

first-hand accounts from refugees, and other sources, the Janjaweed attacks on the civilians of Darfur continue unabated as of September 2004;

Whereas there are credible reports from some of these same sources that the Government of Sudan is providing assistance to the Janjaweed militias and, in some cases, that Government of Sudan forces have participated directly in attacks on civilians;

Whereas the United States Government, after conducting more than 1,000 interviews with survivors and refugees, has determined that genocide has occurred in Darfur, that it may still be occurring, and that both the Janjaweed and the Government of Sudan bear responsibility for these acts;

Whereas the Secretary of State has determined that the attacks by the Government of Sudan and the Janjaweed on the non-Arab people of Darfur and their villages are based on race, not religion;

Whereas the United States has recently introduced a new resolution in the United Nations Security Council that calls for the Government of Sudan to cooperate fully with an expanded African Union force and for a cessation of Sudanese military flights over Darfur;

Whereas the introduced resolution also provides for international overflights of the Darfur region to monitor the situation on the ground and requires the United Nations Security Council to review the record of compliance of the Government of Sudan to determine whether the United Nations should impose sanctions on Sudan, including sanctions affecting the petroleum sector in that country;

Whereas the resolution also urges the Government of Sudan and the Sudanese People's Liberation Movement to conclude negotiations on a comprehensive peace accord and, most important, calls for a United Nations investigation into all violations of international humanitarian law and human rights law that have occurred in Darfur in order to ensure accountability;

Whereas the United Nations Security Council, in United Nations Security Council Resolution 1556, emphasized that the Government of Sudan bears primary responsibility for respecting human rights and protecting the people of Sudan;

Whereas United Nations Security Council Resolution 1556 calls upon the Government of Sudan to cooperate with the United Nations;

Whereas the United Nations Human Rights Commission, established in 1946 and given the responsibility of drafting the Universal Declaration of Human Rights, is responsible for promoting respect for and observance of, human rights and fundamental freedoms for all;

Whereas the Universal Declaration of Human Rights declares that all human beings are born free and equal in dignity and rights, that everyone is entitled to all the rights and freedoms set forth in the Declaration regardless of race, color, sex, language, religion, political or other opinion, or national or social origin, property, birth, or other status that everyone has the right to life, liberty and security of person, that no one shall be held in slavery or servitude, and that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment;

Whereas the Convention on the Prevention and Punishment of Genocide, done at Paris on December 9, 1948 (hereafter in this resolution referred to as the "Genocide Convention"), delineates the criteria that constitute genocide and requires parties to prevent and punish genocide;

Whereas Sudan is a state party to the Genocide Convention and remains a member

of the United Nations Commission on Human Rights;

Whereas the Secretary of State determined that, according to United States law, the Government of Sudan is a state sponsor of terrorism and has been since 1993 and therefore remains ineligible for U.S. foreign assistance;

Whereas, due to the human rights situation in Darfur, it would be consistent with United States obligations under the Genocide Convention for the Secretary of State and the United States Permanent Representative to the United Nations to seek the immediate suspension of Sudan from the United Nations Commission on Human Rights and, in the event a formal investigation results in a determination by the UN that genocide has occurred in Darfur, the ultimate removal of Sudan from such Commission; and

Whereas it is a mockery of human rights as a universal principle, a challenge to the United Nations as an institution, and an affront to all responsible countries that embrace and promote human rights that a government under investigation by the United Nations for committing genocide against, and violating the human rights of, its own citizens sits in judgment of others as a member in good standing of the United Nations Commission on Human Rights: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes and approves of the findings of the Secretary of State that genocide has occurred and may still be occurring in Darfur, Sudan, and that the Government of Sudan bears responsibility for such acts;

(2) supports the Secretary of State's call for a full and unfettered investigation by the United Nations into all violations of international humanitarian law and human rights law that have occurred in Darfur, with a view to ensuring accountability;

(3) supports the resolution introduced by the United States Government in the United Nations Security Council on September 9, 2004, with regard to the situation in Darfur;

(4) calls upon the Secretary of State and the United States Permanent Representative to the United Nations to take immediate steps to pursue the establishment of a formal United Nations investigation, under Article VIII of the Genocide Convention, to determine whether the actions of the Government of Sudan in Darfur constitute acts of genocide;

(5) calls upon the Secretary of State and the United States Permanent Representative to the United Nations to take immediate steps to pursue the immediate suspension of Sudan from the United Nations Commission on Human Rights;

(6) calls upon the Secretary of State and the United States Permanent Representative to the United Nations to take further steps to ensure that the suspension of Sudan from the United Nations Commission on Human Rights remains in effect unless and until the Government of Sudan meets all of its obligations, as determined by the United Nations Security Council, under United Nations Security Council Resolution 1556 of July 30, 2004, and any subsequent United Nations Security Council resolutions regarding this matter;

(7) calls upon the Secretary of State and the United States Permanent Representative to the United Nations to take steps to ensure that, in the event that the formal investigation of acts of genocide in Sudan results in a determination by the UN that genocide has occurred or is occurring in Darfur, the United States Government takes appropriate actions to ensure that Sudan is removed

from the United Nations Human Rights Commission;

(8) calls upon the member states of the United Nations Commission on Human Rights to convene an immediate special session to consider the urgent and acute human rights situation in Sudan for the purpose of considering whether Sudan should be suspended from membership in such Commission; and

(9) expects the Secretary of State to report to Congress on progress made toward taking the actions and accomplishing the objectives outlined in this resolution not later than 60 days after the date on which Congress agrees to the resolution.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3660. Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 2674, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

SA 3661. Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 2674, supra.

SA 3662. Mr. FRIST (for Mr. MCCAIN (for himself, Mr. HOLLINGS, and Mr. SMITH)) submitted an amendment intended to be proposed by Mr. FRIST to the bill S. 1234, to reauthorize the Federal Trade Commission, and for other purposes.

SA 3663. Mr. FRIST (for Mrs. FEINSTEIN (for herself, Mr. DOMENICI, and Mr. BINGAMAN)) proposed an amendment to the bill H.R. 2828, to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

TEXT OF AMENDMENTS

SA 3660. Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 2674, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . (a) ASSESSMENT OF BUDGET AUTHORITY LIMITATION ON MILITARY HOUSING PRIVATIZATION INITIATIVE.—(1) The Secretary of Defense shall assess the impact on the military family housing program of having the total value of contracts and investments undertaken under the Military Housing Privatization Initiative reach the limitation on budget authority for the initiative specified in section 2883(g) of Title 10, United States Code.

(2) The assessment shall include: an estimate of the appropriations and period of time necessary to provide the level and quality of housing contemplated under the Military Housing Privatization Initiative in the event that limitation in 10 USC 2883(g) is not eliminated and the potential impact on military families if the limitation is not eliminated.

(b) The Secretary of Defense shall, no later than December 31, 2004, provide to the congressional defense committees a report on the assessment required by subparagraph (a).

(c) MILITARY HOUSING PRIVATIZATION INITIATIVE DEFINED.—In this section, the term "military housing privatization initiative"

means the programs and activities undertaken under the alternative authority for the acquisition and improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code.

SA 3661. Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 2674, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. 131. Of the amount appropriated by this Act, \$1,500,000 shall be available to the Commission on Review of Overseas Military Facility Structure of the United States.

