

109TH CONGRESS
1ST SESSION

H. R. 3691

To amend the Central Valley Project Improvement Act to provide for improved water management and conservation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2005

Mr. NUNES introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Ways and Means, 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 amend the Central Valley Project Improvement Act to provide for improved water management and conservation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This title may be cited as the “Central Valley Project
5 Reform Act of 2005”.

1 **SEC. 2. PURPOSES.**

2 Section 3402 of the Central Valley Project Improve-
3 ment Act (106 Stat. 4706) is amended by adding sub-
4 section (g) to read as follows:

5 “(g) to ensure that water dedicated to fish and wild-
6 life purposes by this title is replaced and provided to Cen-
7 tral Valley Project water contractors by 2012 at the lowest
8 cost reasonably achievable.”.

9 **SEC. 3. DEFINITIONS.**

10 Section 3403(a) of the Central Valley Project Im-
11 provement Act (106 Stat. 4707) is amended to read as
12 follows:

13 “(a) The term ‘anadromous fish’ means those stocks
14 of Salmon (including steelhead) that ascend, as of the date
15 this title was originally enacted, the Sacramento and San
16 Joaquin rivers and their tributaries and the Sacramento-
17 San Joaquin Delta and its tributaries to reproduce after
18 maturing in San Francisco Bay or the Pacific Ocean.”.

19 **SEC. 4. LIMITATION ON CONTRACTING AND CONTRACT RE-**
20 **FORM.**

21 The Central Valley Project Improvement Act (106
22 Stat. 4710) is amended as follows:

23 (1) The matter preceding paragraph (1) in sec-
24 tion 3404(c) is amended to read as follows:

25 “(c) RENEWAL OF EXISTING LONG-TERM CON-
26 TRACTS.—Notwithstanding the provisions of the Act of

1 July 2, 1956, (70 Stat. 483), the Secretary shall, upon
2 request, renew any existing long-term repayment or water
3 service contracts which provide for the delivery of water
4 from the Central Valley Project for a period of twenty-
5 five years and shall, subject to paragraphs (1) and (2) of
6 this subsection, renew such contracts for successive peri-
7 ods of 25 years each.”.

8 (2) Section 3404(c)(1) is amended to read as
9 follows:

10 “(1) No such renewals shall be authorized until
11 environmental review as required by law has been
12 completed, and until the preparation of the environ-
13 mental impact statement required in section 3409 of
14 this title has been completed. Contracts which expire
15 prior to the completion of such environmental review
16 shall, upon request of the other contracting party, be
17 renewed for an interim period ending on the date on
18 which the long-term renewal with respect to each
19 such contract becomes effective or the date which is
20 three years after completion of the applicable envi-
21 ronmental review, whichever is earlier. An interim
22 contract shall automatically be extended beyond that
23 three-year date for successive periods of two years
24 each until the long-term renewal contract for that
25 contractor has been executed by the Secretary.”.

1 (3) Section 3404 is amended by adding at the
2 end the following new subsection:

3 “(d) Contracts entered into or renewed pursuant to
4 this section shall include a provision which requires the
5 Secretary to charge such party only for water actually de-
6 livered by the Secretary.”.

7 **SEC. 5. WATER TRANSFERS, IMPROVED WATER MANAGE-**
8 **MENT AND CONSERVATION.**

9 (a) FACILITATION OF TRANSFERS.—Congress recon-
10 firms that the original intent of the Central Valley Project
11 Improvement Act (106 Stat. 4712) was to facilitate and
12 expedite water transfers. Accordingly, Congress hereby di-
13 rects the Secretary to take all necessary actions to facili-
14 tate and expedite transfers of Central Valley Project water
15 in accordance with the Central Valley Project Improve-
16 ment Act (106 Stat. 4712) or any other provision of law.

17 (b) AMENDMENTS.—The Central Valley Project Im-
18 provement Act (106 Stat. 4710) is amended as follows:

19 (1) In section 3405(a)(1)(A), by striking “to
20 combination” and inserting “or combination”.

