

108TH CONGRESS
1ST SESSION

H. R. 2641

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2003

Mr. GEORGE MILLER of California (for himself 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

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) CALIFORNIA BAY-DELTA AUTHORITY.—The
9 term “California Bay-Delta Authority” means a
10 committee of State and Federal agencies and public
11 members established to oversee the Calfed Bay-Delta
12 Program, as set forth in the California Bay-Delta
13 Authority Act (2002 Cal. Stat. Chap. 812).

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

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

22 (A) the Department of the Interior (includ-
23 ing the Bureau of Reclamation, Fish and Wild-
24 life Service, Bureau of Land Management, and
25 United States Geological Survey),

1 (B) the Environmental Protection Agency;

2 (C) the Army Corps of Engineers;

3 (D) the Department of Commerce (includ-
4 ing NOAA Fisheries);

5 (E) the Department of Agriculture (includ-
6 ing the Natural Resources Conservation Service
7 and the Forest Service); and

8 (F) the Western Area Power Administra-
9 tion.

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

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

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

22 (8) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

24 (9) STAGE 1.—The term “Stage 1” means the
25 programs and projects planned for the first 7 years

1 of the Calfed Bay-Delta Program, as specified in the
2 Record of Decision.

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

5 (11) STATE AGENCIES.—The term “State
6 Agencies” means the following—

7 (A) the Resources Agency of California
8 (including the Department of Water Resources
9 and the Department of Fish and Game);

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

13 (C) the California Department of Food
14 and Agriculture.

15 **SEC. 3. BAY DELTA PROGRAM.**

16 (a) FINDINGS.—Congress finds that—

17 (1) the mission of the Calfed Bay-Delta Pro-
18 gram is to develop and implement to a long-term
19 comprehensive plan that will improve water manage-
20 ment and restore the ecological health of the Bay-
21 Delta system;

22 (2) the Federal and State agencies participating
23 in the Bay-Delta Program have prepared a thirty-
24 year plan, the Record of Decision, dated August 28,
25 2000, to coordinate existing programs and direct

1 new programs to improve the quality and reliability
2 of the State's water supplies and to restore the eco-
3 logical health of the Bay-Delta watershed;

4 (3) the Calfed Bay-Delta Program was devel-
5 oped as a joint Federal-State program to deal effec-
6 tively with the multijurisdictional issues involved in
7 managing the Bay-Delta system; and

8 (4) while this Act authorizes appropriations for
9 four years of this thirty-year program, it is antici-
10 pated that the Federal Government will participate
11 as a full partner with the State of California for the
12 duration of this thirty-year Program.

13 (b) IN GENERAL.—The Record of Decision is ap-
14 proved as a framework for addressing Calfed Bay-Delta
15 Program components consisting of water storage, eco-
16 system restoration, water supply reliability, conveyance,
17 water use efficiency, water quality, water transfers, water-
18 sheds, Environmental Water Account, levee stability, gov-
19 ernance, and science. The Secretary and the heads of the
20 Federal agencies are authorized to carry out (undertake,
21 fund, or participate in) the activities in the Record of De-
22 cision, subject to the provisions of this Act and the con-
23 straints of the Record of Decision, so that the Program
24 activities consisting of protecting drinking water quality;
25 restoring ecological health; improving water supply reli-

1 ability, including additional water storage and conveyance,
2 and protecting Delta levees will progress in a balanced
3 manner, as set forth in section 5(b) of this Act.

4 (c) AUTHORIZED ACTIVITIES.—

5 (1) IN GENERAL.—The Secretary and the heads
6 of the Federal agencies are authorized to carry out
7 the activities described in this subsection in further-
8 ance of Stage 1 of the Calfed Bay-Delta Program as
9 set forth in the Record of Decision, subject to the
10 cost-share and other provisions of this Act, if the ac-
11 tivity has been subject to environmental review and
12 approval as required under applicable Federal and
13 State law, and has been approved and certified by
14 the California Bay-Delta Authority to be consistent
15 with the Record of Decision and all applicable State
16 and Federal law.