SA 3662. Mr. FRIST (for Mr. MCCAIN (for himself, Mr. HOLLINGS, and Mr. SMITH)) submitted an amendment intended to be proposed by Mr. FRIST to the bill S. 1234, to reauthorize the Federal Trade Commission, and for other purposes; as follows:

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) **SHORT TITLE.**—This Act may be cited as the “International Consumer Protection Act of 2004.”

(b) **FINDINGS.**—The Congress finds the following:

(1) The Federal Trade Commission protects consumers from fraud and deception. Cross-border fraud and deception are growing international problems that affect American consumers and businesses.

(2) The development of the Internet and improvements in telecommunications technologies have brought significant benefits to consumers. At the same time, they have also provided unprecedented opportunities for those engaged in fraud and deception to establish operations in one country and victimize a large number of consumers in other countries.

(3) An increasing number of consumer complaints collected in the Consumer Sentinel database maintained by the Commission, and an increasing number of cases brought by the Commission, involve foreign consumers, foreign businesses or individuals, or assets or evidence located outside the United States.

(4) The Commission has legal authority to remedy law violations involving domestic and foreign wrongdoers, pursuant to the Federal Trade Commission Act. The Commission’s ability to obtain effective relief using this authority, however, may face practical impediments when wrongdoers, victims, other witnesses, documents, money and third parties involved in the transaction are widely dispersed in many different jurisdictions. Such circumstances make it difficult for the Commission to gather all the information necessary to detect injurious practices, to recover offshore assets for consumer redress, and to reach conduct occurring outside the United States that affects United States consumers.

(5) Improving the ability of the Commission and its foreign counterparts to share information about cross-border fraud and deception, to conduct joint and parallel investigations, and to assist each other is critical to achieving more timely and effective enforcement in cross-border cases.

(c) **PURPOSE.**—The purpose of this Act is to enhance the ability of the Federal Trade Commission to protect consumers from cross-border fraud and deception and other consumer protection law violations.

SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.

Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following:

“‘Foreign law enforcement agency’ means—

“(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

“(B) any multinational or multiagency organization to the extent that it is acting on behalf of an entity described in subparagraph (A).”

SEC. 3. AVAILABILITY OF REMEDIES.

Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following:

“(4)(A) For purposes of this subsection, the term ‘unfair or deceptive acts or practices’ includes unfair or deceptive acts or practices involving foreign commerce that—

“(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

“(ii) involve material conduct occurring within the United States.

“(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.”

SEC. 4. POWERS OF THE COMMISSION.

(a) **PUBLICATION OF INFORMATION; REPORTS.**—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting “(1)” after “such information” the first place it appears; and

(2) by striking “purposes,” and inserting “purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b).”

(b) **OTHER POWERS OF THE COMMISSION.**—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is further amended by inserting after subsection (i) and before the proviso the following:

“(j) **INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.**—

“(1) **IN GENERAL.**—Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

“(2) **TYPE OF ASSISTANCE.**—In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

“(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and

“(B) when the request is from an agency acting to investigate or pursue the enforce-

ment of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28, United States Code.

“(3) **CRITERIA FOR DETERMINATION.**—In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

“(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

“(B) whether compliance with the request would prejudice the public interest of the United States; and

“(C) whether the requesting agency’s investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

“(4) **INTERNATIONAL AGREEMENTS.**—If a foreign law enforcement agency has set forth a legal basis for requiring conclusion of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to

“(A) provide assistance using the powers set forth in this subsection;

“(B) disclose materials and information in accordance with subsection (f) and section 21(b); and

“(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this Act.

“(5) **ADDITIONAL AUTHORITY.**—The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

“(6) **LIMITATION.**—This subsection does not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C. 57a(f)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of section 6 (15 U.S.C. 46).

“(7) **ASSISTANCE TO CERTAIN COUNTRIES.**—The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a country that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

“(k) **REFERRAL OF EVIDENCE FOR CRIMINAL PROCEEDINGS.**—

“(1) **IN GENERAL.**—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes.

Nothing in this paragraph affects any other authority of the Commission to disclose information.

“(2) INTERNATIONAL INFORMATION.—The Commission should endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

“(1) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—To expend appropriated funds for—

“(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

“(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

“(A) such incidental expenses as meals taken in the course of such attendance;

“(B) any travel and transportation to or from such meetings; and

“(C) any other related lodging or subsistence.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—The Federal Trade Commission is authorized to expend appropriated funds not to exceed \$100,000 per fiscal year for purposes of section 6(1) of the Federal Trade Commission Act (15 U.S.C. 46(1)) (as added by subsection (b) of this section), including operating expenses and other costs of the following bilateral and multilateral cooperative law enforcement agencies and organizations:

(1) The International Consumer Protection and Enforcement Network.

(2) The International Competition Network.

(3) The Mexico-U.S.-Canada Health Fraud Task Force.

(4) Project Emptor.

(5) The Toronto Strategic Partnership and other regional partnerships with a nexus in a Canadian province.

(d) CONFORMING AMENDMENT.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking “clauses (a) and (b)” in the proviso following subsection (1) (as added by subsection (b) of this section) and inserting “subsections (a), (b), and (j)”.

SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.

Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended by adding at the end the following:

“(c) FOREIGN LITIGATION.—

“(1) COMMISSION ATTORNEYS.—With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

“(2) REIMBURSEMENT FOR FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign

courts in which the Commission has an interest.

“(3) LIMITATION ON USE OF FUNDS.—Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

“(4) OTHER AUTHORITY.—The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.”.

SEC. 6. SHARING INFORMATION WITH FOREIGN LAW ENFORCEMENT AGENCIES.

(a) MATERIAL OBTAINED PURSUANT TO COMPULSORY PROCESS.—Section 21(b)(6) of the Federal Trade Commission Act (15 U.S.C. 57b-2(b)(6)) is amended by adding at the end the following: “The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

“(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

“(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

“(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

“(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

“(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

“(C) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4)); and

“(D) the foreign law enforcement agency is not from a country that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or em-

ployee of a foreign law enforcement agency.”.

(b) INFORMATION SUPPLIED BY AND ABOUT FOREIGN SOURCES.—Section 21(f) of the Federal Trade Commission Act (15 U.S.C. 57b-2(f)) is amended to read as follows:

“(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

“(1) IN GENERAL.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

“(2) MATERIAL OBTAINED FROM A FOREIGN SOURCE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

“(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

“(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

“(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

“(B) SAVINGS PROVISION.—Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.”.

SEC. 7. CONFIDENTIALITY; DELAYED NOTICE OF PROCESS.

(a) IN GENERAL.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 21 the following:

“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.

“(a) APPLICATION WITH OTHER LAWS.—The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, shall apply with respect to the Commission, except as otherwise provided in this section.

“(b) IN GENERAL.—The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

“(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18, United States Code, (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

“(2) if notification would otherwise be required under chapter 121 of title 18, United States Code, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

“(c) EX PARTE APPLICATION BY COMMISSION.—

“(1) IN GENERAL.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

“(2) APPLICATION.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

“(3) LIMITATION.—No order issued under this subsection may prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

“(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

“(1) the underlying conduct reported;

“(2) any failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or

“(3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

“(e) VENUE AND PROCEDURE.—

“(1) IN GENERAL.—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District

of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

“(2) IN CAMERA PROCEEDINGS.—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

“(f) SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)).

“(g) ADVERSE RESULT DEFINED.—For purposes of this section the term ‘adverse result’ means—

“(1) endangering the life or physical safety of an individual;

“(2) flight from prosecution;

“(3) the destruction of, or tampering with, evidence;

“(4) the intimidation of potential witnesses; or

“(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

“(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

“(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

“(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.”

