

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4657

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2002

Mrs. NAPOLITANO (for herself and Mrs. TAUSCHER) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Calfed Bay-Delta Au-  
5       thorization Act”.

6       **SEC. 2. DEFINITIONS.**

7       For purposes of this Act:

1           (1) CALFED BAY-DELTA PROGRAM.—The term  
2           “Calfed Bay-Delta Program” means the programs,  
3           projects, complementary actions, and activities un-  
4           dertaken through coordinated planning, implementa-  
5           tion, and assessment activities of the State and Fed-  
6           eral agencies in a manner consistent with the Record  
7           of Decision.

8           (2) CALFED POLICY GROUP.—The term “Calfed  
9           Policy Group” means a committee of State and Fed-  
10          eral agencies established in the Record of Decision  
11          to oversee the Calfed Bay-Delta Program, or the ap-  
12          propriate successor entity created as part of any per-  
13          manent governing structure pursuant to section  
14          4(d).

15          (3) ENVIRONMENTAL WATER ACCOUNT.—The  
16          term “Environmental Water Account” means the re-  
17          serve of water provided for in the Record of Decision  
18          to provide water, in addition to the amount of the  
19          regulatory baseline, to protect and restore Delta  
20          fisheries.

21          (4) FEDERAL AGENCIES.—The term “Federal  
22          agencies” means the following:

23                  (A) The Department of the Interior (in-  
24                  cluding the Bureau of Reclamation, Fish and

1 Wildlife Service, Bureau of Land Management,  
2 and United States Geological Survey);

3 (B) The Environmental Protection Agency;

4 (C) The Army Corps of Engineers;

5 (D) The Department of Commerce (includ-  
6 ing the National Marine Fisheries Service);

7 (E) The Department of Agriculture (in-  
8 cluding the Natural Resources Conservation  
9 Service and the Forest Service); and

10 (F) The Western Area Power Administra-  
11 tion.

12 (5) GOVERNOR.—The term “Governor” means  
13 the Governor of the State of California.

14 (6) IMPLEMENTATION MEMORANDUM.—The  
15 term “Implementation Memorandum” means the  
16 Calfed Bay-Delta Program Implementation Memo-  
17 randum of Understanding dated August 28, 2000,  
18 executed by the Federal agencies and the State  
19 agencies.

20 (7) RECORD OF DECISION.—The term “Record  
21 of Decision” means the Federal programmatic  
22 Record of Decision dated August 28, 2000, issued  
23 by the Federal agencies and supported by the State.

24 (8) SECRETARY.—The term “Secretary” means  
25 the Secretary of the Interior.

1           (9) STAGE 1.—The term “Stage 1” means the  
2 programs and projects planned for the first 7 years  
3 of the Calfed Bay-Delta Program, as specified in the  
4 Record of Decision.

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

7           (11) STATE AGENCIES.—The term “State agen-  
8 cies” means the following:

9                   (A) The Resources Agency of California  
10                   (including the Department of Water Resources  
11                   and the Department of Fish and Game);

12                   (B) The California Environmental Protec-  
13                   tion Agency (including the State Water Re-  
14                   sources Control Board); and

15                   (C) The California Department of Food  
16                   and Agriculture.

17 **SEC. 3. BAY-DELTA PROGRAM.**

18           (a) IN GENERAL.—The Record of Decision is ap-  
19 proved as a framework for addressing Calfed Bay-Delta  
20 Program components consisting of water storage, eco-  
21 system restoration, water supply reliability, conveyance,  
22 water use efficiency, water quality, water transfers, water-  
23 sheds, Environmental Water Account, levee stability, gov-  
24 ernance, and science. The Secretary, working with the  
25 Federal agency heads, as appropriate, shall undertake ac-

1 tions pursuant to the Record of Decision, subject to the  
2 provisions of this Act, so that the program goals consisting  
3 of: protecting drinking water quality; restoring ecological  
4 health; improving water supply reliability, including water  
5 storage and conveyance; and protecting Delta levees; will  
6 progress in a balanced manner.