21 (2) In section 3405(a)(2)(D), by adding the fol-
22 lowing at the end the following: “The contractor or
23 the Secretary shall determine if a written proposal
24 is complete within 45 days of its submission and, if
25 it determines an application is incomplete, shall im-

1 mediately state with specificity what must be added
2 to or revised in the application in order for it to be
3 complete. Except as provided in this section, the
4 Secretary shall not impose mitigation or other re-
5 quirements on a proposed transfer, but the con-
6 tractor shall retain all authority under state law to
7 approve or condition a proposed transfer.”

8 (3) In section 3405(a), by adding the following
9 new paragraph:

10 “(4) Notwithstanding any other provision of
11 law, the authority to make transfers, exchanges, and
12 banking arrangements of Central Valley Project
13 water which could have been conducted prior to the
14 enactment of this title is continued hereby, and such
15 transfers, exchanges, and banking arrangements
16 shall not be subject to, limited, or conditioned by
17 this title. This title shall not supersede or revoke any
18 authority to transfer, exchange, or bank Central Val-
19 ley Project water that existed prior to the date of
20 the enactment of this paragraph.”.

21 (4) In section 3405(b)—

22 (A) in the heading, by striking “Metering”
23 and inserting “Measurement”; and

24 (B) by inserting after the first sentence
25 the following: “The contracting district or agen-

1 cy, not including contracting districts serving
2 multiple agencies with separate governing
3 boards, shall ensure that all water delivery sys-
4 tems within its boundaries measure surface
5 water at the agency's facilities up to the point
6 the surface water is commingled with other
7 water supplies.”.

8 (5) In section 3405—

9 (A) by striking subsection (d);

10 (B) by redesignating subsections (e) and
11 (f) as subsections (d) and (e); and

12 (C) by amending subsection (e) (as reded-
13 igned by subparagraph (B)) to read as fol-
14 lows:

15 “(e) All increased revenues received by the Secretary
16 that exceed the cost of service rate applicable to the deliv-
17 ery of water transferred from irrigation use to municipal
18 and industrial use under subsection (a) shall be covered
19 to the Restoration Fund.”.

20 **SEC. 6. FISH, WILDLIFE AND HABITAT RESTORATION.**

21 The Central Valley Project Improvement Act (106
22 Stat. 4714) is amended as follows:

23 (1) In section 3406, by adding at the end the
24 following new subsection:

1 “(i) SATISFACTION OF PURPOSES.—By pursuing the
2 programs and activities authorized by this section, the
3 Secretary shall be deemed to have met the mitigation, pro-
4 tection, restoration, and enhancement purposes of section
5 2 of the Act of August 26, 1937 (ch. 832, 50 Stat. 850),
6 as amended.”.

7 (2) Subparagraph (B) of section 3406(b)(1) is
8 amended to read as follows:

9 “(B) As needed to achieve the goals of this
10 program, the Secretary is authorized and di-
11 rected to modify Central Valley Project oper-
12 ations to provide reasonable flows of suitable
13 quality, quantity, and timing to protect all life
14 stages of anadromous fish, except that such
15 flows shall be provided from the quantity of
16 water dedicated for fish, wildlife, and habitat
17 restoration purposes under paragraph (2) of
18 this subsection; from the water supplies ac-
19 quired pursuant to paragraph (3) of this sub-
20 section; and from other sources which do not
21 conflict with fulfillment of the Secretary’s re-
22 maining contractual obligations to provide Cen-
23 tral Valley Project water for other authorized
24 purposes. Reasonable instream flow needs for
25 all Central Valley Project controlled streams

1 and rivers, except the San Joaquin River which
2 is governed by section 3406(c)(1) of this title,
3 shall be determined by the Secretary based on
4 recommendations of the United States Fish and
5 Wildlife Service after consultation with the Cali-
6 fornia Department of Fish and Game.”.