(b) CONFORMING AMENDMENT.—Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) by striking “or” after the semicolon in subparagraph (C);

(2) by inserting “or” after the semicolon in subparagraph (D); and

(3) by inserting after subparagraph (D) the following:

“(E) under section 21A of this Act;”.

SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is further amended by adding after section 21A (as added by section 7 of this Act) the following:

“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

“(a) IN GENERAL.—

“(1) NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.—An entity described in paragraph (2) or (3) of subsection (d) of this section that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

“(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

“(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the

District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

(2) LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

“(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity described in paragraph (1) of subsection (d) of this section shall, in accordance with section 5318(g)(3) of title 31, United States Code, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

“(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

“(A) related to possibly fraudulent or deceptive commercial practices;

“(B) related to persons involved in such practices; or

“(C) otherwise subject to recovery by the Commission; or

“(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

“(c) CONSUMER COMPLAINTS.—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection does not provide any exemption from liability for the underlying conduct.

“(d) APPLICATION.—This section applies to the following entities, whether foreign or domestic:

“(1) A financial institution as defined in section 5312 of title 31, United States Code.

“(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

“(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

“(4) An Internet service provider or provider of telephone services.”

SEC. 9. STAFF EXCHANGES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by adding after section 25 the following new section:

“SEC. 25A. STAFF EXCHANGES.

“(a) IN GENERAL.—The Commission may—

“(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2 of this Act or section 3101 or 3109 of title 5, United States Code; and

“(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

“(b) RECIPROCITY AND REIMBURSEMENT.—The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made

on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

“(c) **STANDARDS OF CONDUCT.**—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.”.

SEC. 10. INFORMATION SHARING WITH FINANCIAL REGULATORS.

Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) is amended by inserting “the Federal Trade Commission,” after “the Securities and Exchange Commission.”.

SEC. 11. AUTHORITY TO ACCEPT REIMBURSEMENTS, GIFTS, AND VOLUNTARY AND UNCOMPENSATED SERVICES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended—

(1) by redesignating section 26 as section 28; and

(2) by inserting after section 25A, as added by section 9 of this Act, the following:

“SEC. 26. REIMBURSEMENT OF EXPENSES.

“The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

“SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED SERVICES.

“(a) **IN GENERAL.**—In furtherance of its functions the Commission may accept, hold, administer, and use unconditional gifts, donations, and bequests of real, personal, and other property and, notwithstanding section 1342 of title 31, United States Code, accept voluntary and uncompensated services.

“(b) **LIMITATIONS.**—

“(1) **CONFLICTS OF INTEREST.**—The Commission shall establish written guidelines setting forth criteria to be used in determining whether the acceptance, holding, administration, or use of a gift, donation, or bequest pursuant to subsection (a) would reflect unfavorably upon the ability of the Commission or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

“(2) **VOLUNTARY SERVICES.**—A person who provides voluntary and uncompensated service under subsection (a) shall be considered a Federal employee for purposes of—

“(A) chapter 81 of title 5, United States Code, (relating to compensation for injury); and

“(B) the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees.

“(3) **TORT LIABILITY OF VOLUNTEERS.**—A person who provides voluntary and uncompensated service under subsection (a), while assigned to duty, shall be deemed a volunteer of a nonprofit organization or governmental entity for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.). Subsection (d) of section 4 of such Act (42 U.S.C. 14503(d)) shall not apply for purposes of any claim against such volunteer.”.

SEC. 12. PRESERVATION OF EXISTING AUTHORITY.

The authority provided by this Act, and by the Federal Trade Commission Act (15 U.S.C.

41 et seq.) and the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States.

SEC. 13. REPORT.

Not later than 3 years after the date of enactment of this Act, the Federal Trade Commission shall transmit to Congress a report describing its use of and experience with the authority granted by this Act, along with any recommendations for additional legislation. The report shall include—

(1) the number of cross-border complaints received by the Commission;

(2) identification of the foreign agencies to which the Commission has provided non-public investigative information under this Act;

(3) the number of times the Commission has used compulsory process on behalf of foreign law enforcement agencies pursuant to section 6 of the Federal Trade Commission Act (15 U.S.C. 46), as amended by section 4 of this Act;

(4) a list of international agreements and memoranda of understanding executed by the Commission that relate to this Act;

(5) the number of times the Commission has sought delay of notice pursuant to section 21A of the Federal Trade Commission Act, as added by section 7 of this Act;

(6) a description of the types of information private entities have provided voluntarily pursuant to section 21B of the Federal Trade Commission Act, as added by section 8 of this Act;

(7) a description of the results of cooperation with foreign law enforcement agencies under section 21 of the Federal Trade Commission Act (15 U.S.C. 57-2) as amended by section 6 of this Act;

(8) an analysis of whether the lack of an exemption from the disclosure requirements of section 552 of title 5, United States Code, with regard to information or material voluntarily provided relevant to possible unfair or deceptive acts or practices, has hindered the Commission in investigating or engaging in enforcement proceedings against such practices; and

(9) a description of Commission litigation brought in foreign courts.

SEC. 14. REAUTHORIZATION.

The text of section 25 of the Federal Trade Commission Act (15 U.S.C. 57c) is amended to read as follows:

“There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$224,695,000 for fiscal year 2005, \$235,457,000 for fiscal year 2006, \$249,000,000 for fiscal year 2007, and \$264,000,000 for fiscal year 2008.”.

SA 3663. Mr. FRIST (for Mrs. FEINSTEIN (for herself, Mr. DOMENICI, and Mr. BINGAMAN)) proposed an amendment to the bill H.R. 2828, to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Supply, Reliability, and Environmental Improvement Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL ENHANCEMENT

Sec. 101. Short title.

Sec. 102. Definitions.

Sec. 103. Bay Delta program.

Sec. 104. Management.

Sec. 105. Reporting requirements.

Sec. 106. Crosscut budget.

Sec. 107. Federal share of costs.

Sec. 108. Compliance with State and Federal law.

Sec. 109. Authorization of appropriation.

TITLE II—MISCELLANEOUS

Sec. 201. Salton Sea study program.

Sec. 202. Alder Creek water storage and conservation project feasibility study and report.

Sec. 203. Folsom Reservoir temperature control device authorization.

TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL ENHANCEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the “Calfed Bay-Delta Authorization Act”.

SEC. 102. DEFINITIONS.

In this title:

(1) **CALFED BAY-DELTA PROGRAM.**—The terms “Calfed Bay-Delta Program” and “Program” mean the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the State agencies and Federal agencies as set forth in the Record of Decision.

(2) **CALIFORNIA BAY-DELTA AUTHORITY.**—The terms “California Bay-Delta Authority” and “Authority” mean the California Bay-Delta Authority, as set forth in the California Bay-Delta Authority Act (Cal. Water Code §79400 et seq.).

(3) **DELTA.**—The term “Delta” has the meaning given the term in the Record of Decision.

(4) **ENVIRONMENTAL WATER ACCOUNT.**—The term “Environmental Water Account” means the Cooperative Management Program established under the Record of Decision.