17 (2) SPECIFIC ACTIVITIES AUTHORIZED.—The
18 Secretary of the Interior is authorized to carry out
19 the activities set forth in subparagraphs (A) through
20 (H), and subparagraphs (K), (L), and (M) of sub-
21 section (c)(3). The Administrator of the Environ-
22 mental Protection Agency is authorized to carry out
23 the activities set forth in subparagraphs (G), (H),
24 (I), (K), and (L) of subsection (c)(3). The Secretary
25 of the Army is authorized to carry out the activities

1 set forth in subparagraphs (G), (J), (K), and (L) of
2 subsection (c)(3). The Secretary of Commerce is au-
3 thorized to carry out the activities set forth in sub-
4 paragraphs (E), (G), (H), and (K) of subsection
5 (c)(3). The Secretary of Agriculture is authorized to
6 carry out the activities set forth in subparagraphs
7 (C), (G), (H), (I), and (K) of subsection (c)(3).

8 (3) PROGRAM ACTIVITIES.—

9 (A) WATER STORAGE.—Of the amounts
10 authorized to be appropriated for fiscal years
11 2004 through 2007 under this Act, no more
12 than \$102,000,000 may be expended for the
13 following—

14 (i) planning activities and feasibility
15 studies for the following projects to be pur-
16 sued with project-specific study—

17 (I) enlargement of Shasta Dam
18 in Shasta County (not to exceed
19 \$12,000,000); and

20 (II) enlargement of Los Vaqueros
21 Reservoir in Contra Costa County
22 (not to exceed \$17,000,000);

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

1 (I) Sites Reservoir in Colusa
2 County (not to exceed \$6,000,000);
3 and

4 (II) Upper San Joaquin River
5 storage in Fresno and Madera Coun-
6 ties (not to exceed \$11,000,000);

7 (iii) developing and implementing
8 groundwater management and ground-
9 water storage projects (not to exceed
10 \$50,000,000); and

11 (iv) comprehensive water management
12 planning (not to exceed \$6,000,000).

13 (B) CONVEYANCE.—Of the amounts au-
14 thorized to be appropriated for fiscal years
15 2004 through 2007 under this Act, no more
16 than \$77,000,000 may be expended for the fol-
17 lowing—

18 (i) South Delta Actions (not to exceed
19 \$45,000,000)—

20 (I) South Delta Improvements
21 Program to—

22 (aa) increase the State
23 Water Project export limit to
24 8,500 cfs; such increased pump-
25 ing is conditional upon avoiding

1 adverse impacts to fishery protec-
2 tion and in-Delta water supply
3 reliability;

4 (bb) install permanent, oper-
5 able barriers in the south Delta;

6 (cc) design and construct
7 fish screens and intake facilities
8 at Clifton Court Forebay and the
9 Tracy Pumping Plant facilities;
10 and

11 (dd) increase the State
12 Water Project export to the max-
13 imum capability of 10,300 cfs;
14 such increased pumping is condi-
15 tional upon avoiding adverse im-
16 pacts to fishery protection and
17 in-Delta water supply reliability;

18 (II) reduction of agricultural
19 drainage in south Delta channels and
20 other actions necessary to minimize
21 impacts of such drainage on drinking
22 water quality;

23 (III) design and construction of
24 lower San Joaquin River floodway im-
25 provements;

1 (IV) installation and operation of
2 temporary barriers in the south Delta
3 until fully operable barriers are con-
4 structed;

5 (V) actions to protect navigation
6 and local diversions not adequately
7 protected by the temporary barriers;

8 (VI) actions identified in sub-
9 clause (I) or other actions necessary
10 to offset degradation of drinking
11 water quality in the Delta due to the
12 South Delta Improvements Program;
13 and

14 (VII) actions at Franks Tract to
15 improve water quality in the Delta;

16 (ii) North Delta Actions (not to ex-
17 ceed \$12,000,000)—

18 (I) evaluation and implementa-
19 tion of improved operational proce-
20 dures for the Delta Cross Channel to
21 address fishery and water quality con-
22 cerns;