7 (b) AUTHORIZED ACTIONS.—The Secretary is au-  
8 thorized to take such actions, subject to the provisions of  
9 this Act, as may be necessary to implement Stage 1 of  
10 the Record of Decision if the activity has been subject to  
11 environmental review and approval as required under ap-  
12 plicable Federal and State law (including regulations); and  
13 has been certified by the Calfed Policy Group to be con-  
14 sistent with the Record of Decision.

15 (c) CONSTRUCTION AND ACQUISITION.—Any project  
16 with the Federal share of construction costs in excess of  
17 \$10 million to be constructed as part of the Calfed Bay-  
18 Delta Program, including an enlarged Los Vaqueros Res-  
19 ervoir, an enlarged Shasta Dam, and in-Delta storage, and  
20 any acquisition in which the total Federal share is in ex-  
21 cess of \$10 million for land or for assets for the Environ-  
22 mental Water Account as part of the Calfed Bay-Delta  
23 Program, shall require specific authorization by an Act of  
24 Congress, in accordance with section 6.

1 **SEC. 4. MANAGEMENT.**

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

5 (b) PUBLIC PARTICIPATION.—In carrying out the  
6 Calfed Bay-Delta Program, the Federal agencies shall co-  
7 operate with local and tribal governments and the public  
8 through a federally chartered advisory committee or other  
9 appropriate means, to seek input on program elements  
10 such as planning, design, technical assistance, and devel-  
11 opment of peer review science programs.

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

15 (1) all major aspects of implementing the Pro-  
16 gram are subjected to credible and objective sci-  
17 entific review; and

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

20 (d) GOVERNANCE.—In carrying out the Calfed Bay-  
21 Delta Program, the Secretary and the Federal agency  
22 heads shall undertake their activities in accordance with  
23 the terms of the Implementation Memorandum until such  
24 time as the Implementation Memorandum is replaced by  
25 a permanent governing structure, whereupon the Sec-  
26 retary and agency heads shall undertake their activities

1 in accordance with the permanent governing structure.  
2 The Secretary and the Federal agency heads shall work  
3 with their State counterparts to develop a permanent gov-  
4 erning structure and shall seek authorization and approval  
5 of the permanent governing structure, as necessary.

6 **SEC. 5. REPORTING REQUIREMENTS.**

7 (a) REPORT AND CERTIFICATION.—The Secretary, in  
8 cooperation with the Governor, shall submit a report of  
9 the Calfed Policy Group by December 15 of each year to  
10 the appropriate authorizing and appropriating Committees  
11 of the Senate and the House of Representatives that de-  
12 scribes the status of implementation of all components of  
13 the Calfed Bay-Delta Program and that certifies that the  
14 Calfed Bay-Delta Program is progressing in a balanced  
15 manner with respect to all program components, including  
16 water supply, ecosystem restoration, and water quality.  
17 The Secretary's report shall describe—

18 (1) the progress of the Calfed Bay-Delta Pro-  
19 gram in meeting the implementation schedule for the  
20 Program in a manner consistent with the Record of  
21 Decision;

22 (2) the status of implementation of all compo-  
23 nents of the Calfed Bay-Delta Program;

1           (3) expenditures in the past fiscal year and year  
2           to date for implementing the Calfed Bay-Delta Pro-  
3           gram; and

4           (4) accomplishments in the past fiscal year and  
5           year to date in achieving the objectives of  
6           improved—

7                   (A) water storage;

8                   (B) water quality;

9                   (C) water use efficiency;

10                  (D) ecosystem restoration;

11                  (E) watershed management;

12                  (F) levee system integrity;

13                  (G) water transfers;

14                  (H) water conveyances; and

15                  (I) water supply reliability.

16 The report shall discuss the status of Calfed Bay-Delta  
17 Program goals, current schedules, and relevant financing  
18 agreements. Each of the above-listed categories must be  
19 considered in determining whether the Program is pro-  
20 ceeding in a balanced manner.