(5) **FEDERAL AGENCIES.**—The term “Federal agencies” means—

(A) the Department of the Interior, including—

(i) the Bureau of Reclamation;

(ii) the United States Fish and Wildlife Service;

(iii) the Bureau of Land Management; and

(iv) the United States Geological Survey;

(B) the Environmental Protection Agency;

(C) the Army Corps of Engineers;

(D) the Department of Commerce, including the National Marine Fisheries Service (also known as “NOAA Fisheries”);

(E) the Department of Agriculture, including—

(i) the Natural Resources Conservation Service; and

(ii) the Forest Service; and

(F) the Western Area Power Administration.

(6) **FIRM YIELD.**—The term “firm yield” means a quantity of water from a project or program that is projected to be available on a reliable basis, given a specified level of risk, during a critically dry period.

(7) **GOVERNOR.**—The term “Governor” means the Governor of the State of California.

(8) **RECORD OF DECISION.**—The term “Record of Decision” means the Calfed Bay-Delta Program Record of Decision, dated August 28, 2000.

(9) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(10) **STATE.**—The term “State” means the State of California.

(11) **STATE AGENCIES.**—The term “State agencies” means—

(A) the Resources Agency of California, including—

(i) the Department of Water Resources;
 (ii) the Department of Fish and Game;
 (iii) the Reclamation Board;
 (iv) the Delta Protection Commission;
 (v) the Department of Conservation;
 (vi) the San Francisco Bay Conservation and Development Commission;
 (vii) the Department of Parks and Recreation; and

(viii) the California Bay-Delta Authority;
 (B) the California Environmental Protection Agency, including the State Water Resources Control Board;

(C) the California Department of Food and Agriculture; and

(D) the Department of Health Services.

SEC. 103. BAY DELTA PROGRAM.

(a) IN GENERAL.—

(1) RECORD OF DECISION AS GENERAL FRAMEWORK.—The Record of Decision is approved as a general framework for addressing the Calfed Bay-Delta Program, including its components relating to water storage, ecosystem restoration, water supply reliability (including new firm yield), conveyance, water use efficiency, water quality, water transfers, watersheds, the Environmental Water Account, levee stability, governance, and science.

(2) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) consistent with—

(i) the Record of Decision;
 (ii) the requirement that Program activities consisting of protecting drinking water quality, restoring ecological health, improving water supply reliability (including additional storage, conveyance, and new firm yield), and protecting Delta levees will progress in a balanced manner; and
 (iii) this title.

(B) MULTIPLE BENEFITS.—In selecting activities and projects, the Secretary and the heads of the Federal agencies shall consider whether the activities and projects have multiple benefits.

(b) AUTHORIZED ACTIVITIES.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) in furtherance of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this title, if the activity has been—

(1) subject to environmental review and approval, as required under applicable Federal and State law; and

(2) approved and certified by the relevant Federal agency, following consultation and coordination with the Governor, to be consistent with the Record of Decision.

(c) AUTHORIZATIONS FOR FEDERAL AGENCIES UNDER APPLICABLE LAW.—

(1) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1) through (10) of subsection (d), to the extent authorized under the reclamation laws, the Central Valley Project Improvement Act (title XXXIV of Public Law 102-575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(2) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable law.

(3) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out

the activities described in paragraphs (1), (2), (6), (7), (8), and (9) of subsection (d), to the extent authorized under flood control, water resource development, and other applicable law.

(4) SECRETARY OF COMMERCE.—The Secretary of Commerce is authorized to carry out the activities described in paragraphs (2), (6), (7), and (9) of subsection (d), to the extent authorized under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(5) SECRETARY OF AGRICULTURE.—The Secretary of Agriculture is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 116 Stat. 134) (including amendments made by that Act), and other applicable law.

(d) DESCRIPTION OF ACTIVITIES UNDER APPLICABLE LAW.—

(1) WATER STORAGE.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) planning and feasibility studies for projects to be pursued with project-specific study for enlargement of—

(I) the Shasta Dam in Shasta County; and
 (II) the Los Vaqueros Reservoir in Contra Costa County;

(ii) planning and feasibility studies for the following projects requiring further consideration—

(I) the Sites Reservoir in Colusa County; and

(II) the Upper San Joaquin River storage in Fresno and Madera Counties;

(iii) developing and implementing ground-water management and groundwater storage projects; and

(iv) comprehensive water management planning.

(B) STORAGE PROJECT AUTHORIZATION AND BALANCED CALFED IMPLEMENTATION.—

(i) IN GENERAL.—If on completion of the feasibility study for a project described in clause (i) or (ii) of subparagraph (A), the Secretary, in consultation with the Governor, determines that the project should be constructed in whole or in part with Federal funds, the Secretary shall submit the feasibility study to Congress.

(ii) FINDING OF IMBALANCE.—If Congress fails to authorize construction of the project by the end of the next full session following the submission of the feasibility study, the Secretary, in consultation with the Governor, shall prepare a written determination making a finding of imbalance for the Calfed Bay-Delta Program.

(iii) REPORT ON REBALANCING.—

(I) IN GENERAL.—If the Secretary makes a finding of imbalance for the Program under clause (ii), the Secretary, in consultation with the Governor, shall, not later than 180 days after the end of the full session described in clause (ii), prepare and submit to Congress a report on the measures necessary to rebalance the Program.

(II) SCHEDULES AND ALTERNATIVES.—The report shall include preparation of revised schedules and identification of alternatives to rebalance the Program, including resubmission of the project to Congress with or without modification, construction of other projects, and construction of other projects that provide equivalent water supply and other benefits at equal or lesser cost.

(C) WATER SUPPLY AND YIELD STUDY.—

(i) IN GENERAL.—The Secretary, acting through the Bureau of Reclamation and in coordination with the State, shall conduct a study of available water supplies and existing and future needs for water—

(I) within the units of the Central Valley Project;

(II) within the area served by Central Valley Project agricultural, municipal, and industrial water service contractors; and

(III) within the Calfed Delta solution area.

(ii) RELATIONSHIP TO PRIOR STUDY.—In conducting the study, the Secretary shall incorporate and revise, as necessary, the results of the study required by section 3408(j) of the Central Valley Project Improvement Act of 1992 (Public Law 102-575; 106 Stat. 4730).

(iii) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study, including—

(I) new firm yield and water supply improvements, if any, for Central Valley Project agricultural water service contractors and municipal and industrial water service contractors, including those identified in Bulletin 160;

(II) all water management actions or projects, including those identified in Bulletin 160, that would—

(aa) improve firm yield or water supply; and

(bb) if taken or constructed, balance available water supplies and existing demand with due recognition of water right priorities and environmental needs;

(III) the financial costs of the actions and projects described under subclause (II); and

(IV) the beneficiaries of those actions and projects and an assessment of the willingness of the beneficiaries to pay the capital costs and operation and maintenance costs of the actions and projects.

(D) MANAGEMENT.—The Secretary shall conduct activities related to developing groundwater storage projects to the extent authorized under law.

(E) COMPREHENSIVE WATER PLANNING.—The Secretary shall conduct activities related to comprehensive water management planning to the extent authorized under law.

(2) CONVEYANCE.—

(A) SOUTH DELTA ACTIONS.—

(i) IN GENERAL.—In the case of the South Delta, activities under this subparagraph consist of—

(I) the South Delta Improvements Program through actions to—

(aa) increase the State Water Project export limit to 8,500 cfs;

(bb) install permanent, operable barriers in the South Delta, under which Federal agencies shall cooperate with the State to accelerate installation of the permanent, operable barriers in the South Delta, with an intent to complete that installation not later than September 30, 2007;

(cc) evaluate, consistent with the Record of Decision, fish screens and intake facilities at the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;

(II) reduction of agricultural drainage in South Delta channels, and other actions necessary to minimize the impact of drainage on drinking water quality;

(III) evaluation of lower San Joaquin River floodway improvements;

(IV) installation and operation of temporary barriers in the South Delta until fully operable barriers are constructed; and

(V) actions to protect navigation and local diversions not adequately protected by temporary barriers.

