 duced from uranium mining or processing.

8 “(b) APPLICABILITY.—Except as provided in sub-  
 9 section (c), this Act does not apply to, and references in  
 10 this Act to particulate matter are deemed to exclude, nui-  
 11 sance dust.

12 “(c) EXCEPTION.—Subsection (a) does not apply  
 13 with respect to any geographical area in which nuisance  
 14 dust is not regulated under State, tribal, or local law inso-  
 15 far as the Administrator, in consultation with the Sec-  
 16 retary of Agriculture, finds that—

17 “(1) nuisance dust (or any subcategory of nui-  
 18 sance dust) causes substantial adverse public health  
 19 and welfare effects at ambient concentrations; and

20 “(2) the benefits of applying standards and  
 21 other requirements of this Act to nuisance dust (or  
 22 a subcategory of nuisance dust) outweigh the costs  
 23 (including local and regional economic and employ-  
 24 ment impacts) of applying those standards and other  
 25 requirements to nuisance dust (or a subcategory).”.

1 **SEC. 704. SENSE OF CONGRESS.**

2 It is the sense of Congress that the Administrator  
 3 should implement an approach to excluding so-called “ex-  
 4 ceptional events”, or events that are not reasonably con-  
 5 trollable or preventable, from determinations of whether  
 6 an area is in compliance with any national ambient air  
 7 quality standard applicable to coarse particulate matter  
 8 that—

- 9 (1) maximizes transparency and predictability  
 10 for States, Indian tribes, and local governments; and  
 11 (2) minimizes the regulatory and cost burdens  
 12 States, Indian tribes, and local governments bear in  
 13 excluding those events.

14 **SEC. 705. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**  
 15 **PLOYMENT AND ECONOMIC ACTIVITY IN AG-**  
 16 **RICULTURE COMMUNITY.**

17 (a) DEFINITIONS.—In this section:

- 18 (1) COVERED ACTION.—The term “covered ac-  
 19 tion” means any of the following actions taken by  
 20 the Administrator under the Clean Air Act (42  
 21 U.S.C. 7401 et seq.) relating to agriculture and the  
 22 national primary ambient air quality standard or the  
 23 national secondary ambient air quality standard for  
 24 particulate matter:

1 (A) Promulgating or issuing a regulation,  
2 policy statement, guidance, response to a peti-  
3 tion, or other requirement.

4 (B) Implementing a new or substantially  
5 altered program.

6 (2) MORE THAN A DE MINIMIS NEGATIVE IM-  
7 PACT.—The term “more than a de minimis negative  
8 impact” means—

9 (A) with respect to employment levels, a  
10 loss of more than 100 jobs relating to the agri-  
11 culture industry, as calculated by excluding con-  
12 sideration of any offsetting job gains that result  
13 from the hypothetical creation of new jobs  
14 through new technologies or government em-  
15 ployment; and

16 (B) with respect to economic activity, a de-  
17 crease in agricultural economic activity of more  
18 than \$1,000,000 over any calendar year, as cal-  
19 culated by excluding consideration of any offset-  
20 ting economic activity that results from the hy-  
21 pothetical creation of new economic activity  
22 through new technologies or government em-  
23 ployment.

1 (b) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-  
 2 MENT AND ECONOMIC ACTIVITY IN THE AGRICULTURE  
 3 COMMUNITY.—

4 (1) ANALYSIS.—Before taking a covered action,  
 5 the Administrator shall analyze the impact,  
 6 disaggregated by State, of the covered action on—

7 (A) employment levels in the agriculture  
 8 industry; and

9 (B) agricultural economic activity, includ-  
 10 ing estimated job losses and decreased economic  
 11 activity relating to agriculture.

12 (2) ECONOMIC MODELS.—

13 (A) IN GENERAL.—In carrying out para-  
 14 graph (1), the Administrator shall use the best  
 15 available economic models.

16 (B) ANNUAL GAO REPORT.—Not later  
 17 than December 31 of each year, the Comp-  
 18 troller General of the United States shall sub-  
 19 mit to Congress a report on the economic mod-  
 20 els used by the Administrator to carry out this  
 21 subsection.

22 (3) AVAILABILITY OF INFORMATION.—With re-  
 23 spect to any covered action, the Administrator  
 24 shall—

1 (A) post the analysis under paragraph (1)  
 2 as a link on the main page of the public Inter-  
 3 net website of the Environmental Protection  
 4 Agency;

5 (B) request the Secretary of Agriculture to  
 6 post the analysis under paragraph (1) as a link  
 7 on the main page of the public Internet website  
 8 of the Department of Agriculture; and

9 (C) request that the Governor of any State  
 10 experiencing more than a de minimis negative  
 11 impact post the analysis on the main page of  
 12 the public Interest website of the State.

13 (c) PUBLIC HEARINGS.—

14 (1) IN GENERAL.—If the Administrator con-  
 15 cludes under subsection (a)(1) that a covered action  
 16 will have more than a de minimis negative impact on  
 17 agricultural employment levels or agricultural eco-  
 18 nomic activity in a State, the Administrator shall  
 19 hold a public hearing in each such State at least 30  
 20 days before the effective date of the covered action.

