

# Union Calendar No. 395

110TH CONGRESS  
2D SESSION

# H. R. 4074

[Report No. 110-633]

To authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2007

Mr. COSTA (for himself, Mr. RADANOVICH, Mr. CARDOZA, and Mrs. NAPOLITANO) introduced the following bill; which was referred to the Committee on Natural Resources

MAY 13, 2008

Additional sponsors: Mr. BACA and Mr. MCNERNEY

MAY 13, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## A BILL

To authorize the implementation of the San Joaquin River Restoration Settlement, 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,*

1 **TITLE I—THE SAN JOAQUIN**  
2 **RIVER RESTORATION SET-**  
3 **TLEMENT ACT**

4 **SECTION 101. SHORT TITLE.**

5 This Act may be cited as the “San Joaquin River  
6 Restoration Settlement Act”.

7 **SEC. 102. PURPOSE.**

8 The purpose of this Act is to authorize implementa-  
9 tion of the Settlement.

10 **SEC. 103. DEFINITIONS.**

11 In this Act—

12 (1) the terms “Friant Division long-term con-  
13 tractors”, “Interim Flows”, “Restoration Flows”,  
14 “Recovered Water Account”, “Restoration Goal”,  
15 and “Water Management Goal” have the meanings  
16 given those terms in the Settlement;

17 (2) the term “Secretary” means the Secretary  
18 of the Interior; and

19 (3) the term “Settlement” means the Stipula-  
20 tion of Settlement dated September 13, 2006, in the  
21 litigation titled “Natural Resources Defense Council,  
22 et al. v. Kirk Rodgers, et al., United States District  
23 Court, Eastern District of California, No. CIV. S-  
24 88–1658–LKK/GGH”.

1 **SEC. 104. IMPLEMENTATION OF SETTLEMENT.**

2 (a) IN GENERAL.—The Secretary of the Interior is  
3 hereby authorized and directed to implement the terms  
4 and conditions of the Settlement in cooperation with the  
5 State of California, including the following measures as  
6 these measures are prescribed in the Settlement:

7 (1) Design and construct channel and struc-  
8 tural improvements as described in paragraph 11 of  
9 the Settlement, provided, however, that the Sec-  
10 retary shall not make or fund any such improve-  
11 ments to facilities or property of the State of Cali-  
12 fornia without the approval of the State of Cali-  
13 fornia and the State’s agreement in 1 or more  
14 Memoranda of Understanding to participate where  
15 appropriate.

16 (2) Modify Friant Dam operations so as to pro-  
17 vide Restoration Flows and Interim Flows.

18 (3) Acquire water, water rights, or options to  
19 acquire water as described in paragraph 13 of the  
20 Settlement, provided, however, such acquisitions  
21 shall only be made from willing sellers and not  
22 through eminent domain.

23 (4) Implement the terms and conditions of  
24 paragraph 16 of the Settlement related to recircula-  
25 tion, recapture, reuse, exchange, or transfer of water  
26 released for Restoration Flows or Interim Flows, for

1 the purpose of accomplishing the Water Manage-  
2 ment Goal of the Settlement, subject to—

3 (A) applicable provisions of California  
4 water law;

5 (B) the Secretary's use of Central Valley  
6 Project facilities to make Project water (other  
7 than water released from Friant Dam pursuant  
8 to the Settlement) and water acquired through  
9 transfers available to existing south-of-Delta  
10 Central Valley Project contractors; and

11 (C) the Secretary's performance of the  
12 Agreement of November 24, 1986, between the  
13 United States of America and the Department  
14 of Water Resources of the State of California  
15 for the coordinated operation of the Central  
16 Valley Project and the State Water Project as  
17 authorized by Congress in section 2(d) of the  
18 Act of August 26, 1937 (50 Stat. 850, 100  
19 Stat. 3051), including any agreement to resolve  
20 conflicts arising from said Agreement.

21 (5) Develop and implement the Recovered  
22 Water Account as specified in paragraph 16(b) of  
23 the Settlement, including the pricing and payment  
24 crediting provisions described in paragraph 16(b)(3)

1 of the Settlement, provided that all other provisions  
2 of Federal reclamation law shall remain applicable.

3 (b) AGREEMENTS.—

4 (1) AGREEMENTS WITH THE STATE.—In order  
5 to facilitate or expedite implementation of the Settle-  
6 ment, the Secretary is authorized and directed to  
7 enter into appropriate agreements, including cost  
8 sharing agreements, with the State of California.

9 (2) OTHER AGREEMENTS.—The Secretary is  
10 authorized to enter into contracts, memoranda of  
11 understanding, financial assistance agreements, cost  
12 sharing agreements, and other appropriate agree-  
13 ments with State, tribal, and local governmental  
14 agencies, and with private parties, including agree-  
15 ments related to construction, improvement, and op-  
16 eration and maintenance of facilities, subject to any  
17 terms and conditions that the Secretary deems nec-  
18 essary to achieve the purposes of the Settlement.