7 (3) The matter preceding paragraph (A) in sec-
8 tion 3406(b)(2) is amended to read as follows:

9 “(2) Upon enactment of this title, dedicate and
10 manage annually 800,000 acre-feet of Central Valley
11 Project water for the purposes of (A) implementing
12 the fish, wildlife, and habitat restoration purposes
13 and measures authorized by this title; (B) assisting
14 the State of California in its efforts to protect the
15 waters of the San Francisco Bay/Sacramento-San
16 Joaquin Delta Estuary; and (C) helping to meet
17 such obligations as may be legally imposed upon the
18 Central Valley Project under State or Federal law
19 following the date of enactment of this title, includ-
20 ing (but not limited to) additional obligations under
21 the Endangered Species Act of 1973. All Central
22 Valley Project water used for the purposes specified
23 in this paragraph shall be credited to the amount of
24 Central Valley Project water so dedicated under this
25 paragraph. Any Central Valley Project water re-

1 quired to fulfill the purposes specified in this para-
2 graph shall be provided pursuant to subsections
3 (b)(1) and (b)(3). To the fullest extent possible and
4 in accordance with section 3411 of this title, after
5 using a quantity of such 800,000 acre-feet of water
6 for fish and wildlife purposes pursuant to this para-
7 graph, the Secretary shall reuse or divert such quan-
8 tity of water for agricultural or municipal and indus-
9 trial purposes.”.

10 (4) Section 3406(c)(1) is amended to read as
11 follows:

12 “(1)(A) Congress hereby confirms that it is and
13 has been its intent to prohibit all releases of water
14 directly from Friant Dam into the San Joaquin
15 River other than for bona fide purposes of—

16 “(i) flood control;

17 “(ii) satisfying the requirements of that
18 certain Contract for Exchange of Waters dated
19 July 27, 1939, between the United States of
20 America, the San Joaquin and Kings River
21 Canal and Irrigation Company, Incorporated, et
22 al., the Columbia Canal Company, the San Luis
23 Canal Company and the Firebaugh Canal Com-
24 pany, as amended from time to time; or

1 “(iii) satisfying those contractual obliga-
2 tions of the Secretary which existed on the date
3 of enactment of this title to provide water to
4 landowners located between Friant Dam and
5 Gravelly Ford.

6 “(B) Notwithstanding any State or other Fed-
7 eral law, water shall not be released directly from
8 Friant Dam into the San Joaquin River except for
9 the purposes enumerated in clauses (i), (ii), and (iii)
10 of subparagraph (A). In lieu of releasing water di-
11 rectly from Friant Dam into the San Joaquin River
12 for any purposes other than those enumerated in
13 this paragraph, entities receiving Central Valley
14 Project water from the Friant Division of the Cen-
15 tral Valley Project shall be assessed, in addition to
16 all other applicable charges, a surcharge for all Class
17 1 and Class 2 water delivered in the amount of \$7
18 per acre-foot. Such surcharge shall not apply to
19 Class 2 water delivered in excess of 50 percent of
20 the amount of Class 2 water to which a contracting
21 party is contractually entitled or to any water deliv-
22 ered pursuant to section 215 of the Reclamation Re-
23 form Act of 1982 (96 Stat. 1270).”.

1 **SEC. 7. RESTORATION FUND.**

2 The Central Valley Project Improvement Act (106
3 Stat. 4714) is amended as follows:

4 (1) Section 3407(a) is amended to read as fol-
5 lows:

6 “(a) RESTORATION FUND ESTABLISHED.—

7 “(1) There is hereby established in the Treas-
8 ury of the United States the ‘Central Valley Project
9 Restoration Fund’ (hereafter ‘Restoration Fund’)
10 which shall be available for deposit of donations
11 from any source and revenues provided under sec-
12 tions 3404(c), 3405(e), 3406(c)(1), and 3407(d) of
13 this title. Amounts deposited shall be credited as off-
14 setting collections. Monies donated to the Restora-
15 tion Fund by non-Federal entities for specific pur-
16 poses shall be expended for those purposes only and
17 shall not be subject to appropriation. Notwith-
18 standing any other provision of this title, the Sec-
19 retary may not directly or indirectly require a dona-
20 tion, or any other payment, to the Restoration
21 Fund, or environmental restoration or mitigation
22 fees not otherwise provided by law, as a condition to
23 providing for the storage or conveyance of non-Cen-
24 tral Valley Project water pursuant to reclamation
25 laws, or as a condition to the delivery of water pur-

1 suant to section 215 of the Reclamation Reform Act
2 of 1982 (96 Stat. 1270).