23 (II) evaluation of a screened
24 through-Delta facility on the Sac-
25 ramento River, including full consider-

1 ation of the constraints identified in
2 the Record of Decision regarding
3 Delta Cross Channel operations strat-
4 egies, water quality impacts, technical
5 viability, and fishery concerns; and

6 (III) design and construction of
7 lower Mokelumne River floodway im-
8 provements;

9 (iii) interties (not to exceed
10 \$10,000,000)—

11 (I) evaluation and construction of
12 an intertie between the State Water
13 Project and the Central Valley Project
14 facilities at or near the City of Tracy;
15 and

16 (II) assessment of the connection
17 of the Central Valley Project to the
18 State Water Project's Clifton Court
19 Forebay with a corresponding increase
20 in the Forebay's screened intake; and

21 (iv) evaluation and implementation of
22 the San Luis Reservoir lowpoint improve-
23 ment project (not to exceed \$10,000,000);

24 (C) WATER USE EFFICIENCY.—Of the
25 amounts authorized to be appropriated for fis-

1 cal years 2004 through 2007 under this Act, no
2 more than \$153,000,000 may be expended for
3 the following—

4 (i) water conservation projects that
5 provide water supply reliability, water
6 quality, and ecosystem benefits to the Bay-
7 Delta system (not to exceed \$61,000,000);

8 (ii) technical assistance for urban and
9 agricultural water conservation projects
10 (not to exceed \$5,000,000);

11 (iii) water recycling and desalination
12 projects, including but not limited to
13 projects identified in the Bay Area Water
14 Plan and the Southern California Com-
15 prehensive Water Reclamation and Reuse
16 Study (not to exceed \$84,000,000), as fol-
17 lows—

18 (I) in providing financial assist-
19 ance under this clause, the Secretary
20 shall give priority consideration to
21 projects that include regional solu-
22 tions to benefit regional water supply
23 and reliability needs;

24 (II) the Secretary shall review
25 any feasibility level studies for sea-

1 water desalination and regional brine
2 line projects that have been com-
3 pleted, whether or not those studies
4 were prepared with financial assist-
5 ance from the Secretary;

6 (III) the Secretary shall report to
7 the Congress within 90 days after the
8 completion of a feasibility study or the
9 review of a feasibility study for the
10 purposes of providing design and con-
11 struction assistance for the construc-
12 tion of desalination and regional brine
13 line projects; and

14 (IV) the Federal share of the
15 cost of any activity carried out with
16 assistance under this clause may not
17 exceed the lesser of 25 percent of the
18 total cost of the activity or
19 \$50,000,000;

20 (iv) water measurement and transfer
21 actions (not to exceed \$1,500,000); and

22 (v) certification of implementation of
23 best management practices for urban
24 water conservation (not to exceed
25 \$1,500,000).

1 (D) WATER TRANSFERS.—Of the amounts
2 authorized to be appropriated for fiscal years
3 2004 through 2007 under this Act, no more
4 than \$3,000,000 may be expended for the fol-
5 lowing—

6 (i) increasing the availability of exist-
7 ing facilities for water transfers;

8 (ii) lowering transaction costs through
9 permit streamlining; and

10 (iii) maintaining a water transfer in-
11 formation clearinghouse.

12 (E) ENVIRONMENTAL WATER ACCOUNT.—
13 Of the amounts authorized to be appropriated
14 for fiscal years 2004 through 2007 under this
15 act, no more than \$75,000,000 may be ex-
16 pended for implementation of the Environ-
17 mental Water Account.

18 (F) INTEGRATED REGIONAL WATER MAN-
19 AGEMENT PLANS.—Of the amounts authorized
20 to be appropriated for fiscal years 2004
21 through 2007 under this Act, no more than
22 \$95,000,000 may be expended for the fol-
23 lowing—

24 (i) establishing a competitive grants
25 program to assist local and regional com-

1 munities in California in developing and
2 implementing integrated regional water
3 management plans to carry out Stage 1 of
4 the Record of Decision; and

5 (ii) implementation of projects and
6 programs in California that improve water
7 supply reliability, water quality, ecosystem
8 restoration, and flood protection, or meet
9 other local and regional needs, that are
10 consistent with, and make a significant
11 contribution to, Stage 1 of the Calfed Bay-
12 Delta Program.