19 (c) ACCEPTANCE AND EXPENDITURE OF NON-FED-  
20 ERAL FUNDS.—The Secretary is authorized to accept and  
21 expend non-Federal funds in order to facilitate implemen-  
22 tation of the Settlement.

23 (d) MITIGATION OF IMPACTS.—Prior to the imple-  
24 mentation of decisions or agreements to construct, im-  
25 prove, operate, or maintain facilities that the Secretary de-

1 termines are needed to implement the Settlement, the Sec-  
2 retary shall identify—

3 (1) the impacts associated with such actions;

4 and

5 (2) the measures which shall be implemented to  
6 mitigate impacts on adjacent and downstream water  
7 users and landowners.

8 (e) DESIGN AND ENGINEERING STUDIES.—The Sec-  
9 retary is authorized to conduct any design or engineering  
10 studies that are necessary to implement the Settlement.

11 (f) EFFECT ON CONTRACT WATER ALLOCATIONS.—  
12 Except as otherwise provided in this section, the imple-  
13 mentation of the Settlement and the reintroduction of  
14 California Central Valley Spring Run Chinook salmon  
15 pursuant to the Settlement and section 110, shall not re-  
16 sult in the involuntary reduction in contract water alloca-  
17 tions to Central Valley Project long-term contractors,  
18 other than Friant Division long-term contractors.

19 (g) EFFECT ON EXISTING WATER CONTRACTS.—Ex-  
20 cept as provided in the Settlement and this Act, nothing  
21 in this Act shall modify or amend the rights and obliga-  
22 tions of the parties to any existing water service, repay-  
23 ment, purchase or exchange contract.

1 **SEC. 105. ACQUISITION AND DISPOSAL OF PROPERTY;**  
2 **TITLE TO FACILITIES.**

3 (a) TITLE TO FACILITIES.—Unless acquired pursu-  
4 ant to subsection (b), title to any facility or facilities,  
5 stream channel, levees, or other real property modified or  
6 improved in the course of implementing the Settlement au-  
7 thorized by this Act, and title to any modifications or im-  
8 provements of such facility or facilities, stream channel,  
9 levees, or other real property—

10 (1) shall remain in the owner of the property;

11 and

12 (2) shall not be transferred to the United  
13 States on account of such modifications or improve-  
14 ments.

15 (b) ACQUISITION OF PROPERTY.—

16 (1) IN GENERAL.—The Secretary is authorized  
17 to acquire through purchase from willing sellers any  
18 property, interests in property, or options to acquire  
19 real property needed to implement the Settlement  
20 authorized by this Act.

21 (2) APPLICABLE LAW.—The Secretary is au-  
22 thorized, but not required, to exercise all of the au-  
23 thorities provided in section 102 of the Act of Au-  
24 gust 26, 1937 (50 Stat. 844, chapter 832), to carry  
25 out the measures authorized in this section and sec-  
26 tion 104.

1 (c) DISPOSAL OF PROPERTY.—

2 (1) IN GENERAL.—Upon the Secretary’s deter-  
3 mination that retention of title to property or inter-  
4 ests in property acquired pursuant to this Act is no  
5 longer needed to be held by the United States for  
6 the furtherance of the Settlement, the Secretary is  
7 authorized to dispose of such property or interest in  
8 property on such terms and conditions as the Sec-  
9 retary deems appropriate and in the best interest of  
10 the United States, including possible transfer of  
11 such property to the State of California.

12 (2) RIGHT OF FIRST REFUSAL.—In the event  
13 the Secretary determines that property acquired pur-  
14 suant to this Act through the exercise of its eminent  
15 domain authority is no longer necessary for imple-  
16 mentation of the Settlement, the Secretary shall pro-  
17 vide a right of first refusal to the property owner  
18 from whom the property was initially acquired, or  
19 his or her successor in interest, on the same terms  
20 and conditions as the property is being offered to  
21 other parties.

22 (3) DISPOSITION OF PROCEEDS.—Proceeds  
23 from the disposal by sale or transfer of any such  
24 property or interests in such property shall be depos-  
25 ited in the fund established by section 109(c).

1 **SEC. 106. COMPLIANCE WITH APPLICABLE LAW.**

2 (a) APPLICABLE LAW.—

3 (1) IN GENERAL.—In undertaking the measures  
4 authorized by this Act, the Secretary and the Sec-  
5 retary of Commerce shall comply with all applicable  
6 Federal and State laws, rules, and regulations, in-  
7 cluding the National Environmental Policy Act of  
8 1969 (42 U.S.C. 4321 et seq.) and the Endangered  
9 Species Act of 1973 (16 U.S.C. 1531 et seq.), as  
10 necessary.

11 (2) ENVIRONMENTAL REVIEWS.—The Secretary  
12 and the Secretary of Commerce are authorized and  
13 directed to initiate and expeditiously complete appli-  
14 cable environmental reviews and consultations as  
15 may be necessary to effectuate the purposes of the  
16 Settlement.