21 (2) TIME, LOCATION, AND SELECTION.—A pub-  
 22 lic hearing required under paragraph (1) shall be  
 23 held at—

24 (A) a convenient time and location for im-  
 25 pacted residents; and

1 (B) at such location selected by the Ad-  
 2 ministrator as shall give priority to locations in  
 3 the State that will experience the greatest num-  
 4 ber of job losses.

5 (d) NOTIFICATION.—If the Administrator concludes  
 6 under subsection (b)(1) that a covered action will have  
 7 more than a de minimis negative impact on agricultural  
 8 employment levels or agricultural economic activity in any  
 9 State, the Administrator shall give notice of the impact  
 10 to the congressional delegation, Governor, and legislature  
 11 of the State at least 45 days before the effective date of  
 12 the covered action.

## 13 **TITLE VIII—ENERGY TAX** 14 **PREVENTION**

### 15 **SEC. 801. SHORT TITLE.**

16 This title may be cited as the “Energy Tax Preven-  
 17 tion Act of 2012”.

### 18 **SEC. 802. NO REGULATION OF EMISSIONS OF GREENHOUSE** 19 **GASES.**

20 Title III of the Clean Air Act (42 U.S.C. 7601 et  
 21 seq.) is amended by adding at the end the following:

### 22 **“SEC. 330. NO REGULATION OF EMISSIONS OF GREEN-** 23 **HOUSE GASES.**

24 “(a) DEFINITION.—In this section, the term ‘green-  
 25 house gas’ means any of the following:

1 “(1) Water vapor.

2 “(2) Carbon dioxide.

3 “(3) Methane.

4 “(4) Nitrous oxide.

5 “(5) Sulfur hexafluoride.

6 “(6) Hydrofluorocarbons.

7 “(7) Perfluorocarbons.

8 “(8) Any other substance subject to, or pro-  
9 posed to be subject to, regulation, action, or consid-  
10 eration under this Act to address climate change.

11 “(b) LIMITATION ON AGENCY ACTION.—

12 “(1) LIMITATION.—

13 “(A) IN GENERAL.—The Administrator  
14 may not, under this Act, promulgate any regu-  
15 lation concerning, take action relating to, or  
16 take into consideration the emission of a green-  
17 house gas to address climate change.

18 “(B) AIR POLLUTANT DEFINITION.—The  
19 definition of the term ‘air pollutant’ in section  
20 302(g) does not include a greenhouse gas. Not-  
21 withstanding the previous sentence, such defini-  
22 tion may include a greenhouse gas for purposes  
23 of addressing concerns other than climate  
24 change.

1           “(2) EXCEPTIONS.—Paragraph (1) does not  
2       prohibit the following:

3           “(A) Notwithstanding paragraph (4)(B),  
4       implementation and enforcement of the rule en-  
5       titled ‘Light-Duty Vehicle Greenhouse Gas  
6       Emission Standards and Corporate Average  
7       Fuel Economy Standards’ (75 Fed. Reg. 25324  
8       (May 7, 2010) and without further revision)  
9       and finalization, implementation, enforcement,  
10      and revision of the proposed rule entitled  
11      ‘Greenhouse Gas Emissions Standards and  
12      Fuel Efficiency Standards for Medium- and  
13      Heavy-Duty Engines and Vehicles’ published at  
14      75 Fed. Reg. 74152 (November 30, 2010).

15          “(B) Implementation and enforcement of  
16      section 211(o).

17          “(C) Statutorily authorized Federal re-  
18      search, development, and demonstration pro-  
19      grams addressing climate change.

20          “(D) Implementation and enforcement of  
21      title VI to the extent such implementation or  
22      enforcement only involves one or more class I or  
23      class II substances (as such terms are defined  
24      in section 601).



1           “(E) Implementation and enforcement of  
 2           section 821 (42 U.S.C. 7651k note) of Public  
 3           Law 101–549 (commonly referred to as the  
 4           ‘Clean Air Act Amendments of 1990’).

5           “(3) INAPPLICABILITY OF PROVISIONS.—Noth-  
 6           ing listed in paragraph (2) shall cause a greenhouse  
 7           gas to be subject to part C of title I (relating to pre-  
 8           vention of significant deterioration of air quality) or  
 9           considered an air pollutant for purposes of title V  
 10          (relating to air permits).

11          “(4) CERTAIN PRIOR AGENCY ACTIONS.—The  
 12          following rules, and actions (including any supple-  
 13          ment or revision to such rules and actions) are re-  
 14          pealed and shall have no legal effect:

15               “(A) ‘Mandatory Reporting of Greenhouse  
 16               Gases’, published at 74 Fed. Reg. 56260 (Octo-  
 17               ber 30, 2009).