(ii) ACTIONS TO INCREASE PUMPING.—Actions to increase pumping shall be accomplished in a manner consistent with the Record of Decision requirement to avoid redirected impacts and adverse impacts to

fishery protection and with any applicable Federal or State law that protects—

(I) water diversions and use (including avoidance of increased costs of diversion) by in-Delta water users (including in-Delta agricultural users that have historically relied on water diverted for use in the Delta);

(II) water quality for municipal, industrial, agricultural, and other uses; and

(III) water supplies for areas of origin.

(B) NORTH DELTA ACTIONS.—In the case of the North Delta, activities under this subparagraph consist of—

(i) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(ii) evaluation of a screened through-Delta facility on the Sacramento River; and

(iii) evaluation of lower Mokelumne River floodway improvements.

(C) INTERTIES.—Activities under this subparagraph consist of—

(i) evaluation and construction of an intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal, near the City of Tracy, as an operation and maintenance activity, except that the Secretary shall design and construct the intertie in a manner consistent with a possible future expansion of the intertie capacity (as described in subsection (f)(1)(B)); and

(ii) assessment of a connection of the Central Valley Project to the Clifton Court Forebay of the State Water Project, with a corresponding increase in the screened intake of the Forebay.

(D) PROGRAM TO MEET STANDARDS.—

(i) IN GENERAL.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.

(ii) MEASURES.—In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) RECIRCULATION PROGRAM.—The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(iv) BEST MANAGEMENT PRACTICES PLAN.—

(I) IN GENERAL.—The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

(II) COORDINATION WITH INTERESTED PARTIES.—The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) COORDINATION WITH ENTITIES THAT DISCHARGE WATER.—The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into the River, including the timing of discharges to optimize their assimilation.

(v) ACQUISITION OF WATER.—The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

(vi) PURPOSE.—The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.

(vii) UPDATING OF NEW MELONES OPERATING PLAN.—The Secretary shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.

(3) WATER USE EFFICIENCY.—

(A) WATER CONSERVATION PROJECTS.—Activities under this paragraph include water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the California Bay-Delta system.

(B) TECHNICAL ASSISTANCE.—Activities under this paragraph include technical assistance for urban and agricultural water conservation projects.

(C) WATER RECYCLING AND DESALINATION PROJECTS.—Activities under this paragraph include water recycling and desalination projects, including groundwater remediation projects and projects identified in the Bay Area Water Plan and the Southern California Comprehensive Water Reclamation and Reuse Study and other projects, giving priority to projects that include regional solutions to benefit regional water supply and reliability needs.

(D) WATER MEASUREMENT AND TRANSFER ACTIONS.—Activities under this paragraph include water measurement and transfer actions.

(E) URBAN WATER CONSERVATION.—Activities under this paragraph include implementation of best management practices for urban water conservation.

(F) RECLAMATION AND RECYCLING PROJECTS.—

(i) PROJECTS.—This subparagraph applies to—

(I) projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study, dated April 2001 and authorized by section 1606 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-4); and

(II) projects identified in the San Francisco Bay Area Regional Water Recycling Program described in the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan, dated December 1999 and authorized by section 1611 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-9).

(ii) DEADLINE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(I) complete the review of the existing studies of the projects described in clause (i); and

(II) make the feasibility determinations described in clause (iii).

(iii) FEASIBILITY DETERMINATIONS.—A project described in clause (i) is presumed to be feasible if the Secretary determines for the project—

(I) in consultation with the affected local sponsoring agency and the State, that the existing planning and environmental studies for the project (together with supporting materials and documentation) have been prepared consistent with Bureau of Reclamation procedures for projects under consideration for financial assistance under the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.); and

(II) that the planning and environmental studies for the project (together with supporting materials and documentation) demonstrate that the project will contribute to the goals of improving water supply reliability in the Calfed solution area or the Colorado River Basin within the State and otherwise meets the requirements of section 1604 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-2).

(iv) REPORT.—Not later than 90 days after the date of completion of a feasibility study or the review of a feasibility study under this subparagraph, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study or review.

(4) WATER TRANSFERS.—Activities under this paragraph consist of—

(A) increasing the availability of existing facilities for water transfers;

(B) lowering transaction costs through permit streamlining; and

(C) maintaining a water transfer information clearinghouse.

(5) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Activities under this paragraph consist of assisting local and regional communities in the State in developing and implementing integrated regional water management plans to carry out projects and programs that improve water supply reliability, water quality, ecosystem restoration, and flood protection, or meet other local and regional needs, in a manner that is consistent with, and makes a significant contribution to, the Calfed Bay-Delta Program.

(6) ECOSYSTEM RESTORATION.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) implementation of large-scale restoration projects in San Francisco Bay and the Delta and its tributaries;

(ii) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetland and riparian habitat;

(iii) fish screen and fish passage improvement projects, including the Sacramento River Small Diversion Fish Screen Program;

(iv) implementation of an invasive species program, including prevention, control, and eradication;

(v) development and integration of Federal and State agricultural programs that benefit wildlife into the Ecosystem Restoration Program;

(vi) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;

(vii) water quality improvement projects to manage or reduce concentrations of salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;

(viii) land and water acquisitions to improve habitat and fish spawning and survival in the Delta and its tributaries;

(ix) integrated flood management, ecosystem restoration, and levee protection projects;

(x) scientific evaluations and targeted research on Program activities; and

(xi) strategic planning and tracking of Program performance.

(B) **REPORTING REQUIREMENTS.**—The Secretary or the head of the relevant Federal agency (as appropriate under clause (ii)) shall provide to the appropriate authorizing committees of the Senate and the House of Representatives and other appropriate parties in accordance with this subparagraph—

(i) an annual ecosystem program plan report in accordance with subparagraph (C); and

(ii) detailed project reports in accordance with subparagraph (D).

(C) **ANNUAL ECOSYSTEM PROGRAM PLAN.**—

(i) **IN GENERAL.**—Not later than October 1 of each year, with respect to each ecosystem restoration action carried out using Federal funds under this title, the Secretary, in consultation with the Governor, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives an annual ecosystem program plan report.

(ii) **PURPOSES.**—The purposes of the report are—

(I) to describe the projects and programs to implement this subsection in the following fiscal year; and

(II) to establish priorities for funding the projects and programs for subsequent fiscal years.

(iii) **CONTENTS.**—The report shall describe—

(I) the goals and objectives of the programs and projects;

(II) program accomplishments;

(III) major activities of the programs;

(IV) the Federal agencies involved in each project or program identified in the plan and the cost-share arrangements with cooperating agencies;

(V) the resource data and ecological monitoring data to be collected for the restoration projects and how the data are to be integrated, streamlined, and designed to measure the effectiveness and overall trend of ecosystem health in the Bay-Delta watershed;

(VI) implementation schedules and budgets;

(VII) existing monitoring programs and performance measures;

(VIII) the status and effectiveness of measures to minimize the impacts of the program on agricultural land; and

(IX) a description of expected benefits of the restoration program relative to the cost.