17 (b) EFFECT ON STATE LAW.—Nothing in this Act  
18 shall preempt State law or modify any existing obligation  
19 of the United States under Federal reclamation law to op-  
20 erate the Central Valley Project in conformity with State  
21 law.

22 (c) USE OF FUNDS FOR ENVIRONMENTAL RE-  
23 VIEWS.—

24 (1) DEFINITION OF ENVIRONMENTAL RE-  
25 VIEW.—For purposes of this subsection, the term  
26 “environmental review” includes any consultation

1 and planning necessary to comply with subsection  
2 (a).

3 (2) PARTICIPATION IN ENVIRONMENTAL RE-  
4 VIEW PROCESS.—In undertaking the measures au-  
5 thorized by section 104, and for which environ-  
6 mental review is required, the Secretary may provide  
7 funds made available under this Act to affected Fed-  
8 eral agencies, State agencies, local agencies, and In-  
9 dian tribes if the Secretary determines that such  
10 funds are necessary to allow the Federal agencies,  
11 State agencies, local agencies, or Indian tribes to ef-  
12 fectively participate in the environmental review  
13 process.

14 (3) LIMITATION.—Funds may be provided  
15 under paragraph (2) only to support activities that  
16 directly contribute to the implementation of the  
17 terms and conditions of the Settlement.

18 (d) NONREIMBURSABLE FUNDS.—The United States  
19 share of the costs of implementing this Act shall be non-  
20 reimbursable under Federal reclamation law, provided  
21 that nothing in this subsection shall limit or be construed  
22 to limit the use of the funds assessed and collected pursu-  
23 ant to sections 3406(c)(1) and 3407(d)(2) of the Reclama-  
24 tion Projects Authorization and Adjustment Act of 1992  
25 (Public Law 102–575; 106 Stat. 4721, 4727), for imple-

1 mentation of the Settlement, nor shall it be construed to  
2 limit or modify existing or future Central Valley Project  
3 Ratesetting Policies.

4 **SEC. 107. COMPLIANCE WITH CENTRAL VALLEY PROJECT**  
5 **IMPROVEMENT ACT.**

6 Congress hereby finds and declares that the Settle-  
7 ment satisfies and discharges all of the obligations of the  
8 Secretary contained in section 3406(e)(1) of the Reclama-  
9 tion Projects Authorization and Adjustment Act of 1992  
10 (Public Law 102–575; 106 Stat. 4721), provided, how-  
11 ever, that—

12 (1) the Secretary shall continue to assess and  
13 collect the charges provided in section 3406(e)(1) of  
14 the Reclamation Projects Authorization and Adjust-  
15 ment Act of 1992 (Public Law 102–575; 106 Stat.  
16 4721), as provided in the Settlement and section  
17 109(d); and

18 (2) those assessments and collections shall con-  
19 tinue to be counted towards the requirements of the  
20 Secretary contained in section 3407(e)(2) of the  
21 Reclamation Projects Authorization and Adjustment  
22 Act of 1992 (Public Law 102–575; 106 Stat. 4726).

23 **SEC. 108. NO PRIVATE RIGHT OF ACTION.**

24 (a) IN GENERAL.—Nothing in this Act confers upon  
25 any person or entity not a party to the Settlement a pri-

1 vate right of action or claim for relief to interpret or en-  
2 force the provisions of this Act or the Settlement.

3 (b) APPLICABLE LAW.—This section shall not alter  
4 or curtail any right of action or claim for relief under any  
5 other applicable law.

6 **SEC. 109. APPROPRIATIONS; SETTLEMENT FUND.**

7 (a) IMPLEMENTATION COSTS.—

8 (1) IN GENERAL.—The costs of implementing  
9 the Settlement shall be covered by payments or in  
10 kind contributions made by Friant Division contrac-  
11 tors and other non-Federal parties, including the  
12 funds provided in paragraphs (1) through (5) of  
13 subsection (c), estimated to total \$440,000,000, of  
14 which the non-Federal payments are estimated to  
15 total \$200,000,000 (at October 2006 price levels)  
16 and the amount from repaid Central Valley Project  
17 capital obligations is estimated to total  
18 \$240,000,000, the additional Federal appropriation  
19 of \$250,000,000 authorized pursuant to subsection  
20 (b)(1), and such additional funds authorized pursu-  
21 ant to subsection (b)(2); provided however, that the  
22 costs of implementing the provisions of section  
23 104(a)(1) shall be shared by the State of California  
24 pursuant to the terms of a Memorandum of Under-  
25 standing executed by the State of California and the

1 Parties to the Settlement on September 13, 2006,  
2 which includes at least \$110,000,000 of State funds.

3 (2) ADDITIONAL AGREEMENTS.—

4 (A) IN GENERAL.—The Secretary shall  
5 enter into 1 or more agreements to fund or im-  
6 plement improvements on a project-by-project  
7 basis with the State of California.