3 “(2) The Secretary shall utilize amounts col-
4 lected pursuant to section 3406(c)(1) to assist in im-
5 proving water quality and riparian values in the San
6 Joaquin River, or to support other projects bene-
7 fitting land within the Friant Division.

8 “(3) Notwithstanding any other provision of
9 this title, funds deposited in the Restoration Fund
10 may be appropriated for the acquisition of water
11 supplies and the construction of facilities used to im-
12 plement projects or programs undertaken pursuant
13 to section 3408(j) of this title.

14 “(4) Any amounts paid by a repayment or
15 water service contractor under sections 3404(e),
16 3405(e), 3406(c)(1), and 3407(d) after the date of
17 enactment of Public Law 102–575 shall be a credit
18 to the obligations of that contractor to repay the
19 construction costs of the Central Valley Project.”.

20 (2) Section 3407(c)(1) is amended to read as
21 follows:

22 “(1) PAYMENTS BY WATER AND POWER BENE-
23 FICIARIES.—To the extent required in appropriation
24 Acts, the Secretary shall assess and collect addi-
25 tional annual payments, in addition to the charges

1 provided for or collected under sections 3404(c)(3),
2 3405(a)(1)(C), 3405(f), and 3406(c)(1) of this title,
3 consisting of charges to direct beneficiaries of the
4 Central Valley Project under subsection (d) of this
5 section in order to recover a portion or all of the
6 costs of carrying out programs, projects, plans, and
7 habitat restoration, improvement, and acquisition
8 provisions of this title.”.

9 (3) Section 3407 is amended by adding at the
10 end the following new subsection (g):

11 “(g) Each year the Secretary shall submit to Con-
12 gress a proposed plan to expend all of the funds deposited
13 in the Restoration Fund during the preceding year that
14 describes why the expenditure of those funds produces the
15 optimum benefit from those expenditures.”.

16 **SEC. 8. ADDITIONAL AUTHORITIES.**

17 (a) EXCLUSION OF NONPROFIT.—Section 3408(c) of
18 the Central Valley Project Improvement Act (106 Stat.
19 4728.) is amended by striking “nonprofit”.

20 (b) AUTHORITY FOR CERTAIN ACTIVITIES; RATES.—
21 The Secretary shall use the authority granted by section
22 3408(c) of the Central Valley Project Improvement Act
23 (106 Stat. 4728.) rather than other authorities whenever
24 possible in connection with requests to exchange, impound,
25 store, carry or deliver non-project water using Central Val-

1 ley Project facilities for any beneficial purpose. The Sec-
2 retary shall develop rates to be charged to parties using
3 Central Valley Project facilities for any of such purposes
4 that recover the reasonable costs incurred by the Secretary
5 in connection therewith, which costs shall not include any
6 donation or other payment to the Restoration Fund. Pay-
7 ments received in connection with the use of Central Val-
8 ley Project facilities shall be applied to reduce the current
9 year operations and maintenance expenses otherwise pay-
10 able by Project contractors for the Central Valley Project
11 facilities used.

12 (c) REPORTING REQUIREMENTS.—Section 3408(f) of
13 the Central Valley Project Improvement Act (106 stat.
14 4729) is amended—

15 (1) by striking out “Interior and Insular Affairs
16 and Merchant Marine and Fisheries” and inserting
17 in lieu thereof “Resources”;

18 (2) in the second sentence, by inserting before
19 the period at the end the following: “, including (but
20 not limited to) progress on the plan required by sub-
21 section (j)”;

22 (3) by adding the following sentence at the end:
23 “The filing and adequacy of such report shall be
24 personally certified to the Committees referenced

1 above by the Regional Director of the Mid-Pacific
2 Region of the Bureau of Reclamation.”.