18               “(B) ‘Endangerment and Cause or Con-  
 19               tribute Findings for Greenhouse Gases under  
 20               section 202(a) of the Clean Air Act’ published  
 21               at 74 Fed. Reg. 66496 (Dec. 15, 2009).

22               “(C) ‘Reconsideration of the Interpretation  
 23               of Regulations That Determine Pollutants Cov-  
 24               ered by Clean Air Act Permitting Programs’  
 25               published at 75 Fed. Reg. 17004 (April 2,

2010) and the memorandum from Stephen L. Johnson, Environmental Protection Agency (EPA) Administrator, to EPA Regional Administrators, concerning ‘EPA’s Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program’ (Dec. 18, 2008).

“(D) ‘Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule’, published at 75 Fed. Reg. 31514 (June 3, 2010).

“(E) ‘Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call’, published at 75 Fed. Reg. 77698 (December 13, 2010).

“(F) ‘Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure to Submit State Implementation Plan Revisions Required for Greenhouse Gases’, published at 75 Fed. Reg. 81874 (December 29, 2010).

1           “(G) ‘Action To Ensure Authority To  
2           Issue Permits Under the Prevention of Signifi-  
3           cant Deterioration Program to Sources of  
4           Greenhouse Gas Emissions: Federal Implemen-  
5           tation Plan’, published at 75 Fed. Reg. 82246  
6           (December 30, 2010).

7           “(H) ‘Action To Ensure Authority To Im-  
8           plement Title V Permitting Programs Under  
9           the Greenhouse Gas Tailoring Rule’, published  
10          at 75 Fed. Reg. 82254 (December 30, 2010).

11          “(I) ‘Determinations Concerning Need for  
12          Error Correction, Partial Approval and Partial  
13          Disapproval, and Federal Implementation Plan  
14          Regarding Texas Prevention of Significant De-  
15          terioration Program’, published at 75 Fed. Reg.  
16          82430 (December 30, 2010).

17          “(J) ‘Limitation of Approval of Prevention  
18          of Significant Deterioration Provisions Con-  
19          cerning Greenhouse Gas Emitting-Sources in  
20          State Implementation Plans; Final Rule’, pub-  
21          lished at 75 Fed. Reg. 82536 (December 30,  
22          2010).

23          “(K) ‘Determinations Concerning Need for  
24          Error Correction, Partial Approval and Partial  
25          Disapproval, and Federal Implementation Plan

1       Regarding Texas Prevention of Significant De-  
2       terioration Program; Proposed Rule’, published  
3       at 75 Fed. Reg. 82365 (December 30, 2010).

4               “(L) Except for action listed in paragraph  
5       (2), any other Federal action under this Act oc-  
6       curring before the date of enactment of this  
7       section that applies a stationary source permit-  
8       ting requirement or an emissions standard for  
9       a greenhouse gas to address climate change.

10       “(5) STATE ACTION.—

11               “(A) NO LIMITATION.—This section does  
12       not limit or otherwise affect the authority of a  
13       State to adopt, amend, enforce, or repeal State  
14       laws and regulations pertaining to the emission  
15       of a greenhouse gas.

16       “(B) EXCEPTION.—

17               “(i) RULE.—Notwithstanding sub-  
18       paragraph (A), any provision described in  
19       clause (ii)—

20                       “(I) is not federally enforceable;

21                       “(II) is not deemed to be a part  
22       of Federal law; and

23                       “(III) is deemed to be stricken  
24       from the plan described in clause

1 (ii)(I) or the program or permit de-  
 2 scribed in clause (ii)(II), as applicable.

3 “(ii) PROVISIONS DEFINED.—For pur-  
 4 poses of clause (i), the term ‘provision’  
 5 means any provision that—

6 “(I) is contained in a State im-  
 7 plementation plan under section 110  
 8 and authorizes or requires a limitation  
 9 on, or imposes a permit requirement  
 10 for, the emission of a greenhouse gas  
 11 to address climate change; or

12 “(II) is part of an operating per-  
 13 mit program under title V, or a per-  
 14 mit issued pursuant to title V, and  
 15 authorizes or requires a limitation on  
 16 the emission of a greenhouse gas to  
 17 address climate change.

18 “(C) ACTION BY ADMINISTRATOR.—The  
 19 Administrator may not approve or make feder-  
 20 ally enforceable any provision described in sub-  
 21 paragraph (B)(ii).”.

22 **SEC. 803. PRESERVING ONE NATIONAL STANDARD FOR**  
 23 **AUTOMOBILES.**

24 Section 209(b) of the Clean Air Act (42 U.S.C. 7543)  
 25 is amended by adding at the end the following:

1           “(4) With respect to standards for emissions of  
2       greenhouse gases (as defined in section 330) for  
3       model year 2017 or any subsequent model year for  
4       new motor vehicles and new motor vehicle engines—

5           “(A) the Administrator may not waive ap-  
6       plication of subsection (a); and

7           “(B) no waiver granted prior to the date of  
8       enactment of this paragraph may be considered  
9       to waive the application of subsection (a).”.

○