8 (B) REQUIREMENTS.—Any agreements en-  
9 tered into under subparagraph (A) shall provide  
10 for recognition of either monetary or in-kind  
11 contributions toward the State of California’s  
12 share of the cost of implementing the provisions  
13 of section 104(a)(1).

14 (3) LIMITATION.—Except as provided in the  
15 Settlement, to the extent that costs incurred solely  
16 to implement this Settlement would not otherwise  
17 have been incurred by any entity or public or local  
18 agency or subdivision of the State of California, such  
19 costs shall not be borne by any such entity, agency,  
20 or subdivision of the State of California, unless such  
21 costs are incurred on a voluntary basis.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—In addition to the funds pro-  
24 vided in paragraphs (1) through (5) of subsection  
25 (c), there are also authorized to be appropriated not

1 to exceed \$250,000,000 (at October 2006 price lev-  
2 els) to implement this Act and the Settlement, to be  
3 available until expended; provided however, that the  
4 Secretary is authorized to spend such additional ap-  
5 propriations only in amounts equal to the amount of  
6 funds deposited in the Fund (not including pay-  
7 ments under subsection (c)(2), proceeds under sub-  
8 section (c)(3) other than an amount equal to what  
9 would otherwise have been deposited under sub-  
10 section (c)(1) in the absence of issuance of the bond,  
11 and proceeds under subsection (c)(4)), the amount  
12 of in-kind contributions, and other non-Federal pay-  
13 ments actually committed to the implementation of  
14 this Act or the Settlement.

15 (2) OTHER FUNDS.—The Secretary is author-  
16 ized to use monies from the Fund created under sec-  
17 tion 3407 of the Reclamation Projects Authorization  
18 and Adjustment Act of 1992 (Public Law 102–575;  
19 106 Stat. 4727) for purposes of this Act.

20 (c) FUND.—There is hereby established within the  
21 Treasury of the United States a fund, to be known as the  
22 “San Joaquin River Restoration Fund”, into which the  
23 following shall be deposited and used solely for the purpose  
24 of implementing the Settlement, to be available for ex-  
25 penditure without further appropriation:

1           (1) At the beginning of the fiscal year following  
2           enactment of this Act, all payments received pursu-  
3           ant to section 3406(c)(1) of the Reclamation  
4           Projects Authorization and Adjustment Act of 1992  
5           (Public Law 102–575; 106 Stat. 4721).

6           (2) The construction cost component (not oth-  
7           erwise needed to cover operation and maintenance  
8           costs) of payments made by Friant Division, Hidden  
9           Unit, and Buchanan Unit contractors pursuant to  
10          long-term water service contracts or pursuant to re-  
11          payment contracts, including repayment contracts  
12          executed pursuant to section 110 of this Act. The  
13          construction cost repayment obligation assigned such  
14          contractors under such contracts shall be reduced by  
15          the amount paid pursuant to this paragraph and the  
16          appropriate share of the existing Federal investment  
17          in the Central Valley project to be recovered by the  
18          Secretary pursuant to Public Law 99–546 (100  
19          Stat. 3050) shall be reduced by an equivalent sum.

20          (3) Proceeds from the sale of water pursuant to  
21          the Settlement, or from the sale of property or inter-  
22          ests in property as provided in section 105, to be  
23          available without further appropriation.

24          (4) Any non-Federal funds, including State  
25          cost-sharing funds, contributed to the United States

1 for implementation of the Settlement, which the Sec-  
2 retary may expend without further appropriation for  
3 the purposes for which contributed.

4 (d) LIMITATION ON CONTRIBUTIONS.—Payments  
5 made by long-term contractors who receive water from the  
6 Friant Division and Hidden and Buchanan Units of the  
7 Central Valley Project pursuant to sections 3406(e)(1)  
8 and 3407(d)(2) of the Reclamation Projects Authorization  
9 and Adjustment Act of 1992 (Public Law 102–575; 106  
10 Stat. 4721, 4727) and payments made pursuant to para-  
11 graph 16(b)(3) of the Settlement and subsection (c)(2)  
12 shall be the limitation of such entities’ direct financial con-  
13 tribution to the Settlement, subject to the terms and con-  
14 ditions of paragraph 21 of the Settlement.

15 (e) NO ADDITIONAL EXPENDITURES REQUIRED.—  
16 Nothing in this Act shall be construed to require a Federal  
17 official to expend Federal funds not appropriated by Con-  
18 gress, or to seek the appropriation of additional funds by  
19 Congress, for the implementation of the Settlement.

20 (f) REACH 4B.—

21 (1) STUDY.—

22 (A) IN GENERAL.—In accordance with the  
23 Settlement and the Memorandum of Under-  
24 standing executed pursuant to paragraph 6 of

1 the Settlement, the Secretary shall conduct a  
2 study that specifies—

3 (i) the costs of undertaking any work  
4 required under paragraph 11(a)(3) of the  
5 Settlement to increase the capacity of  
6 Reach 4B prior to reinitiation of Restora-  
7 tion Flows;

8 (ii) the impacts associated with re-  
9 initiation of such flows; and

10 (iii) measures that shall be imple-  
11 mented to mitigate impacts.

