AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

113TH CONGRESS
1ST SESSION

H. R. 1927

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

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2013

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

---

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''More Water and Security for Californians Act''.

SEC. ___. COMPLIANCE WITH ENDANGERED SPECIES ACT OF 1973.

(a) FINDINGS.—Congress finds the following:

(1) The economy of the San Joaquin Valley in California is predominantly based on irrigated agriculture served water to the Westside and southern end of the San Joaquin Valley by—

(A) the Central Valley Project; and

(B) the California State Water Project.

(2) The quantity of water available for irrigated agriculture in these areas of the San Joaquin Valley served by the Central Valley Project and the California State Water Project has been reduced significantly as a result of restrictions placed on the operations of the Central Valley Project and the California State Water Project under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(3) California's San Joaquin Valley is one of the most fertile agricultural regions in the world, and produces more than 250 different crops with an estimated value of $17,000,000,000 per year, supplying about 8 percent of United States agricultural production and approximately 40 percent of the Nation's fruits and vegetables on less than 1 percent of United States farmland. Crops grown in the San Joaquin Valley are exported to 100 countries around

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

(4) Water supply shortages resulting from regulatory restrictions on the operations of the Central Valley Project and the California State Water Project have greatly exacerbated the economic recession and contributed to an economic crisis in the San Joaquin Valley.

(5)(A) More than 400,000 acres of highly productive farmland in the San Joaquin Valley were fallowed in 2009.

(B) Unemployment rates in small rural communities in the San Joaquin Valley remain over 25 percent.

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

(6) Any water not captured and stored by the Central Valley Project and the California State Water Project is water that could have been used to sustain irrigated agriculture and the many businesses and communities that rely on it throughout the Central Valley of California.

(7) Deliveries to water agencies that rely on exports from the Sacramento-San Joaquin Delta (California Bay-Delta) are expected to remain at reduced levels this year due to pumping restrictions imposed on operations of the Central Valley Project and the California State Water Project under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) in the early part of 2013.

(8) Due to reduced surface water supplies, reliance on groundwater has increased, and the withdrawals from the aquifers are unsustainable and put significant infrastructure at risk of collapse, including the State Water Project's California Aqueduct, due to permanent subsidence of land over the overdrafted aquifers.

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

(10) Discharge of pollutants and invasive species have dramatically impaired the ecosystem of the California Bay-Delta.

(11) Large-scale and sustained habitat restoration and fish passage improvements are essential—

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

(B) to recover native species in the California Bay-Delta.

(12) As of the date of enactment of this Act, Federal and State agencies, and a number of interested parties, continue to develop the Bay Delta Conservation Plan to establish a habitat conservation plan—

(A) to provide ecosystem restoration;

(B) to contribute to native species recovery; and

(C) to allow for projects to proceed that restore and protect water supplies for—

(i) the Central Valley Project; and

(ii) the California State Water Project.

(b) COMPLIANCE.—

(1) IN GENERAL.—All requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) relating to operations of the Central Valley Project and the California State Water Project (''Projects'') shall be deemed satisfied with regard to the species and their critical habitat covered by the biological opinions for the operations of the Central

Valley Project and the California State Water Project issued by the United States Fish and Wildlife Service and dated December 15, 2008, and the National Marine Fisheries Service and dated June 4, 2009 (the ''biological opinions''), if—

(A) the alternatives described in that portion of the biological opinions entitled ''Reasonable and Prudent Alternatives'' are implemented; and

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

(2) MANDATES.—The Secretary of the Interior and the Secretary of Commerce shall ensure the following:

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

(B) CONTROL OF PUMPING OPERATIONS.—For each calendar year, during the period beginning on April 1 and ending on May 31, rates of pumping at the C.W. ''Bill'' Jones Pumping

Plant and Harvey O. Banks Pumping Plant shall not be reduced pursuant to the biological opinion of the National Marine Fisheries Service described in paragraph (1), except as required to implement California State Water Resources Control Board Water Rights Decision 1641 or a superseding water rights decision.

(C) FALL X2.—For each calendar year, during the period beginning September 1 and ending November 30, monthly average x2 no greater (more eastward) than 74 km (from the Golden Gate) shall be maintained only to the extent that such action does not diminish the capability of either the Central Valley Project or the California State Water Project to make water available for other authorized project purposes.

(3) MODIFICATION.—The Secretary of the Interior may modify the flow and pumping operation mandates established in paragraph (2) upon recommendations of the National Research Council Committee on Sustainable Water and Environmental Management in the California Bay-Delta, if such modifications—

(A) would provide greater benefits to the species covered by the biological opinions described in paragraph (1); and

(B) would not reduce the water delivery capability of the Central Valley Project or California State Water Project more than their delivery capability allowed under paragraph (2).

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

(1) establish a fish hatchery program or refuge to preserve and restore the delta smelt in collaboration with the Governor of the State of California; and

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

(A) at-risk species; and

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

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

(3) install the Head of Old River Barrier during the April–May pulse flow, as set forth in California State Water Resources Control Board Water Rights Decision 1641.

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

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

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

(e) SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT.—Nothing in this Act shall limit or otherwise affect the implementation of the San Joaquin River Restoration Settlement of the San Joaquin River Restoration Settlement Act (Public Law 111–11), including the Water Management Goal.

(f) NO FURTHER RESTRICTION.—No State or any political subdivision thereof shall adopt or attempt to enforce any requirements relating to the impact of the operation of the Projects on the species and critical habitat

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

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

○