(iv) **SPECIAL RULE FOR LAND ACQUISITION USING FEDERAL FUNDS.**—For each ecosystem restoration project involving land acquisition using Federal funds under this title, the Secretary shall—

(I) identify the specific parcels to be acquired in the annual ecosystem program plan report under this subparagraph; or

(II) not later than 150 days before the project is approved, provide to the appropriate authorizing committees of the Senate and the House of Representatives, the United States Senators from the State, and the United States Representative whose district would be affected, notice of any such proposed land acquisition using Federal funds under this title submitted to the Federal or State agency.

(D) **DETAILED PROJECT REPORTS.**—

(i) **IN GENERAL.**—In the case of each ecosystem restoration program or project funded under this title that is not specifically identified in an annual ecosystem program plan under subparagraph (C), not later than 45 days prior to approval, the Secretary, in coordination with the State, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives recommendations on the proposed program or project.

(ii) **CONTENTS.**—The recommendations shall—

(I) describe the selection of the program or project, including the level of public involvement and independent science review;

(II) describe the goals, objectives, and implementation schedule of the program or project, and the extent to which the program or project addresses regional and programmatic goals and priorities;

(III) describe the monitoring plans and performance measures that will be used for evaluating the performance of the proposed program or project;

(IV) identify any cost-sharing arrangements with cooperating entities;

(V) identify how the proposed program or project will comply with all applicable Federal and State laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(VI) in the case of any program or project involving the acquisition of private land using Federal funds under this title—

(aa) describe the process and timing of notification of interested members of the public and local governments;

(bb) describe the measures taken to minimize impacts on agricultural land pursuant to the Record of Decision; and

(cc) include preliminary management plans for all properties to be acquired with Federal funds, including an overview of existing conditions (including habitat types in the affected project area), the expected ecological benefits, preliminary cost estimates, and implementation schedules.

(7) **WATERSHEDS.**—Activities under this paragraph consist of—

(A) building local capacity to assess and manage watersheds affecting the Delta system;

(B) technical assistance for watershed assessments and management plans; and

(C) developing and implementing locally-based watershed conservation, maintenance, and restoration actions.

(8) **WATER QUALITY.**—Activities under this paragraph consist of—

(A) addressing drainage problems in the San Joaquin Valley to improve downstream water quality (including habitat restoration projects that improve water quality) if—

(i) a plan is in place for monitoring downstream water quality improvements; and

(ii) State and local agencies are consulted on the activities to be funded; except that no right, benefit, or privilege is created as a result of this subparagraph;

(B) implementation of source control programs in the Delta and its tributaries;

(C) developing recommendations through scientific panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in Delta water quality for all uses;

(D) investing in treatment technology demonstration projects;

(E) controlling runoff into the California aqueduct, the Delta-Mendota Canal, and other similar conveyances;

(F) addressing water quality problems at the North Bay Aqueduct;

(G) supporting and participating in the development of projects to enable San Francisco Bay Area water districts, and water entities in San Joaquin and Sacramento Counties, to work cooperatively to address their water quality and supply reliability issues, including—

(i) connections between aqueducts, water transfers, water conservation measures, institutional arrangements, and infrastructure improvements that encourage regional approaches; and

(ii) investigations and studies of available capacity in a project to deliver water to the East Bay Municipal Utility District under

its contract with the Bureau of Reclamation, dated July 20, 2001, in order to determine if such capacity can be utilized to meet the objectives of this subparagraph;

(H) development of water quality exchanges and other programs to make high quality water available for urban and other users;

(I) development and implementation of a plan to meet all Delta water quality standards for which the Federal and State water projects have responsibility;

(J) development of recommendations through science panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in water quality for all uses; and

(K) projects that are consistent with the framework of the water quality component of the Calfed Bay-Delta Program.

(9) **SCIENCE.**—Activities under this paragraph consist of—

(A) supporting establishment and maintenance of an independent science board, technical panels, and standing boards to provide oversight and peer review of the Program;

(B) conducting expert evaluations and scientific assessments of all Program elements;

(C) coordinating existing monitoring and scientific research programs;

(D) developing and implementing adaptive management experiments to test, refine, and improve scientific understandings;

(E) establishing performance measures, and monitoring and evaluating the performance of all Program elements; and

(F) preparing an annual science report.

(10) **DIVERSIFICATION OF WATER SUPPLIES.**—Activities under this paragraph consist of actions to diversify sources of level 2 refuge supplies and modes of delivery to refuges while maintaining the diversity of level 4 supplies pursuant to section 3406(d)(2) of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4723).

(e) **NEW AND EXPANDED AUTHORIZATIONS FOR FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The heads of the Federal agencies described in this subsection are authorized to carry out the activities described in subsection (f) during each of fiscal years 2005 through 2010, in coordination with the Governor.

(2) **SECRETARY OF THE INTERIOR.**—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1), (2), and (4) of subsection (f).

(3) **ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARIES OF AGRICULTURE AND COMMERCE.**—The Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the Secretary of Commerce are authorized to carry out the activities described in subsection (f)(4).

(4) **SECRETARY OF THE ARMY.**—The Secretary of the Army is authorized to carry out the activities described in paragraphs (3) and (4) of subsection (f).

(f) **DESCRIPTION OF ACTIVITIES UNDER NEW AND EXPANDED AUTHORIZATIONS.**—

(1) **CONVEYANCE.**—Of the amounts authorized to be appropriated under section 109, not more than \$184,000,000 may be expended for the following:

(A) **SAN LUIS RESERVOIR.**—Funds may be expended for feasibility studies, evaluation, and implementation of the San Luis Reservoir lowpoint improvement project, except that Federal participation in any construction of an expanded Pacheco Reservoir shall be subject to future congressional authorization.

(B) **INTERTIE.**—Funds may be expended for feasibility studies and evaluation of increased capacity of the intertie between the State Water Project California Aqueduct and

the Central Valley Project Delta Mendota Canal.

(C) **FRANKS TRACT.**—Funds may be expended for feasibility studies and actions at Franks Tract to improve water quality in the Delta.

(D) **CLIFTON COURT FOREBAY AND THE TRACY PUMPING PLANT.**—Funds may be expended for feasibility studies and design of fish screen and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities.

(E) **DRINKING WATER INTAKE FACILITIES.**—

(i) **IN GENERAL.**—Funds may be expended for design and construction of the relocation of drinking water intake facilities to in-Delta water users.

(ii) **DRINKING WATER QUALITY.**—The Secretary shall coordinate actions for relocating intake facilities on a time schedule consistent with subsection (d)(2)(A)(i)(I)(bb) or take other actions necessary to offset the degradation of drinking water quality in the Delta due to the South Delta Improvement Program.

(F) **NEW MELONES RESERVOIR.**—

(i) **IN GENERAL.**—In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) **PURPOSE.**—The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) **FUNDING.**—Of the amounts authorized to be appropriated under section 109, not more than \$30,000,000 may be expended to carry out clause (i).

(G) **RECIRCULATION OF EXPORT WATER.**—Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

(2) **ENVIRONMENTAL WATER ACCOUNT.**—

(A) **IN GENERAL.**—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended for implementation of the Environmental Water Account.

(B) **NONREIMBURSABLE FEDERAL EXPENDITURE.**—Expenditures under subparagraph (A) shall be considered a nonreimbursable Federal expenditure in recognition of the payments of the contractors of the Central Valley Project to the Restoration Fund created by the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575; 106 Stat. 4706).