12 (B) DEADLINE.—The study under sub-  
13 paragraph (A) shall be completed prior to res-  
14 toration of any flows other than Interim Flows.

15 (2) REPORT.—

16 (A) IN GENERAL.—The Secretary shall file  
17 a report with Congress not later than 90 days  
18 after issuing a determination, as required by  
19 the Settlement, on whether to expand channel  
20 conveyance capacity to 4500 cubic feet per sec-  
21 ond in Reach 4B of the San Joaquin River, or  
22 use an alternative route for pulse flows, that—

23 (i) explains whether the Secretary has  
24 decided to expand Reach 4B capacity to  
25 4500 cubic feet per second; and

1 (ii) addresses the following matters:

2 (I) The basis for the Secretary's  
3 determination, whether set out in en-  
4 vironmental review documents or oth-  
5 erwise, as to whether the expansion of  
6 Reach 4B would be the preferable  
7 means to achieve the Restoration Goal  
8 as provided in the Settlement, includ-  
9 ing how different factors were as-  
10 sessed such as comparative biological  
11 and habitat benefits, comparative  
12 costs, relative availability of State  
13 cost-sharing funds, and the compara-  
14 tive benefits and impacts on water  
15 temperature, water supply, private  
16 property, and local and downstream  
17 flood control.

18 (II) The Secretary's final cost es-  
19 timate for expanding Reach 4B capac-  
20 ity to 4500 cubic feet per second, or  
21 any alternative route selected, as well  
22 as the alternative cost estimates pro-  
23 vided by the State, by the Restoration  
24 Administrator, and by the other par-  
25 ties to the Settlement.

1 (III) The Secretary's plan for  
2 funding the costs of expanding Reach  
3 4B or any alternative route selected,  
4 whether by existing Federal funds  
5 provided under this Act, by non-Fed-  
6 eral funds, by future Federal appro-  
7 priations, or some combination of  
8 such sources.

9 (B) DETERMINATION REQUIRED.—The  
10 Secretary shall, to the extent feasible, make the  
11 determination in subparagraph (A) prior to un-  
12 dertaking any substantial construction work to  
13 increase capacity in Reach 4B.

14 (3) COSTS.—If the Secretary's estimated Fed-  
15 eral cost for expanding Reach 4B in paragraph (2),  
16 in light of the Secretary's funding plan set out in  
17 paragraph (2), would exceed the remaining Federal  
18 funding authorized by this Act (including all funds  
19 reallocated, all funds dedicated, and all new funds  
20 authorized by this Act and separate from all com-  
21 mitments of State and other non-Federal funds and  
22 in-kind commitments), then before the Secretary  
23 commences actual construction work in Reach 4B  
24 (other than planning, design, feasibility, or other  
25 preliminary measures) to expand capacity to 4500

1 cubic feet per second to implement this Settlement,  
2 Congress must have increased the applicable author-  
3 ization ceiling provided by this Act in an amount at  
4 least sufficient to cover the higher estimated Federal  
5 costs.

6 **SEC. 110. REPAYMENT CONTRACTS AND ACCELERATION OF**  
7 **REPAYMENT OF CONSTRUCTION COSTS.**

8 (a) **CONVERSION OF CONTRACTS.**—The Secretary is  
9 authorized and directed to convert, prior to December 31,  
10 2010, all existing Friant Division, Hidden Unit, and Bu-  
11 chanan Unit long-term contracts entered under subsection  
12 (e) of section 109 of the Act of August 4, 1939 (53 Stat.  
13 1196) to a contract under subsection (d) of section 9 of  
14 said Act (53 Stat. 1195), under mutually agreeable terms  
15 and conditions. Upon request of the contractor, the Sec-  
16 retary is further authorized to convert, prior to December  
17 31, 2010, any existing Friant Division long-term contract  
18 entered under subsection (c)(2) of section 9 of the Act  
19 of August 4, 1939 (53 Stat. 1194), to a contract under  
20 subsection (c)(1) of section 9 of said Act, under mutually  
21 agreeable terms and conditions. All such contracts shall—

22 (1) require the repayment, either in lump sum  
23 or by accelerated pre-payment, of the remaining  
24 amount of construction cost identified in the Central  
25 Valley Project Schedule of Irrigation Capital Rates

1 by Contractor 2007 Irrigation Water Rates, dated  
2 January 25, 2007, as adjusted to reflect payments  
3 not reflected in such schedule, and properly assign-  
4 able for ultimate return by the contractor, no later  
5 than January 31, 2011, or if made in approximately  
6 equal annual installments, not later than January  
7 31, 2014;

8 (2) require that, notwithstanding subsection  
9 (c)(2), construction costs, including construction  
10 costs or other capitalized costs incurred after the ef-  
11 fective date of the contract, properly assignable to  
12 such contractor but not reflected in the Schedule  
13 referenced in paragraph (1) shall be repaid in not  
14 more than 5 years after notification of the alloca-  
15 tion, unless the Secretary and the contractor agree  
16 upon a longer repayment period consistent with ap-  
17 plicable law;

18 (3) provide that power revenues will not be  
19 available to aid in repayment of construction costs  
20 allocated to irrigation under the contract; and

21 (4) conform to the Settlement and this Act and  
22 shall continue so long as the contractor pays applica-  
23 ble charges, consistent with subsection (c)(2).

