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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–633

SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

MAY 13, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4074]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4074) to authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4074 is to authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4074 is intended to implement the Stipulation of Settlement of *Natural Resources Defense Council, et al.*, v. *Kirk Rodgers, et al.*, filed with the U.S. District Court in Sacramento, California, on September 13, 2006. The settlement is often referred to as the "San Joaquin River Settlement" or the "Friant Settlement." U.S. District Court Judge Lawrence K. Karlton approved the settlement on October 23, 2006.

The litigation leading to the settlement was filed 19 years ago by the Natural Resources Defense Council (NRDC). The issues in the case and the settlement directly affect the Friant Division of the

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Central Valley Project, the largest water project built by the U.S. Bureau of Reclamation. As the settlement is highly complex and locally controversial, the implementation of the terms of the settlement will be very expensive and take many years to complete.

In 1988, the NRDC and a coalition of groups originally challenged the Department of the Interior's proposal to renew 40-year water service contracts for the Friant Division without the preparation of an Environmental Impact Statement under the National Environmental Policy Act. NRDC's complaint was subsequently amended to include other claims, including a claim under the Endangered Species Act, and more recently a claim alleging that the operation of the Friant Dam violates California Fish & Game Code Section 5937, which requires dams to release sufficient water to keep fish in good condition below the dam. It was the latter claim that became the focus of the litigation in recent years. The current settlement and enactment of legislation resolves all of the pending legal claims.

Certain Interior Department actions called for in the settlement require Congressional authorization. Exhibit "A" of the Stipulation of Settlement contains legislative language suggested for introduction in Congress to implement the settlement. According to a document released by the settling parties on September 13, 2006, "[p]assage of this legislation in substantially the same form as the exhibit is critical because any party could void the Settlement if the legislation were not enacted."

The actual language in the settlement regarding the need for this implementing legislation is found in Sec. 8 of the Stipulation of Settlement (beginning at page 6, line 20):

> 8. The Parties acknowledge that certain actions to be undertaken to implement this Settlement will require additional authorizations or appropriations by Congress, or both. The Plaintiffs and the Friant Parties agree jointly to request that legislation in the form of Exhibit A be enacted into law. The Parties intend and anticipate that such legislation will provide the federal legislative authorizations necessary for the Secretary to carry out the federal obligations under this Settlement. In the event that legislation substantially in the form of Exhibit A is not enacted into law by December 31, 2006, this Settlement is voidable at the election of any Party. Before any Party may exercise its right to void this Settlement in accordance with the preceding sentence, it shall provide written notice of its intent to do so to the other Parties and, following receipt of such notice, the Parties shall meet and confer in good faith for a period of no less than 30 days. During that time, the Parties shall explore the extent to which this Settlement might be modified (in accordance with Paragraph 48) to further the goals of this Settlement in light of Congressional action or inaction on Exhibit A.

The costs of implementing the San Joaquin River Restoration Settlement are significant and have been the subject of extensive discussions and negotiations among the Settling Parties. House pay-as-you-go (PAYGO) rules have also affected progress on enactment of implementing legislation.

When asked to prepare a preliminary analysis of an earlier version of this legislation (H.R. 24), the Congressional Budget Office (CBO) estimated that H.R. 24 as introduced would result in $217 million in direct spending (not subject to appropriation) over the 2008–2017 time frame, plus another $23 million in forgone revenue. Of that total amount, $70 million is attributable to a provision that authorized the Secretary of the Interior to facilitate third-party financing provisions (including the issuance of bonds and federally guaranteed loans) to pay for river restoration work.

The Settling Parties returned to the negotiating table in an effort to significantly reduce the $240 million direct total costs estimated by CBO for H.R. 24. The Settling Parties proposed eliminating bonding and loan guarantee provisions and replacing that with new language that would allow Friant Division water users to "pre-pay" their allocated share of construction costs for the water project. This would require Friant users to arrange private sector financing of their existing repayment obligation to the United States, and would necessitate a restructuring of their contracts with the Bureau of Reclamation. The bill's sponsors and other affected water agencies agreed to the conceptual approval, in which Friant, the Settling Parties and third party interests reserved the right to make a final decision on the pre-payment proposal once the analysis of the proposed changes is complete.

The Settling Parties have agreed to strictly observe an agreement that any proposed amendment to the implementing legislation required the advance approval of all the Settling Parties as well as the "Third Parties" affected by implementation of the settlement. All the parties are keenly aware that failure to achieve a straightforward authorization for the settlement will allow any party to seek to vacate the settlement and let the court decide how the San Joaquin River should be restored. A court-ordered action could drastically increase the risks to the federal government and water users, as well as the overall cost of restoration efforts.