13 (G) ECOSYSTEM RESTORATION.—Of the
14 amounts authorized to be appropriated for fis-
15 cal years 2004 through 2007 under this Act, no
16 more than \$100,000,000 may be expended for
17 the following—

18 (i) implementation of large-scale res-
19 toration projects in San Francisco Bay,
20 the Delta, and its tributaries;

21 (ii) restoration of habitat in the Delta,
22 San Pablo Bay, and Suisun Bay and
23 Marsh, including tidal wetlands and ripar-
24 ian habitat;

1 (iii) fish screen and fish passage im-
2 provement projects;

3 (iv) implementation of an invasive
4 species program, including prevention, con-
5 trol, and eradication;

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

10 (vi) financial and technical support
11 for locally-based collaborative programs to
12 restore habitat while addressing the con-
13 cerns of local communities;

14 (vii) water quality improvement
15 projects to reduce salinity, selenium, mer-
16 cury, pesticides, trace metals, dissolved ox-
17 ygen, turbidity, sediment, and other pollut-
18 ants;

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

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

1 (x) scientific evaluations and targeted
2 research on program activities; and

3 (xi) strategic planning and tracking of
4 program performance.

5 (H) WATERSHEDS.—Of the amounts au-
6 thorized to be appropriated for fiscal years
7 2004 through 2007 under this Act, no more
8 than \$50,000,000 may be expended for the fol-
9 lowing—

10 (i) building local capacity to assess
11 and manage watersheds affecting the Bay-
12 Delta system;

13 (ii) technical assistance for watershed
14 assessments and management plans; and

15 (iii) developing and implementing lo-
16 cally-based watershed conservation, main-
17 tenance, and restoration actions.

18 (I) WATER QUALITY.—Of the amounts au-
19 thorized to be appropriated for fiscal years
20 2004 through 2007 under this Act, no more
21 than \$50,000,000 may be expended for the fol-
22 lowing—

23 (i) implementation of source control
24 programs in the Delta and its tributaries;

- 1 (ii) developing recommendations
2 through scientific panels and advisory
3 council processes to meet the Calfed Bay-
4 Delta Program goal of continuous improve-
5 ment in Delta water quality for all uses;
- 6 (iii) investing in treatment technology
7 demonstration projects;
- 8 (iv) controlling runoff into the Cali-
9 fornia aqueduct and other similar convey-
10 ances;
- 11 (v) addressing water quality problems
12 at the North Bay Aqueduct;
- 13 (vi) studying recirculation of export
14 water to reduce salinity and improve dis-
15 solved oxygen in the San Joaquin River;
- 16 (vii) supporting and participating in
17 the development of projects to enable San
18 Francisco Bay Area water districts to work
19 cooperatively to address their water quality
20 and supply reliability issues, including con-
21 nections between aqueducts, water trans-
22 fers, water conservation measures, institu-
23 tional arrangements, and infrastructure
24 improvements that encourage regional ap-
25 proaches, and investigations and studies of

1 available capacity in a project to deliver
2 water to the East Bay Municipal Utility
3 District under its contract with the Bureau
4 of Reclamation dated July 20, 2001, in
5 order to determine if such capacity can be
6 utilized to meet the above objectives: *Pro-*
7 *vided*, That these investigations and stud-
8 ies shall be conducted consistent with the
9 Record of Decision;

10 (viii) development of water quality ex-
11 changes and other programs to make high
12 quality water available to urban areas; and

13 (ix) development and implementation
14 of a plan to meet all existing water quality
15 standards for which the State and Federal
16 water projects have responsibility.