24 (b) FINAL ADJUSTMENT.—The amounts paid pursu-  
25 ant to subsection (a) shall be subject to adjustment fol-

1 lowing a final cost allocation by the Secretary upon com-  
2 pletion of the construction of the Central Valley Project.  
3 In the event that the final cost allocation indicates that  
4 the costs properly assignable to the contractor are greater  
5 than what has been paid by the contractor, the contractor  
6 shall be obligated to pay the remaining allocated costs.  
7 The term of such additional repayment contract shall be  
8 no less than one year and no more than 10 years, however,  
9 mutually agreeable provisions regarding the rate of repay-  
10 ment of such amount may be developed by the parties.  
11 In the event that the final cost allocation indicates that  
12 the costs properly assignable to the contractor are less  
13 than what the contractor has paid, the Secretary is au-  
14 thorized and directed to credit such overpayment as an  
15 offset against any outstanding or future obligation of the  
16 contractor.

17 (c) APPLICABILITY OF CERTAIN PROVISIONS.—Not-  
18 withstanding any repayment obligation under subsection  
19 (a)(2) or (b), upon a contractor's compliance with and dis-  
20 charge of the obligation of repayment of the construction  
21 costs as provided in subsection (a)(1)—

22 (1) the provisions of section 213(a) and (b) of  
23 the Reclamation Reform Act of 1982 (96 Stat.  
24 1269) shall apply to lands in such district; and

1           (2) the Secretary shall waive the pricing provi-  
2           sions of section 3405(d) of the Reclamation Projects  
3           Authorization and Adjustment Act of 1992 (Public  
4           Law 102–575) for such contractor, provided that  
5           such contractor shall continue to pay applicable op-  
6           eration and maintenance costs and other charges ap-  
7           plicable to such repayment contracts pursuant to the  
8           then-current ratesetting policy and applicable law.

9           (d) REDUCTION OF CHARGE.—Beginning in 2019,  
10          the Secretary shall reduce the charge mandated in section  
11          107(1) of the Act in recognition of the financing costs in-  
12          curred in making 110(a)(1) payments.

13          (e) SATISFACTION OF CERTAIN PROVISIONS.—

14                 (1) IN GENERAL.—Upon the first release of In-  
15                 terim Flows or Restoration Flows, pursuant to para-  
16                 graphs 13 or 15 of the Settlement, any short- or  
17                 long-term agreement to which one or more long-term  
18                 Friant water service or repayment contractors is a  
19                 party providing for the transfer or exchange of water  
20                 not released as Interim Flows or Restoration Flows  
21                 shall be deemed to satisfy the provisions of sub-  
22                 section 3405(a)(1)(A) and (I) of the Reclamation  
23                 Projects Authorization and Adjustment Act of 1992  
24                 (Public Law 102–575) without the further concur-  
25                 rence of the Secretary as to compliance with said

1 subsections if the contractor provides, not later than  
2 90 days before commencement of such transfer or  
3 exchange, written notice to the Secretary stating  
4 how the proposed transfer or exchange is intended to  
5 reduce, avoid, or mitigate impacts to water deliveries  
6 caused by the Interim Flows or Restoration Flows  
7 or is intended to otherwise facilitate the Water Man-  
8 agement Goal, as described in the Settlement. The  
9 Secretary shall promptly make such notice publicly  
10 available.

11 (2) DETERMINATION OF REDUCTIONS TO  
12 WATER DELIVERIES.—Water transferred or ex-  
13 changed under an agreement that meets the terms  
14 of this subsection shall not be counted as a replace-  
15 ment or an offset for purposes of determining reduc-  
16 tions to water deliveries to any Friant Division long-  
17 term contractor except as provided in paragraph  
18 16(b) of the Settlement. The Secretary shall, at least  
19 annually, make publicly available a compilation of  
20 the number of transfer or exchange agreements exer-  
21 cising the provisions of this subsection to reduce,  
22 avoid, or mitigate impacts to water deliveries caused  
23 by the Interim Flows or Restoration Flows or to fa-  
24 cilitate the Water Management Goal, as well as the

1 volume of water transferred or exchanged under  
2 such agreements.

3 (3) STATE LAW.—Nothing in this subsection al-  
4 ters State law or permit conditions, including any  
5 applicable geographical restrictions on the place of  
6 use of water transferred or exchanged pursuant to  
7 this subsection.