3 (d) PROJECT YIELD INCREASE.—Section 3408(j) of
4 the Central Valley Project Improvement Act (106 Stat.
5 4730) is amended to read as follows:

6 “(j) PROJECT YIELD INCREASE.—

7 “(1) PLAN REQUIRED.—In order to minimize
8 adverse effects upon existing Central Valley Project
9 water contractors resulting from the water dedicated
10 for fish and wildlife under this title, and to assist
11 the State of California in meeting its future water
12 needs, the Secretary shall, on a priority basis, not
13 later than September 30, 2007, submit to Congress
14 a least-cost plan to increase, as soon as possible but
15 not later than September 30, 2012 (except for the
16 construction of new facilities which shall not be lim-
17 ited by that deadline), the yield of the Central Valley
18 Project by the amount dedicated and managed for
19 fish and wildlife purposes under this title and other-
20 wise required to meet the purposes of the Central
21 Valley Project including, without limitation, satis-
22 fying contractual obligations. The plan shall be de-
23 veloped in a manner consistent with all applicable
24 State and Federal laws.

1 “(2) CONTENTS OF PLAN.—The plan author-
2 ized by this subsection shall include, at a minimum,
3 recommendations on appropriate cost-sharing ar-
4 rangements and for authorizing legislation or other
5 measures, if any, needed to implement the intent,
6 purposes, and provisions of this subsection, and a
7 description of how the Secretary intends to use the
8 following options:

9 “(A) Improvements in, modification of, or
10 additions to the facilities and operations of the
11 project and construction of new water storage
12 facilities.

13 “(B) Conservation.

14 “(C) Transfers.

15 “(D) Conjunctive use.

16 “(E) Purchase of water.

17 “(F) Purchase and idling of agricultural
18 land.

19 “(G) Direct purchase of water rights.

20 “(3) IMPLEMENTATION OF PLAN.—Subject to
21 appropriation of required funds, such plan shall be
22 implemented by the Secretary commencing on Octo-
23 ber 1, 2007. In order to carry out this subsection,
24 the Secretary is authorized and directed to coordi-
25 nate with the State of California in implementing

1 measures for the long-term resolution of problems in
2 the San Francisco Bay/Sacramento-San Joaquin
3 Delta Estuary.”.

4 (e) Section 3408(h)(2) of the Central Valley Project
5 Improvement Act (106 Stat. 4729) is amended by striking
6 “(h)(i)” and inserting “(h)(1)”.

7 **SEC. 9. REPORTING BY SECRETARY OF THE TREASURY RE-**
8 **GARDING ILLEGAL FEDERAL IRRIGATION**
9 **SUBSIDIES.**

10 Section 90 of the Internal Revenue Code of 1986 (re-
11 lating to illegal Federal irrigation subsidies) is amended
12 by adding at the end the following new subsection:

13 “(d) REPORTING TO BUREAU OF RECLAMATION.—
14 Not later than September 30 of each year, the Secretary
15 shall submit a written report to the Commissioner of the
16 Bureau of Reclamation which states the number of tax-
17 payers who included an amount in gross income under this
18 section by reason of receiving an illegal Federal irrigation
19 subsidy during the preceding calendar year.”.

20 **SEC. 10. ALL-AMERICAN CANAL, CALIFORNIA; LAGUNA**
21 **DAM, ARIZONA.**

22 (a) PROJECT AUTHORIZATION.—The Secretary of
23 the Interior, acting through the Commissioner of the Bu-
24 reau of Reclamation, is authorized to construct new off-
25 stream regulatory storage near the All-American Canal in

1 California and to remove sediment behind Laguna Dam,
2 Arizona.

3 (b) COST SHARING.—The Federal share of the cost
4 of activities authorized under this section shall be 100 per-
5 cent.

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated such sums as may be nec-
8 essary to carry out this section.

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