17 (J) LEVEE STABILITY.—Of the amounts
18 authorized to be appropriated for fiscal years
19 2004 through 2007 under this Act, no more
20 than \$70,000,000 may be expended for the fol-
21 lowing—

22 (i) assisting local reclamation districts
23 in reconstructing Delta levees to a base
24 level of protection (not to exceed
25 \$20,000,000);

1 (ii) enhancing the stability of levees
2 that have particular importance in the sys-
3 tem through the Delta Levee Special Im-
4 provement Projects program (not to exceed
5 \$20,000,000);

6 (iii) developing best management
7 practices to control and reverse land sub-
8 sidence on Delta islands (not to exceed
9 \$1,000,000);

10 (iv) refining the Delta Emergency
11 Management Plan (not to exceed
12 \$1,000,000);

13 (v) developing a Delta Risk Manage-
14 ment Strategy after assessing the con-
15 sequences of Delta levee failure from
16 floods, seepage, subsidence, and earth-
17 quakes (not to exceed \$500,000);

18 (vi) developing a strategy for reuse of
19 dredged materials on Delta islands (not to
20 exceed \$1,500,000);

21 (vii) evaluating, and where appro-
22 priate, rehabilitating the Suisun Marsh lev-
23 ees (not to exceed \$6,000,000); and

24 (viii) integrated flood management,
25 ecosystem restoration, and levee protection

1 projects, including design and construction
2 of lower San Joaquin River and lower
3 Mokelumne River floodway improvements
4 and other projects under the Sacramento-
5 San Joaquin Comprehensive Study (not to
6 exceed \$20,000,000);

7 (K) SCIENCE.—Of the amounts authorized
8 to be appropriated for fiscal years 2004
9 through 2007 under this Act, no more than
10 \$50,000,000 may be expended for the fol-
11 lowing—

12 (i) establishing and maintaining an
13 independent science board, technical pan-
14 els, and standing boards to provide over-
15 sight and peer review of the program;

16 (ii) conducting expert evaluations and
17 scientific assessments of all program ele-
18 ments;

19 (iii) coordinating existing monitoring
20 and scientific research programs;

21 (iv) developing and implementing
22 adaptive management experiments to test,
23 refine and improve scientific under-
24 standings;

1 (v) establishing performance meas-
2 ures, and monitoring and evaluating the
3 performance of all program elements; and

4 (vi) preparing an annual Science Re-
5 port.

6 (L) PROGRAM MANAGEMENT, OVERSIGHT,
7 AND COORDINATION.—Of the amounts author-
8 ized to be appropriated for fiscal years 2004
9 through 2007 under this Act, no more than
10 \$25,000,000 may be expended by the Secretary,
11 acting through the Director of the Calfed Bay-
12 Delta Program, for the following—

13 (i) program-wide tracking of sched-
14 ules, finances, and performance;

15 (ii) multi-agency oversight and coordi-
16 nation of Calfed activities to ensure pro-
17 gram balance and integration;

18 (iii) development of interagency cross-
19 cut budgets and a comprehensive finance
20 plan to allocate costs in accordance with
21 the beneficiary pays provisions of the
22 Record of Decision;

23 (iv) coordination of public outreach
24 and involvement, including tribal, environ-
25 mental justice, and public advisory activi-

1 ties under the Federal Advisory Committee
2 Act; and

3 (v) development of Annual Reports.

4 (M) REFUGE WATER SUPPLIES.—Of the
5 amounts authorized to be appropriated for fis-
6 cal years 2004 through 2007 under this Act, no
7 more than \$30,000,000 may be expended to
8 comply with the Level 2 and Level 4 refuge
9 water supply requirements set forth in section
10 3406(d)(1)(2) of the Central Valley Project Im-
11 provement Act. Such funds shall be expended
12 first to acquire the quantities of Level 4 water
13 specified in section 3406(d)(2) of that Act and
14 second to acquire 26,000 AF of Level 2 replace-
15 ment water. Any remaining funds may be ex-
16 pended to diversify sources of Level 2 refuge
17 water supplies.