8 (f) CERTAIN REPAYMENT OBLIGATIONS NOT AL-  
9 TERED.—Implementation of the provisions of this section  
10 shall not alter the repayment obligation of any other long-  
11 term water contractor receiving water from the Central  
12 Valley Project.

13 (g) STATUTORY INTERPRETATION.—Nothing in this  
14 Act shall be construed to affect the right of any Friant  
15 Division long-term contractor to use a particular type of  
16 financing to make the payments required in subsection  
17 (a)(1).

18 **SEC. 111. CALIFORNIA CENTRAL VALLEY SPRING RUN CHI-**  
19 **NOOK SALMON.**

20 (a) FINDING.—Congress finds that the implementa-  
21 tion of the Settlement to resolve 18 years of contentious  
22 litigation regarding restoration of the San Joaquin River  
23 and the reintroduction of the California Central Valley  
24 Spring Run Chinook salmon is a unique and unprece-  
25 dented circumstance that requires clear expressions of

1 Congressional intent regarding how the provisions of the  
2 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
3 are utilized to achieve the goals of restoration of the San  
4 Joaquin River and the successful reintroduction of Cali-  
5 fornia Central Valley Spring Run Chinook salmon.

6 (b) REINTRODUCTION IN THE SAN JOAQUIN  
7 RIVER.—California Central Valley Spring Run Chinook  
8 salmon shall be reintroduced in the San Joaquin River  
9 below Friant Dam pursuant to section 10(j) of the Endan-  
10 gered Species Act of 1973 (16 U.S.C. 1539(j)) and the  
11 Settlement, provided that the Secretary of Commerce  
12 finds that a permit for the reintroduction of California  
13 Central Valley Spring Run Chinook salmon may be issued  
14 pursuant to section 10(a)(1)(A) of the Endangered Spe-  
15 cies Act of 1973 (16 U.S.C. 1539(a)(1)(A)).

16 (c) FINAL RULE.—

17 (1) DEFINITION OF THIRD PARTY.—For the  
18 purpose of this subsection, the term “third party”  
19 means persons or entities diverting or receiving  
20 water pursuant to applicable State and Federal law  
21 and shall include Central Valley Project contractors  
22 outside of the Friant Division of the Central Valley  
23 Project and the State Water Project.

24 (2) ISSUANCE.—The Secretary of Commerce  
25 shall issue a final rule pursuant to section 4(d) of

1 the Endangered Species Act of 1973 (16 U.S.C.  
2 1533(d)) governing the incidental take of reintro-  
3 duced California Central Valley Spring Run Chinook  
4 salmon prior to the reintroduction.

5 (3) REQUIRED COMPONENTS.—The rule issued  
6 under paragraph (2) shall provide that the reintro-  
7 duction will not impose more than de minimus:  
8 water supply reductions, additional storage releases,  
9 or bypass flows on unwilling third parties due to  
10 such reintroduction.

11 (4) APPLICABLE LAW.—Nothing in this sec-  
12 tion—

13 (A) diminishes the statutory or regulatory  
14 protections provided in the Endangered Species  
15 Act for any species listed pursuant to section 4  
16 of the Endangered Species Act of 1973 (16  
17 U.S.C. 1533) other than the reintroduced popu-  
18 lation of California Central Valley Spring Run  
19 Chinook salmon, including protections pursuant  
20 to existing biological opinions or new biological  
21 opinions issued by the Secretary or Secretary of  
22 Commerce; or

23 (B) precludes the Secretary or Secretary of  
24 Commerce from imposing protections under the  
25 Endangered Species Act of 1973 (16 U.S.C.

1           1531 et seq.) for other species listed pursuant  
2           to section 4 of that Act (16 U.S.C. 1533) be-  
3           cause those protections provide incidental bene-  
4           fits to such reintroduced California Central Val-  
5           ley Spring Run Chinook salmon.

6           (d) REPORT.—

7           (1) IN GENERAL.—Not later than December 31,  
8           2024, the Secretary of Commerce shall report to  
9           Congress on the progress made on the reintroduction  
10          set forth in this section and the Secretary’s plans for  
11          future implementation of this section.

12          (2) INCLUSIONS.—The report under paragraph  
13          (1) shall include—

14                (A) an assessment of the major challenges,  
15                if any, to successful reintroduction;

16                (B) an evaluation of the effect, if any, of  
17                the reintroduction on the existing population of  
18                California Central Valley Spring Run Chinook  
19                salmon existing on the Sacramento River or its  
20                tributaries; and

21                (C) an assessment regarding the future of  
22                the reintroduction.