(C) **USE OF RESTORATION FUND.**—

(i) **IN GENERAL.**—Of the amounts appropriated for the Restoration Fund for each fiscal year, an amount not to exceed \$10,000,000 for any fiscal year may be used to implement the Environmental Water Account to the extent those actions are consistent with the fish and wildlife habitat restoration and improvement purposes of the Central Valley Project Improvement Act.

(ii) **ACCOUNTING.**—Any such use of the Restoration Fund shall count toward the 33 percent of funds made available to the Restoration Fund that, pursuant to section 3407(a) of the Central Valley Project Improvement Act, are otherwise authorized to be appropriated to the Secretary to carry out paragraphs (4) through (6), (10) through (18), and

(20) through (22) of section 3406(b) of that Act.

(iii) **FEDERAL FUNDING.**—The \$10,000,000 limitation on the use of the Restoration Fund for the Environmental Water Account under clause (i) does not limit the appropriate amount of Federal funding for the Environmental Water Account.

(3) **LEEVE STABILITY.**—

(A) **IN GENERAL.**—For purposes of implementing the Calfed Bay-Delta Program within the Delta (as defined in Cal. Water Code § 12220), the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

(C) **SMALL FLOOD CONTROL PROJECTS.**—Notwithstanding the project purpose, the authority granted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) shall apply to each project authorized under this paragraph.

(D) **PROJECTS.**—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended to—

(i) reconstruct Delta levees to a base level of protection (also known as the “Public Law 84-99 standard”);

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

(4) **PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.**—

(A) **IN GENERAL.**—Of the amounts authorized to be appropriated under section 109, not more than \$25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

(i) Program support;

(ii) Program-wide tracking of schedules, finances, and performance;

(iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;

(iv) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the bene-

ficiary pays provisions of the Record of Decision;

(v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and

(vi) development of Annual Reports.

(B) **PROGRAM-WIDE ACTIVITIES.**—Of the amount referred to in subparagraph (A), not less than 50 percent of the appropriated amount shall be provided to the California Bay-Delta Authority to carry out Program-wide management, oversight, and coordination activities.

SEC. 104. MANAGEMENT.

(a) **COORDINATION.**—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) **PUBLIC PARTICIPATION.**—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program planning and design, technical assistance, and development of peer review science programs.

(c) **SCIENCE.**—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) **GOVERNANCE.**—

(1) **IN GENERAL.**—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads are authorized to participate as nonvoting members of the California Bay-Delta Authority, as established in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.), to the extent consistent with Federal law, for the full duration of the period the Authority continues to be authorized by State law.

(2) **RELATIONSHIP TO FEDERAL LAW AND AGENCIES.**—Nothing in this subsection shall preempt or otherwise affect any Federal law or limit the statutory authority of any Federal agency.

(3) **CALIFORNIA BAY-DELTA AUTHORITY.**—

(A) **ADVISORY COMMITTEE.**—The California Bay-Delta Authority shall not be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

(B) **FINANCIAL INTEREST.**—The financial interests of the California Bay-Delta Authority shall not be imputed to any Federal official participating in the Authority.

(C) **ETHICS REQUIREMENTS.**—A Federal official participating in the California Bay-Delta Authority shall remain subject to Federal financial disclosure and conflict of interest laws and shall not be subject to State financial disclosure and conflict of interest laws.

(e) **ENVIRONMENTAL JUSTICE.**—The Federal agencies, consistent with Executive Order 12898 (59 Fed. Reg. 7629), should continue to collaborate with State agencies to—

(1) develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program; and

(2) fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan, dated December 13, 2000.

(f) **LAND ACQUISITION.**—Federal funds appropriated by Congress specifically for implementation of the Calfed Bay-Delta Program may be used to acquire fee title to land

only where consistent with the Record of Decision.

SEC. 105. REPORTING REQUIREMENTS.

(a) REPORT.—

(1) IN GENERAL.—Not later than February 15 of each year, the Secretary, in cooperation with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that—

(A) describes the status of implementation of all components of the Calfed Bay-Delta Program;

(B) sets forth any written determination resulting from the review required under subsection (b) or section 103(d)(1)(B); and

(C) includes any revised schedule prepared under subsection (b) or section 103(d)(1)(B)(iii)(II).

(2) CONTENTS.—The report required under paragraph (1) shall describe—

(A) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;

(B) the status of implementation of all components of the Program;

(C) expenditures in the past fiscal year for implementing the Program;

(D) accomplishments during the past fiscal year in achieving the objectives of additional and improved—

(i) water storage;

(ii) water quality, including—

(I) the water quality targets described in section 2.2.9 of the Record of Decision; and

(II) any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets and requirements;

(iii) water use efficiency;

(iv) ecosystem restoration;

(v) watershed management;

(vi) levee system integrity;

(vii) water transfers;

(viii) water conveyance;

(ix) water supply reliability (including new firm yield), including progress in achieving the water supply targets described in section 2.2.4 of the Record of Decision and any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets; and

(x) the uses and assets of the environmental water account described in section 2.2.7 of the Record of Decision;

(E) Program goals, current schedules, and relevant financing agreements, including funding levels necessary to achieve completion of the feasibility studies and environmental documentation for the surface storage projects identified in section 103 by not later than September 30, 2008;

(F) progress on—

(i) storage projects;

(ii) conveyance improvements;

(iii) levee improvements;

(iv) water quality projects; and

(v) water use efficiency programs;

(G) completion of key projects and milestones identified in the Ecosystem Restoration Program, including progress on project effectiveness, monitoring, and accomplishments;

(H) development and implementation of local programs for watershed conservation and restoration;

(I) progress in improving water supply reliability and implementing the Environmental Water Account;

(J) achievement of commitments under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and endangered species law of the State;

(K) implementation of a comprehensive science program;

(L) progress toward acquisition of the Federal and State permits (including permits

under section 404(a) of the Federal Water Pollution Control Act (33 U.S.C. 1344(a))) for implementation of projects in all identified Program areas;

(M) progress in achieving benefits in all geographic regions covered by the Program;

(N) legislative action on—

(i) water transfer;

(ii) groundwater management;

(iii) water use efficiency; and

(iv) governance;

(O) the status of complementary actions;

(P) the status of mitigation measures; and

(Q) revisions to funding commitments and Program responsibilities.

(b) ANNUAL REVIEW OF PROGRESS AND BALANCE.—

(1) IN GENERAL.—Not later than November 15 of each year, the Secretary, in cooperation with the Governor, shall review progress in implementing the Calfed Bay-Delta Program based on—

(A) consistency with the Record of Decision; and

(B) balance in achieving the goals and objectives of the Calfed Bay-Delta Program.

(2) REVISED SCHEDULE.—If, at the conclusion of each such annual review or if a timely annual review is not undertaken, the Secretary or the Governor determines in writing that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, the Secretary and the Governor, in coordination with the Bay-Delta Public Advisory Committee, shall prepare a revised schedule to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the intent of the Record of Decision.

(c) FEASIBILITY STUDIES.—Any feasibility studies completed as a result of this title shall include identification of project benefits and a cost allocation plan consistent with the beneficiaries pay provisions of the Record of Decision.

SEC. 106. CROSSCUT BUDGET.

(a) IN GENERAL.—The President's budget shall include such requests as the President considers necessary and appropriate for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program.