18 (N) GROUNDWATER MANAGEMENT.—The
19 Secretary and the Federal agency heads shall
20 not approve, release, transfer, or obligate in any
21 manner any funds for the design or construc-
22 tion of projects described in section 3(c)(3)(A)
23 and section 3(c)(3)(B) of this Act until there be
24 in effect measures, duly enacted by the Cali-
25 fornia State legislature and adequate in the

1 judgment of the Secretary, to manage and con-
2 trol the pumping of groundwater on a sustain-
3 able basis within the Calfed Solution Area, as
4 that term is used in the Record of Decision.

5 (4) AUTHORIZED ACTIONS.—The Secretary and
6 the Federal agency heads are authorized to carry
7 out the activities authorized by this Act through the
8 use of grants, loans, contracts, and cooperative
9 agreements with Federal and non-Federal entities
10 where the Secretary or Federal agency head deter-
11 mines that the grant, loan, contract, or cooperative
12 agreement will assist in implementing the authorized
13 activity in an efficient, timely, and cost-effective
14 manner: *Provided, however,* That such activities shall
15 not include construction unless the United States is
16 a party to the contract for construction.

17 (5) PROJECT REQUIREMENTS REGARDING FEA-
18 SIBILITY AND APPLICATION OF BENEFICIARIES PAY
19 PRINCIPLE.—No Federal funds are authorized for
20 any project under the Calfed Bay-Delta program for
21 increasing water supply, water yield, water storage,
22 or water conveyance that is intended in whole or in
23 part for any agricultural, municipal and industrial,
24 domestic, or hydroelectric power purposes, unless—

1 (A) a feasibility study for the project is
2 prepared in accordance with this section;

3 (B) a report on the findings of such study
4 is submitted to the Secretary and the Congress;
5 and

6 (C) the Secretary certifies that—

7 (i) the feasibility study and report in-
8 dicate that total project benefits for those
9 purposes will equal or exceed total project
10 costs; and

11 (ii) the beneficiaries of those purposes
12 have demonstrated to the satisfaction of
13 the Secretary a willingness and ability to
14 pay for costs allocated to them, under the
15 beneficiaries pay principle referred to in
16 section 2.2.5 of the Record of Decision;
17 and

18 (iii) such beneficiaries are obligated to
19 repay such costs.

20 **SEC. 4. MANAGEMENT.**

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

24 (b) **PUBLIC PARTICIPATION.**—In carrying out the
25 Calfed Bay-Delta Program, the Federal agencies shall co-

1 operate with local and tribal governments and the public
2 through a federally chartered advisory committee or other
3 appropriate means, to seek input on program elements
4 such as planning, design, technical assistance, and devel-
5 opment of peer review science programs.

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

9 (1) all major aspects of implementing the Pro-
10 gram are subjected to credible and objective sci-
11 entific review; and

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

14 (d) GOVERNANCE.—In carrying out the Calfed Bay-
15 Delta Program, the Secretary and the Federal agency
16 heads are authorized to become voting members of the
17 California Bay-Delta Authority, as established in the Cali-
18 fornia Bay-Delta Authority Act (2002 Cal. Stat. Chap.
19 812), to the extent consistent with Federal law. Nothing
20 in this subsection shall preempt or otherwise affect any
21 Federal law or limit the statutory authority of any Federal
22 agency: *Provided*, That the California Bay-Delta Authority
23 shall not be deemed to be an advisory committee within
24 the meaning of the Federal Advisory Committee Act (5
25 U.S.C. App. 1) and the financial interests of the California

1 Bay-Delta Authority shall not be imputed to any Federal
2 official participating in such Authority.

3 (e) ENVIRONMENTAL JUSTICE.—Consistent with Ex-
4 ecutive Order 12898 pertaining to Federal Actions to Ad-
5 dress Environmental Justice in Minority and Low-Income
6 Populations, it is the intent of the Congress that the Fed-
7 eral and State agencies should continue to collaborate to
8 develop a comprehensive environmental justice workplan
9 for the Calfed Bay-Delta Program and fulfill the commit-
10 ment to addressing environmental justice challenges re-
11 ferred to in the Calfed Bay-Delta Program Environmental
12 Justice Workplan dated December 13, 2000.