23          (e) FERC PROJECTS.—

24                (1) IN GENERAL.—With regard to California  
25          Central Valley Spring Run Chinook salmon reintro-

1       duced pursuant to the Settlement, the Secretary of  
2       Commerce shall exercise its authority under section  
3       18 of the Federal Power Act (16 U.S.C. 811) by re-  
4       serving its right to file prescriptions in proceedings  
5       for projects licensed by the Federal Energy Regu-  
6       latory Commission on the Calaveras, Stanislaus,  
7       Tuolumne, Merced, and San Joaquin rivers and oth-  
8       erwise consistent with subsection (c) until after the  
9       expiration of the term of the Settlement, December  
10      31, 2025, or the expiration of the designation made  
11      pursuant to subsection (b), whichever ends first.

12           (2) EFFECT OF SUBSECTION.—Nothing in this  
13      subsection shall preclude the Secretary of Commerce  
14      from imposing prescriptions pursuant to section 18  
15      of the Federal Power Act (16 U.S.C. 811) solely for  
16      other anadromous fish species because those pre-  
17      scriptions provide incidental benefits to such reintro-  
18      duced California Central Valley Spring Run Chinook  
19      salmon.

20           (f) EFFECT OF SECTION.—Nothing in this section is  
21      intended or shall be construed—

22           (1) to modify the Endangered Species Act of  
23      1973 (16 U.S.C. 1531 et seq.) or the Federal Power  
24      Act (16 U.S.C. 791a et seq.); or

1           (2) to establish a precedent with respect to any  
2           other application of the Endangered Species Act of  
3           1973 (16 U.S.C. 1531 et seq.) or the Federal Power  
4           Act (16 U.S.C. 791a et seq.).

5 **SEC. 112. OFFSETTING RECEIPTS.**

6           (a) CONSERVATION OF RESOURCES FEE FOR NON-  
7 PRODUCING FEDERAL OIL AND GAS LEASES IN THE  
8 GULF OF MEXICO.—Not later than 60 days after the date  
9 of enactment of this Act, the Secretary of the Interior by  
10 regulation shall establish a conservation of resources fee  
11 for nonproducing Federal oil and gas leases in the Gulf  
12 of Mexico.

13           (b) NONPRODUCING LEASE FEE TERMS.—The fee  
14 under subsection (a)—

15                 (1) subject to paragraph (3), shall apply to  
16 leases that are nonproducing leases;

17                 (2) shall be set at \$3.75 per acre per year in  
18 2005 dollars; and

19                 (3) shall apply on and after October 1, 2006.

20           (c) TREATMENT OF RECEIPTS.—Amounts received  
21 by the United States as fees under this section shall be  
22 treated as offsetting receipts.

1     **TITLE II—STUDY TO DEVELOP**  
2             **WATER PLAN; REPORT**

3     **SEC. 201. STUDY TO DEVELOP WATER PLAN; REPORT.**

4             (a) PLAN.—

5                     (1) GRANT.—To the extent that funds are  
6             made available in advance for this purpose, the Sec-  
7             retary of the Interior, acting through the Bureau of  
8             Reclamation, shall provide direct financial assistance  
9             to the California Water Institute, located at Cali-  
10            fornia State University, Fresno, California, to con-  
11            duct a study regarding the coordination and integra-  
12            tion of sub-regional integrated regional water man-  
13            agement plans into a unified Integrated Regional  
14            Water Management Plan for the subject counties in  
15            the hydrologic basins that would address issues re-  
16            lated to—

17                     (A) water quality;

18                     (B) water supply (both surface, ground-  
19             water banking, and brackish water desalina-  
20             tion);

21                     (C) water conveyance;

22                     (D) water reliability;

23                     (E) flood control;

24                     (F) water resource-related environmental  
25             enhancement; and

1 (G) population growth.

2 (2) STUDY AREA.—The study area referred to  
3 in paragraph (1) is the proposed study area of the  
4 San Joaquin River Hydrologic Region and Tulare  
5 Lake Hydrologic Region, as defined by California  
6 Department of Water Resources Bulletin 160–05,  
7 Volume 3, Chapters 7 and 8, including Kern,  
8 Tulare, Kings, Fresno, Madera, Merced, Stanislaus,  
9 and San Joaquin counties in California.

10 (b) USE OF PLAN.—The Integrated Regional Water  
11 Management Plan developed for the 2 hydrologic basins  
12 under subsection (a) shall serve as a guide for the 8 coun-  
13 ties in the study area described in subsection (a)(2) to use  
14 as a mechanism to address and solve long-term water  
15 needs in a sustainable and equitable manner.

16 (c) REPORT.—The Secretary shall ensure that a re-  
17 port containing the results of the Integrated Regional  
18 Water Management Plan for the hydrologic regions is sub-  
19 mitted to the Committee on Natural Resources of the  
20 House of Representatives and the Committee on Energy  
21 and Natural Resources of the Senate not later than 24  
22 months after financial assistance is made available to the  
23 California Water Institute under subsection (a)(1).

1       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to carry out this section  
3 \$1,000,000 to remain available until expended.

Union Calendar No. 395

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

**H. R. 4074**

[Report No. 110-633]

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## **A BILL**

To authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

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MAY 13, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed