

113TH CONGRESS
1ST SESSION

H. R. 2705

To develop a pilot program to remove non-native predator fishes from the Stanislaus River to protect the native anadromous fishery resources affected by the operation of the New Melones Unit of the East Side Division of the Central Valley Project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2013

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

A BILL

To develop a pilot program to remove non-native predator fishes from the Stanislaus River to protect the native anadromous fishery resources affected by the operation of the New Melones Unit of the East Side Division of the Central Valley Project, 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.**

4 This Act may be cited as the “Stanislaus River Na-
5 tive Anadromous Fish Improvement Act”.

1 **SEC. 2. PILOT PROGRAM TO PROTECT ANADROMOUS FISH**
2 **IN THE STANISLAUS RIVER.**

3 (a) ESTABLISHMENT OF NON-NATIVE PREDATOR
4 FISH REMOVAL PROGRAM.—The Commissioner and dis-
5 tricts, in consultation with the National Marine Fisheries
6 Service, the United States Fish and Wildlife Service, and
7 the California Department of Fish and Wildlife, shall
8 jointly develop and conduct a pilot non-native predator
9 fish removal program to remove non-native striped bass,
10 smallmouth bass, largemouth bass, black bass, and other
11 non-native predator fishes from the Stanislaus River. The
12 pilot program shall—

13 (1) be scientifically based;

14 (2) include methods to quantify the number and
15 size of predator fishes removed each year, the im-
16 pact of such removal on the overall abundance of
17 predator fishes, and the impact of such removal on
18 the populations of juvenile anadromous fish found in
19 the Stanislaus River by, among other things, evalu-
20 ating the number of juvenile anadromous fish that
21 migrate past the rotary screw trap located at
22 Caswell;

23 (3) use wire fyke trapping, portable resistance
24 board weirs, and boat electrofishing, which are the
25 most effective predator collection techniques that
26 minimize affects to native anadromous fish;

1 (4) be developed, including the application for
2 all necessary scientific research and species enhance-
3 ment permits under section 10(a)(1) of the Endan-
4 gered Species Act of 1973 (16 U.S.C. 1539(a)(1)),
5 for the performance of the pilot program, not later
6 than 6 months after the date of the enactment of
7 this Act;

8 (5) be implemented on the first business day of
9 the calendar year following the issuance of all nec-
10 essary scientific research and species enhancement
11 permits needed to begin the pilot program; and

12 (6) be implemented for a period of five consecu-
13 tive calendar years.

14 (b) MANAGEMENT.—The management of the pilot
15 program shall be the joint responsibility of the Commis-
16 sioner and the districts. Such parties shall work collabo-
17 ratively to insure the performance of the pilot program,
18 and shall discuss and agree upon, among other things,
19 changes in the structure, management, personnel, tech-
20 niques, strategy, data collection, reporting, and conduct
21 of the pilot program.

22 (c) CONDUCT.—

23 (1) IN GENERAL.—At the election of the dis-
24 tricts, the pilot program may be conducted by their
25 own personnel, qualified private contractors hired by

1 the districts, personnel of, on loan to, or otherwise
2 assigned to the Bureau of Reclamation, or a com-
3 bination thereof.

4 (2) PARTICIPATION BY BUREAU OF RECLAMA-
5 TION.—In the event the districts elect to conduct the
6 program using their own personnel or qualified pri-
7 vate contractors hired by them, the Commissioner
8 has the option to assign an employee of, on loan to,
9 or otherwise assigned to the Bureau of Reclamation,
10 to be present for all activities performed in the field.
11 Such presence shall insure compliance with the
12 agreed upon elements specified in subsection (b).
13 The districts shall pay 100 percent of the cost of
14 such participation as specified in subsection (d).

15 (3) TIMING OF ELECTION.—The districts shall
16 notify the Commissioner of their election on or be-
17 fore October 15 of each calendar year of the pilot
18 program, which election shall apply to the work per-
19 formed in the subsequent calendar year.

20 (d) FUNDING.—

21 (1) ANNUAL FUNDING.—The districts shall be
22 responsible for 100 percent of the cost of the pilot
23 program. On or before December 1 of each year of
24 the pilot program, the Commissioner shall submit to
25 the districts an estimate of the cost to be incurred

1 by the Bureau of Reclamation in the following cal-
2 endar year, if any, including the cost of any data
3 collection and posting under subsection (e). If an
4 amount equal to the estimate is not provided to the
5 reclamation fund identified in section 3 of the Act
6 of February 21, 1911 (43 U.S.C. 525), by the dis-
7 tricts on or before December 31 of each year—

8 (A) the Bureau of Reclamation shall have
9 no obligation to conduct the pilot program ac-
10 tivities otherwise scheduled until full payment is
11 made by the districts; and

12 (B) the districts shall be prohibited from
13 conducting any aspect of the pilot program
14 until full payment is made by the districts.