13 (f) LAND ACQUISITION.—Before obligating or ex-
14 pending any Federal funds to acquire land for the Eco-
15 system Restoration Program, the Secretary shall first de-
16 termine that existing Federal land, State land, or other
17 public land is not available for the project purpose. Private
18 land acquisitions shall prioritize easements over acquisi-
19 tions of fee title unless easements are unavailable or un-
20 suitable for the stated purpose.

21 (g) STATUS REPORTS.—The Secretary shall report
22 monthly on the Authority's progress in achieving the water
23 supply targets as described in Section 2.2.4 of the Record
24 of Decision, the environmental water account require-
25 ments as described in Section 2.2.7, and the water quality

1 targets as described in Section 2.2.9, and any pending ac-
2 tions that may affect the Authority's ability to achieve
3 those targets and requirements.

4 **SEC. 5. REPORTING REQUIREMENTS.**

5 (a) REPORT AND CERTIFICATION BY CALFED.—The
6 Secretary, in cooperation with the Governor, shall submit
7 a report of the California Bay-Delta Authority by Decem-
8 ber 15 of each year to the appropriate authorizing and
9 appropriating Committees of the Senate and the House
10 of Representatives that describes the status of implemen-
11 tation of all components of the Calfed Bay-Delta Program
12 and that certifies whether or not the Calfed Bay-Delta
13 Program is progressing in a balanced manner which allows
14 all program components to be advanced, including addi-
15 tional water supply, ecosystem restoration, and water
16 quality. The Secretary's report shall describe—

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

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

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

1 (4) accomplishments in the past fiscal year and
2 year to date in achieving the objectives of additional
3 and improved—

- 4 (A) water storage;
- 5 (B) water quality;
- 6 (C) water use efficiency;
- 7 (D) ecosystem restoration;
- 8 (E) watershed management;
- 9 (F) levee system integrity;
- 10 (G) water transfers;
- 11 (H) water conveyance; and
- 12 (I) water supply reliability.

13 The report shall discuss the status of Calfed Bay-Delta
14 Program goals, current schedules, and relevant financing
15 agreements.

16 (b) STATEMENT OF BALANCE.—Substantial progress
17 in each of the categories listed in subsection (a) shall be
18 considered in determining whether the Calfed Bay-Delta
19 Program is proceeding in a balanced manner for purposes
20 of making the certification provided for in subsection (a).
21 In addition, in making such certification the Secretary, in
22 cooperation with the Governor, shall prepare a statement
23 of whether the program is in balance which takes into con-
24 sideration the following—

- 1 (1) status of all Stage 1 actions, including
2 goals, schedules, and financing agreements;
- 3 (2) progress on storage projects, conveyance im-
4 provements, levee improvements, water quality
5 projects, and water use efficiency programs;
- 6 (3) completion of key projects and milestones
7 identified in the Ecosystem Restoration Program;
- 8 (4) development and implementation of local
9 programs for watershed conservation and restora-
10 tion;
- 11 (5) progress in improving water supply reli-
12 ability and implementing the Environmental Water
13 Account;
- 14 (6) achievement of commitments under State
15 and Federal Endangered Species Acts;
- 16 (7) implementation of a comprehensive science
17 program;
- 18 (8) progress toward acquisition of the State and
19 Federal permits, including Clean Water Act section
20 404(a) permits, for implementation of projects in all
21 identified program areas;
- 22 (9) progress in achieving benefits in all geo-
23 graphic regions covered by the Program;

1 (10) legislative action on water transfer,
2 groundwater management, water use efficiency, and
3 governance issues;

4 (11) status of complementary actions;

5 (12) status of mitigation measures; and

6 (13) revisions to funding commitments and pro-
7 gram responsibilities.

8 (c) REVISED SCHEDULE.—If the report provided for
9 in subsection (a) and the statement of balance provided
10 for in subsection (b) conclude that the Calfed Bay-Delta
11 Program is not progressing in a balanced manner so that
12 no certification of balanced implementation can be made,
13 the California Bay-Delta Authority shall prepare a revised
14 schedule to ensure the Calfed Bay-Delta Program will
15 progress in a balanced manner consistent with the intent
16 of the Record of Decision. This revised schedule shall be
17 subject to approval by the Secretary and the Governor,
18 and upon such approval, shall be submitted to the appro-
19 priate authorizing and appropriating committees of the
20 Senate and the House of Representatives.