21           (b) REVISED SCHEDULE.—If the report provided for  
22 in subsection (a) concludes that the Calfed Bay-Delta Pro-  
23 gram is not progressing in a balanced manner so that no  
24 certification of balanced implementation can be made, the  
25 Calfed Policy Group shall prepare a revised schedule and



1 such other modifications, to ensure the Calfed Bay-Delta  
2 Program will progress in a balanced manner consistent  
3 with the intent of the Record of Decision. This revised  
4 schedule is subject to approval by the Secretary and the  
5 Governor and shall be submitted to the appropriate au-  
6 thorizing and appropriating Committees of the Senate and  
7 the House of Representatives.

8 (c) FINANCIAL SUMMARY.—In addition to the report  
9 required pursuant to subsection (a), no later than Feb-  
10 ruary 15 of each year the Secretary shall submit to the  
11 appropriate authorizing and appropriating committees of  
12 the Senate and the House of Representatives a financial  
13 report containing a detailed accounting of all funds re-  
14 ceived by Federal and State agencies for implementing the  
15 Plan in the previous fiscal year budget and a budget for  
16 the proposed projects to be carried out in the upcoming  
17 fiscal year with the Federal portion of funds authorized  
18 under this Act.

19 (d) CROSSCUT BUDGET REPORTS.—Not later than  
20 February 15, 2003, and annually thereafter through Feb-  
21 ruary 15, 2008, the Director of the Office of Management  
22 and Budget shall submit to the appropriate authorizing  
23 and appropriating committees of the Senate and the  
24 House of Representatives an inter-agency budget crosscut  
25 report that—

1           (1) displays the proposed Federal spending, for  
2           the fiscal year in which the report is submitted and  
3           for each subsequent fiscal year through 2007, on im-  
4           plementation of the Calfed Bay-Delta Program; and

5           (2) identifies all expenditures to date within the  
6           Federal and State governments used to achieve the  
7           objectives of the Calfed Bay-Delta Program.

8 **SEC. 6. AUTHORIZATION REQUIREMENTS FOR CERTAIN**  
9                               **CONSTRUCTION AND ACQUISITION ACTIVI-**  
10                              **TIES.**

11           (a) CONSTRUCTION AND ACQUISITION ACTIVITIES.—  
12           The process for authorizing appropriations to pay the  
13           Federal share of the costs of acquisition of land and assets  
14           for the Environmental Water Account as part of the  
15           Calfed Bay-Delta Program, where such share exceeds \$10  
16           million, and the process for authorizing the construction  
17           of projects as part of the Calfed Bay-Delta Program,  
18           where the Federal share of such costs exceeds \$10 million,  
19           shall be as follows:

20           (1) REPORT.—Every odd-numbered year after  
21           the date of enactment of this Act, at the same time  
22           the Secretary submits the report described in section  
23           5(a), the Calfed Policy Group, acting through the  
24           Secretary, shall submit to the appropriate author-  
25           izing and appropriating Committees a report cov-

1 ering the next two fiscal years setting forth the list  
2 of projects and other actions that are proposed for  
3 construction or acquisition and a listing of proposed  
4 acquisition for the Environmental Water Account, as  
5 described in section 6(a). The Calfed Policy Group  
6 and the Secretary shall certify that implementation  
7 of the Calfed Bay-Delta Program in the manner set  
8 forth in the report will result in balanced implemen-  
9 tation in all Calfed Bay-Delta Program areas.

10 (2) AUTHORIZATION REQUIRED.—No amounts  
11 may be appropriated for any fiscal year for any  
12 project or acquisition in which the total Federal  
13 share is in excess of \$10 million for construction,  
14 land acquisition, or acquisition of assets for the En-  
15 vironmental Water Account, unless the project or ac-  
16 quisition has been specifically authorized by law.

17 (3) INTENT OF CONGRESS.—It is the intent of  
18 Congress that the authorizations and appropriations  
19 for implementation of the Calfed Bay-Delta Program  
20 shall promote and carry out the fundamental prin-  
21 ciple that the Calfed Bay-Delta Program compo-  
22 nents, consisting of water storage, ecosystem res-  
23 toration, water supply reliability, conveyance, water  
24 use efficiency, water quality, water transfers, water-  
25 sheds, Environmental Water Account, levee stability,

1 governance, and science, must progress together in  
2 a balanced manner.

3 (4) FAILURE TO AUTHORIZE OR FUND.—If the  
4 Congress, through the authorization and appropria-  
5 tion process amends, or fails to authorize or fund,  
6 the projects or acquisitions included in a report sub-  
7 mitted pursuant to subsection (a)(1), the Secretary  
8 shall, in consultation with the Calfed Policy Group,  
9 redetermine whether implementation of the projects  
10 and acquisitions, as authorized or funded, respec-  
11 tively, by the Congress will maintain balanced imple-  
12 mentation in all Calfed Bay-Delta Program areas. If  
13 the Secretary finds that implementation of such  
14 projects or acquisitions, as so authorized or funded  
15 by the Congress, will not maintain balanced imple-  
16 mentation in all Program areas, the Secretary shall  
17 report to the Congress the finding as part of the re-  
18 port required under section 5(a) and recommend  
19 those steps needed to restore balance to the imple-  
20 mentation process, as part of the revised schedule  
21 required under section 5(b).

22 (b) RECOMMENDATIONS AND REPORTS.—

23 (1) RECOMMENDATIONS REGARDING SPECIFIC  
24 ACTIONS.—The Calfed Policy Group, through the  
25 Secretary, shall include in the report under sub-

1 section (a) of this section recommendations with re-  
2 spect to construction projects (including for surface  
3 storage and groundwater storage) that would im-  
4 prove water supply reliability and water quality and  
5 recommendations with respect to acquisition of land  
6 and assets for the Environmental Water Account  
7 that would achieve Program goals.

8 (2) REPORTS ON CONSTRUCTION PROJECTS.—

9 With respect to construction projects with the Fed-  
10 eral share of costs in excess of \$10 million, the Sec-  
11 retary, acting in cooperation with the Governor,  
12 shall transmit to the appropriate authorizing and  
13 appropriating committees of the Senate and the  
14 House of Representatives the reports of the Calfed  
15 Policy Group regarding such construction projects in  
16 accordance with the time frames set forth in the  
17 Record of Decision or such other time frames as  
18 may be approved by the Calfed Policy Group. Such  
19 reports shall include—

20 (A) a project description;

21 (B) feasibility and operational studies com-  
22 pleted by the Secretary or the Governor, as ap-  
23 propriate;

24 (C) environmental impact statements or re-  
25 ports;

1 (D) a finding of consistency with the  
2 record of decision as determined by the Calfed  
3 Policy Group;

4 (E) findings of the Independent Science  
5 Panel relative to the consistency of the Calfed  
6 Bay-Delta Program goals;

7 (F) cost-benefit analysis;

8 (G) a plan for fulfilling mitigation require-  
9 ments;

10 (H) identification of project benefits and  
11 beneficiaries;

12 (I) cost allocation plan consistent with the  
13 beneficiaries pay provisions of the Record of  
14 Decision;

15 (J) financing and repayment plans based  
16 upon commitments by beneficiaries that they  
17 are willing and able to pay their allocated  
18 share;

19 (K) progress in the acquisition of the Fed-  
20 eral and State permits including permits under  
21 section 404(a) of the Federal Water Pollution  
22 Control Act (33 U.S.C. 1344) for implementa-  
23 tion of projects in all identified program areas;  
24 and

1           (L) a recommendation, based on the re-  
2           sults of items (A) through (K) above, on wheth-  
3           er to proceed with the project.

4 **SEC. 7. ENVIRONMENTAL JUSTICE.**

5           It is the intent of the Congress that—

6           (1) implementation of the Calfed Bay-Delta  
7           Program by the Federal agencies and State agencies  
8           should fulfill the commitment to addressing environ-  
9           mental justice challenges referred to in the Calfed  
10          Bay-Delta Program Environmental Justice  
11          Workplan dated December 13, 2000;

12          (2) the Federal agencies and State agencies  
13          should continue to collaborate to develop a com-  
14          prehensive environmental justice workplan for the  
15          Calfed Bay-Delta Program, including through con-  
16          tinuation of the functions of the Calfed Bay-Delta  
17          Environmental Justice Workgroup; and

18          (3) the Calfed Policy Group should collaborate  
19          with such workgroup to ensure fulfillment of the  
20          commitment referred to in paragraph (a).

21 **SEC. 8. GRANTS TO FEDERAL AGENCIES FOR IMPLEMENTA-**  
22 **TION OF RECORD OF DECISION.**

23          The Secretary may, through interagency agreements  
24          or other means, transfer funds appropriated to the Calfed  
25          Bay-Delta Program to the Federal agencies assuming re-

1 sponsibility for the implementation of components of the  
2 Califed Bay-Delta Program pursuant to the Record of De-  
3 cision.

4 **SEC. 9. AUTHORIZATION OF WATER RECYCLING AND DE-**  
5 **SALINATION STUDIES AND PROJECTS.**

6 (a) PROJECTS.—The Secretary of the Interior shall  
7 provide financial assistance for the planning, design, and  
8 construction of the projects determined to be feasible by  
9 the Bureau of Reclamation in—

10 (1) the Southern California Comprehensive  
11 Water Reclamation and Reuse Study, dated April  
12 2001 and authorized by section 1606 of the Rec-  
13 lamation Wastewater and Groundwater Study and  
14 Facilities Act (43 U.S.C. 390h–4); and

15 (2) the San Francisco Bay Area Regional  
16 Water Recycling Program described in the San  
17 Francisco Bay Area Regional Water Recycling Pro-  
18 gram Recycled Water Master Plan, dated December  
19 1999 and authorized by section 1611 of the Rec-  
20 lamation Wastewater and Groundwater Study and  
21 Facilities Act (43 U.S.C. 390h–9).

22 (b) STUDIES.—

23 (1) IN GENERAL.—The Secretary shall assist  
24 the State of California and local water agencies in  
25 California in the preparation of necessary studies of



1 water recycling, reclamation, reuse and desalination  
2 projects to—

3 (A) ensure a long term, high quality, safe,  
4 and adequate supply of municipal water to the  
5 residents of California;

6 (B) reduce regional dependence on less re-  
7 liable water supplies, including southern Cali-  
8 fornia's dependence on water from northern  
9 California; and

10 (C) assist the State of California in lim-  
11 iting its annual use of Colorado River water,  
12 starting in 2016, to no more than 4,400,000  
13 acre-feet per year in normal years.

14 (2) INCLUDED PROJECTS.—Projects with re-  
15 spect to which assistance is provided under this sub-  
16 section may include—

17 (A) desalination of sea water and brackish  
18 water supplies;

19 (B) recycling, reclamation, and reuse of  
20 water supplies impaired by natural causes or  
21 human activities; and

22 (C) construction of regional brine lines.

23 (3) PRIORITY PROJECTS.—The Secretary  
24 shall—

1 (A) in providing financial assistance under  
2 this subsection, give priority consideration to  
3 projects that include regional solutions to ben-  
4 efit regional water supply and reliability needs;  
5 and

6 (B) review any feasibility level studies for  
7 seawater desalination and regional brine line  
8 projects that have been completed, whether or  
9 not those studies were prepared with financial  
10 assistance from the Secretary; and

11 (C) report to the Congress within 90 days  
12 after the completion of a feasibility study or the  
13 review of a feasibility study for the purposes of  
14 providing design and construction assistance for  
15 the construction of desalination and regional  
16 brine line projects.

17 (c) FEDERAL COST SHARE.—The Federal share of  
18 the cost of any activity carried out with assistance under  
19 this section may not exceed the lesser of 25 percent of  
20 the total cost of the activity or \$50,000,000.

21 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

22 To pay the Federal share of the cost of carrying out  
23 Stage 1 of the Record of Decision in accordance with this  
24 Act, there are authorized to be appropriated to the Sec-  
25 retary \$2,402,000,000 for fiscal years 2003 through 2007.

1 Amounts appropriated under this subsection shall remain  
2 available until expended.

3 **SEC. 11. COMPLIANCE WITH STATE AND FEDERAL LAW.**

4       Nothing in this Act preempts or otherwise affects any  
5 Federal or State law.