15 (2) ACCOUNTING.—On or before September 1
16 of each calendar year, the Commissioner shall pro-
17 vide an accounting of the prior calendar year's ex-
18 penses to the districts. If the estimate paid by the
19 districts was less than the actual costs incurred by
20 the Bureau of Reclamation, the districts shall have
21 until September 30 of that calendar year to pay the
22 difference to the reclamation fund. If the estimate
23 paid by the districts was greater than the actual
24 costs incurred by the Bureau of Reclamation, then
25 a credit shall be provided to the districts, which shall

1 be deducted from the estimate payment the districts
2 must make for the work performed by the Bureau
3 of Reclamation, if any, in the next calendar year.

4 (e) REPORTING AND EVALUATION.—

5 (1) IN GENERAL.—On or before the 15th day
6 of each month, the Commissioner shall post on the
7 Web site of the Bureau of Reclamation a tabular
8 summary of the raw data collected in the prior
9 month.

10 (2) REPORT.—On or before June 30 of the cal-
11 endar year following the completion of the program,
12 the Commissioner and districts shall jointly publish
13 a peer reviewed report that—

14 (A) discusses the findings and conclusions
15 of the pilot program;

16 (B) synthesizes the data collected under
17 paragraph (1); and

18 (C) makes recommendations for further
19 study and action.

20 (f) PERMITS PROCESS.—

21 (1) Not later than 180 days after filing of an
22 application by the Commissioner and the districts,
23 the Secretary of the Interior, the Secretary of Com-
24 merce, or both, as appropriate, shall issue all nec-
25 essary scientific research and species enhancement

1 permits under section 10(a)(1) of the Endangered
2 Species Act (16 U.S.C. 153(9)(a)(1)), for the per-
3 formance of the pilot program.

4 (2) Any permit application that is not approved
5 by the Secretary of the Interior, Secretary of Com-
6 merce, or both, as appropriate, for any reason, with-
7 in 180 days after receiving the application, shall be
8 deemed approved.

9 (3) All permits issued shall be in the name of
10 the Bureau of Reclamation and the districts.

11 (4) Districts may delegate the authority to ad-
12 minister the permit authority to any qualified pri-
13 vate contractor retained in accordance with sub-
14 section (c).

15 (5) The pilot program, including amendments
16 thereto by the appropriate Federal and State agen-
17 cies, shall constitute a conservation plan that com-
18 plies with the requirements of section 10(a)(2) of
19 the Endangered Species Act of 1973 (16 U.S.C.
20 1539(a)(2)).

21 (g) NEPA.—Section 102(2)(C) of the National Envi-
22 ronmental Policy Act of 1969 (42 U.S.C. 4332(2)(C))
23 shall not apply with respect to section 2 and the issuance
24 of any permit under this subsection during the seven-year

1 period beginning on the date of the implementation of the
2 pilot program.

3 **SEC. 3. RESTRICTIONS.**

4 Any restriction imposed under California law on the
5 catch, take, or harvest of any non-native or introduced
6 aquatic or terrestrial species that preys upon anadromous
7 fish and that occupies or is found in the Stanislaus River
8 is hereby void and is preempted.

9 **SEC. 4. DEFINITIONS.**

10 For the purposes of this Act:

11 (1) ANADROMOUS FISH.—

12 (A) The term “anadromous fish” as ap-
13 plied to the Stanislaus River and the operation
14 of New Melones—

15 (i) means those native stocks of salm-
16 on (including steelhead) that—

17 (I) as of October 30, 1992, were
18 present in and had not been extir-
19 pated from the Stanislaus River; and

20 (II) which ascend the Stanislaus
21 River to reproduce after maturing in
22 San Francisco Bay or the Pacific
23 Ocean; and

1 (ii) does not mean any stock, strain or
2 member of American shad, sockeye salmon,
3 or striped bass.

4 (B) The definition of anadromous fish pro-
5 vided in section 3403(a) of the Central Valley
6 Project Improvement Act (Public Law 102–
7 575) shall not apply to the operation of New
8 Melones Dam and Reservoir, or to any Federal
9 action in the Stanislaus River.

10 (2) COMMISSIONER.—The term “Commis-
11 sioner” means the Commissioner of the Bureau of
12 Reclamation.

13 (3) DISTRICTS.—The term “districts” means
14 the Oakdale Irrigation District and the South San
15 Joaquin Irrigation District.

16 (4) PILOT PROGRAM.—The term “pilot pro-
17 gram” means the pilot non-native predator removal
18 program established under section 2(b).

19 **SEC. 5. SUNSET.**

20 This Act and the authorities provided under this Act
21 shall expire 7 years after implementation of the pilot pro-
22 gram begins.

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