21 (d) FEASIBILITY STUDIES.—Any feasibility studies
22 completed for storage projects as a result of this Act shall
23 include identification of project benefits and beneficiaries
24 and a cost allocation plan consistent with the beneficiaries
25 pay provisions of the Record of Decision.

1 (e) FINANCIAL SUMMARY.—In addition to the report
2 required pursuant to subsection (a), no later than Feb-
3 ruary 15 of each year the Secretary shall submit to the
4 appropriate authorizing and appropriating committees of
5 the Senate and the House of Representatives a financial
6 report certified by the Secretary containing a detailed ac-
7 counting of all funds received and obligated by all Federal
8 and State agencies responsible for implementing the
9 Calfed Bay-Delta Program in the previous fiscal year, a
10 budget for the proposed projects (including a description
11 of the project, authorization level, and project status) to
12 be carried out in the upcoming fiscal year with the Federal
13 portion of funds authorized under this Act, and a listing
14 of all projects to be undertaken in the upcoming fiscal year
15 with the Federal portion of funds authorized under this
16 Act.

17 (f) REPORT.—Prior to December 2004, the Sec-
18 retary, after consultation with the Governor and the Fed-
19 eral agency heads, shall submit a report to Congress
20 that—

21 (1) details the accomplishments of the Calfed
22 Bay-Delta Program to date;

23 (2) identifies the specific steps that remain to
24 be undertaken in the Program;

1 (3) sets forth the specific funding levels and
2 sources to accomplish such steps; and

3 (4) makes such recommendations as may be
4 necessary to accomplish the goals and objectives of
5 the continuing Calfed Bay-Delta Program.

6 **SEC. 6. CROSSCUT BUDGET AND AUTHORIZATION OF AP-**
7 **PROPRIATIONS.**

8 (a) **CROSSCUT BUDGET.**—The President’s Budget
9 shall include requests for the appropriate level of funding
10 for each of the Federal agencies to carry out its respon-
11 sibilities under the Calfed Bay-Delta Program. Such funds
12 shall be requested for the Federal agency with authority
13 and programmatic responsibility for the obligation of such
14 funds, as set forth in section 3(c)(2). At the time of sub-
15 mission of the President’s Budget to the Congress, the Di-
16 rector of the Office of Management and Budget shall sub-
17 mit to the appropriate authorizing and appropriating com-
18 mittees of the Senate and the House of Representatives
19 and interagency budget crosscut report that displays the
20 budget proposed, including any interagency or intra-agen-
21 cy transfer, for each of the Federal agencies to carry out
22 the Calfed Bay-Delta Program for the upcoming fiscal
23 year, separately showing funding requested under both
24 pre-existing authorities and under the new authorities
25 granted by this Act. The report shall also identify all ex-

1 penditures since 1996 within the Federal and State gov-
2 ernments used to achieve the objectives of the Calfed Bay-
3 Delta Program.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary and
6 the heads of the Federal agencies \$880,000,000 to pay
7 the Federal share of carrying out Stage 1 of the Record
8 of Decision for fiscal years 2004 through 2007, in accord-
9 ance with the provisions of this Act. The funds shall re-
10 main available without fiscal year limitation.

11 **SEC. 7. FEDERAL SHARE OF COSTS.**

12 The Federal share of the cost of implementing Stage
13 1 of the Calfed Bay-Delta Program as set forth in the
14 Record of Decision shall not exceed 33.3 percent, unless
15 otherwise specified in this Act.

16 **SEC. 8. COMPLIANCE WITH STATE AND FEDERAL LAW.**

17 Nothing in this Act preempts or otherwise affects any
18 Federal or State law, including any authority of a Federal
19 agency to carry out activities related to, or in furtherance
20 of, the Calfed Bay-Delta Program.

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