(b) REQUESTS BY FEDERAL AGENCIES.—The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds, in accordance with subsections (b) through (f) of section 103.

(c) REPORT.—Not later than 30 days after submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report certified by the Secretary containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any interagency or intra-agency transfer, for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this title; and

(B) identifies all expenditures since 1998 by the Federal and State governments to achieve the objectives of the Calfed Bay-Delta Program;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and State agencies responsible for implementing the Calfed Bay-Delta Program during the previous fiscal year;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103.

SEC. 107. FEDERAL SHARE OF COSTS.

(a) IN GENERAL.—The Federal share of the cost of implementing the Calfed Bay-Delta Program for fiscal years 2005 through 2010 in the aggregate, as set forth in the Record of Decision, shall not exceed 33.3 percent.

(b) PAYMENT FOR BENEFITS.—The Secretary shall ensure that all beneficiaries, including beneficiaries of environmental restoration and other Calfed program elements, shall pay for the benefit received from all projects or activities carried out under the Calfed Bay-Delta Program.

(c) INTEGRATED RESOURCE PLANNING.—Federal expenditures for the Calfed Bay-Delta Program shall be implemented in a manner that encourages integrated resource planning.

SEC. 108. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this title—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water;

(3) preempts or modifies any State or Federal law or interstate compact governing water quality or disposal;

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource; or

(5) alters or modifies any provision of existing Federal law, except as specifically provided in this title.

SEC. 109. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary and the heads of the Federal agencies to pay the Federal share of the cost of carrying out the new and expanded authorities described in subsections (e) and (f) of section 103 \$389,000,000 for the period of fiscal years 2005 through 2010, to remain available until expended.

TITLE II—MISCELLANEOUS

SEC. 201. SALTON SEA STUDY PROGRAM.

Not later than December 31, 2006, the Secretary of the Interior, in coordination with the State of California and the Salton Sea Authority, shall complete a feasibility study on a preferred alternative for Salton Sea restoration.

SEC. 202. ALDER CREEK WATER STORAGE AND CONSERVATION PROJECT FEASIBILITY STUDY AND REPORT.

(a) STUDY.—Pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), the Secretary of the Interior (referred to in this section as the "Secretary"), through the Bureau of Reclamation, and in consultation and cooperation with the El Dorado Irrigation District, is authorized to conduct a study to determine the feasibility of constructing a project on Alder Creek in El Dorado County, California, to store water and provide water supplies during dry and critically dry years for consumptive use, recreation, in-stream flows, irrigation, and power production.

(b) REPORT.—

(1) TRANSMISSION.—On completion of the study authorized by subsection (a), the Secretary shall transmit to the Committee on

Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the results of the study.

(2) **CONTENTS OF REPORT.**—The report shall contain appropriate cost sharing options for the implementation of the project based on the use and possible allocation of any stored water.

(3) **USE OF AVAILABLE MATERIALS.**—In developing the report under this section, the Secretary shall use reports and any other relevant information supplied by the El Dorado Irrigation District.

(c) **COST SHARE.**—

(1) **FEDERAL SHARE.**—The Federal share of the costs of the feasibility study authorized by this section shall not exceed 50 percent of the total cost of the study.

(2) **IN-KIND CONTRIBUTION FOR NON-FEDERAL SHARE.**—The Secretary may accept as part of the non-Federal cost share the contribution such in-kind services by the El Dorado Irrigation District as the Secretary determines will contribute to the conduct and completion of the study.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$3,000,000.

SEC. 203. FOLSOM RESERVOIR TEMPERATURE CONTROL DEVICE AUTHORIZATION.

Section 1(c) of Public Law 105-295 (112 Stat. 2820) (as amended by section 219(b) of Public Law 108-137 (117 Stat. 1853)) is amended in the second sentence by striking “\$3,500,000” and inserting “\$6,250,000”.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Commerce, Science, and Transportation Committee be authorized to meet on Wednesday, September 15, 2004, at 10 a.m., on “Impacts of Climate Change.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, September 15 at 9:30 a.m., to consider pending calendar business.

Agenda Item 1: S. Con. Res. 121—A concurrent resolution supporting the goals and ideals of the World Year of Physics.

Agenda Item 2: S. 437—A bill to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes.

Agenda Item 3: S. 511—A bill to provide permanent funding for the Payment in Lieu of Taxes program, and for other purposes.

Agenda Item 7: S. 1064—A bill to establish a commission to commemorate the sesquicentennial of the American Civil War, and for other purposes.

Agenda Item 9: S. 1354—A bill to resolve certain conveyances and provide for alternative land selections under

the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

Agenda Item 12: S. 1462—A bill to adjust the boundary of the Cumberland Island Wilderness, to authorize tours of the Cumberland Island National Seashore, and for other purposes.

Agenda Item 13: S. 1466—A bill to facilitate the transfer of land in the State of Alaska, and for other purposes.

Agenda Item 14: S. 1614—A bill to designate a portion of White Salmon River as a component of the National Wild and Scenic Rivers System.

Agenda Item 15: S. 1649—A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

Agenda Item 16: S. 1678—A bill to provide for the establishment of the Uintah Research and Curatorial Center for Dinosaur National Monument in the States of Colorado and Utah, and for other purposes.

Agenda Item 17: S. 1852—A bill to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin.

Agenda Item 18: S. 1876—A bill to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project.

Agenda Item 19: S. 2086—A bill to amend the Surface Mining Control and Reclamation Act of 1977 to improve the reclamation of abandoned mines.

Agenda Item 20: S. 2142—A bill to authorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes.

Agenda Item 21: S. 2181—A bill to adjust the boundary of Rocky Mountain National Park in the State of Colorado.

Agenda Item 23: S. 2334—A bill to designate certain National Forest System land in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System.

Agenda Item 24: S. 2374—A bill to provide for the conveyance of certain lands to the United States and to revise the boundary of Chickasaw National Recreation Area, Oklahoma, and for other purposes.

Agenda Item 25: S. 2408—A bill to adjust the boundaries of the Helena, Lolo, and Beaverhead-Deerlodge National Forests in the State of Montana.

Agenda Item 26: S. 2432—A bill to expand the boundaries of Wilson's Creek Battlefield National Park, and for other purposes.

Agenda Item 27: S. 2567—A bill to adjust the boundary of Redwood National Park in the State of California.

Agenda Item 28: S. 2622—A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historic Park in the State of New Mexico.

Agenda Item 31: H.R. 1113—To authorize an exchange of land at Fort Frederica National Monument, and for other purposes.

Agenda Item 32: H.R. 1446—To support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

Agenda Item 33: H.R. 1964—To assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region, and for other purposes.

Agenda Item 34: H.R. 2010—To protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes.

Agenda Item 35: H.R. 3706—To adjust the boundary of the John Muir National Historic site, and for other purposes.

Agenda Item 36: H.R. 4516—To require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

In addition, the committee may turn to any other measures that are ready for consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open executive session during the session on September 15, 2004, at 10 a.m., to consider favorably reporting S. 333, a bill to promote elder justice, and the nomination of Joey Russell George, to be Treasury Inspector General for Tax Administration, U.S. Department of Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 15, 2004, at 9:30 a.m., to hold a hearing on “Accelerating U.S. Assistance to Iraq.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, September 15, 2004, at 10 a.m., in room 485 of the Russell Senate Office Building to conduct a business meeting on pending committee matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent that Stephen