COMMITTEE ACTION

H.R. 4074 was introduced by Representative Jim Costa (D–CA) on November 5, 2007. The bill is nearly identical to legislation (H.R. 24) introduced by Representative George Radanovich (R–CA) earlier in the 110th Congress to implement the above-referenced settlement, with amendments designed to reduce the overall cost and to authorize federal assistance for a regional water plan in Title II.

The Subcommittee on Water and Power considered the policy aspects of the San Joaquin River Settlement in an oversight hearing on September 21, 2006. Later in the 109th Congress, implementing legislation (H.R. 6377) was introduced by Rep. George Radanovich. The legislation was not considered by the Committee or by the full House of Representatives prior to adjournment. In the 110th Congress, a legislative hearing was held in the Subcommittee on Water and Power on H.R. 24 on March 1, 2007.

On November 15, 2007, the Full Natural Resources Committee met to consider H.R. 4074. Subcommittee Ranking Member Cathy McMorris Rodgers (R–WA) offered an amendment #3* which sought to ensure that nothing in the legislation would result in the increase of water rates or project-use power and preference power

rates. The amendment also required that the Secretary in consultation with the Administrator of the Western Area Power Administration include any cost increases in billing information for power and water customers. The amendment was not agreed to by a roll call vote of 14 yeas and 22 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: 11/15/07 Convened: Adjourned:

Meeting on: **Full Committee Markup of HR 4074: McMorris Rodgers amendment #3***

__ Recorded Vote Vote #____1__ Total: Yeas: 14 Nays: 22

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✓		*Mr. Jindal, LA*			
Mr. Young, AK				Mrs. Bordallo, GUAM		✓	
Mr. Miller, CA		✓		*Mr. Gohmert, TX*	✓		
Mr. Saxton, NJ				Mr. Costa, CA		✓	
Mr. Markey, MA				*Mr. Cole, OK*	✓		
Mr. Gallegly, CA	✓			Mr. Boren, OK		✓	
Mr. Kildee, MI		✓		*Mr. Bishop, UT*	✓		
Mr. Duncan, TN				Mr. Sarbanes, MD		✓	
Mr. DeFazio, OR		✓		*Mr. Shuster, PA*			
Mr. Gilchrest, MD				Mr. Hinchey, NY		✓	
Mr. Faleomavaega, AS		✓		*Mr. Heller, NV*	✓		
Mr. Cannon, UT	✓			Mr. Kennedy, RI			
Mr. Abercrombie, HI				*Mr. Sali, ID*	✓		
Mr. Tancredo, CO	✓			Mr. Kind, WI			
Mr. Ortiz, TX		✓		*Mr. Lamborn, CO*	✓		
Mr. Flake, AZ	✓			Mrs. Capps, CA		✓	
Mr. Pallone, NJ		✓		*Ms. Fallin, OK*	✓		
Mr. Pearce, NM	✓			Mr. Inslee, WA		✓	
Mrs. Christensen, VI		✓		*Vacancy*			
Mr. Brown, SC	✓			Mr. Mark Udall, CO		✓	
Mrs. Napolitano, CA		✓		Mr. Baca, CA		✓	
Mr. Fortuño, PR				Ms. Solis, CA			
Mr. Holt, NJ		✓		Ms. Herseth Sandlin, SD		✓	
Mrs. McMorris Rodgers, WA	✓			Mr. Shuler, NC		✓	
Mr. Grijalva, AZ		✓					
				Total	14	22	

Markups - 1/3 to meet (16), 25 to report
November 19, 2007 (11:13am)

Rep. Lamborn (R–CO) then offered an amendment (Lamborn #1) which would increase by $20 million the City of San Francisco's payments for hydropower generated by the O'Shaughnassey dam. This payment would be in addition to the annual payment required by the Raker Act and other settlements related to the Toulumne River. The amendment was not agreed to by a roll call vote of 15 yeas and 24 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: 11/15/07 Convened: Adjourned:

Meeting on: **Full Committee Markup of HR 4074: Lamborn amendment #1**

__ Recorded Vote Vote #____2__ Total: Yeas: 15 Nays: 24

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✓		*Mr. Jindal, LA*			
Mr. Young, AK				Mrs. Bordallo, GUAM		✓	
Mr. Miller, CA		✓		*Mr. Gohmert, TX*	✓		
Mr. Saxton, NJ				Mr. Costa, CA		✓	
Mr. Markey, MA				*Mr. Cole, OK*	✓		
Mr. Gallegly, CA	✓			Mr. Boren, OK		✓	
Mr. Kildee, MI		✓		*Mr. Bishop, UT*	✓		
Mr. Duncan, TN				Mr. Sarbanes, MD		✓	
Mr. DeFazio, OR		✓		*Mr. Shuster, PA*	✓		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✓	
Mr. Faleomavaega, AS		✓		*Mr. Heller, NV*	✓		
Mr. Cannon, UT	✓			Mr. Kennedy, RI			
Mr. Abercrombie, HI		✓		*Mr. Sali, ID*	✓		
Mr. Tancredo, CO	✓			Mr. Kind, WI		✓	
Mr. Ortiz, TX		✓		*Mr. Lamborn, CO*	✓		
Mr. Flake, AZ	✓			Mrs. Capps, CA		✓	
Mr. Pallone, NJ		✓		*Ms. Fallin, OK*	✓		
Mr. Pearce, NM	✓			Mr. Inslee, WA		✓	
Mrs. Christensen, VI		✓		*Vacancy*			
Mr. Brown, SC	✓			Mr. Mark Udall, CO		✓	
Mrs. Napolitano, CA		✓		Mr. Baca, CA		✓	
Mr. Fortuño, PR				Ms. Solis, CA			
Mr. Holt, NJ		✓		Ms. Herseth Sandlin, SD		✓	
Mrs. McMorris Rodgers, WA	✓			Mr. Shuler, NC		✓	
Mr. Grijalva, AZ		✓					
				Total	15	24	

Markups - 1/3 to meet (16), 25 to report
November 19, 2007 (11:14am)

A third amendment (McMorris Rodgers #6) was offered by Rep. McMorris Rodgers which related to the ability to use the power of eminent domain as part of the river restoration effort. This amendment was not agreed to by a roll call vote of 15 yeas and 24 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: 11/15/07 Convened: Adjourned:

Meeting on: **Full Committee Markup of HR 4074: McMorris Rodgers amendment #6**

__ Recorded Vote Vote #____3__ Total: Yeas: 15 Nays: 24

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✓		*Mr. Jindal, LA*			
Mr. Young, AK				Mrs. Bordallo, GUAM		✓	
Mr. Miller, CA		✓		*Mr. Gohmert, TX*	✓		
Mr. Saxton, NJ				Mr. Costa, CA		✓	
Mr. Markey, MA				*Mr. Cole, OK*	✓		
Mr. Gallegly, CA	✓			Mr. Boren, OK		✓	
Mr. Kildee, MI		✓		*Mr. Bishop, UT*	✓		
Mr. Duncan, TN				Mr. Sarbanes, MD		✓	
Mr. DeFazio, OR		✓		*Mr. Shuster, PA*	✓		
Mr. Gilchrest, MD				Mr. Hinchey, NY		✓	
Mr. Faleomavaega, AS		✓		*Mr. Heller, NV*	✓		
Mr. Cannon, UT	✓			Mr. Kennedy, RI			
Mr. Abercrombie, HI		✓		*Mr. Sali, ID*	✓		
Mr. Tancredo, CO	✓			Mr. Kind, WI		✓	
Mr. Ortiz, TX		✓		*Mr. Lamborn, CO*	✓		
Mr. Flake, AZ	✓			Mrs. Capps, CA		✓	
Mr. Pallone, NJ				*Ms. Fallin, OK*	✓		
Mr. Pearce, NM	✓			Mr. Inslee, WA		✓	
Mrs. Christensen, VI		✓		*Vacancy*			
Mr. Brown, SC	✓			Mr. Mark Udall, CO		✓	
Mrs. Napolitano, CA		✓		Mr. Baca, CA		✓	
Mr. Fortuño, PR				Ms. Solis, CA		✓	
Mr. Holt, NJ		✓		Ms. Herseth Sandlin, SD		✓	
Mrs. McMorris Rodgers, WA	✓			Mr. Shuler, NC		✓	
Mr. Grijalva, AZ		✓					
				Total	15	24	

Markups - 1/3 to meet (16), 25 to report
November 19, 2007 (11:14am)

The bill was then ordered favorably reported without amendment to the House of Representatives by a roll call vote of 25 to 15, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
110th Congress

Date: 11/15/07 Convened: Adjourned:

Meeting on: **Full Committee Markup of HR 4074: On reporting favorably to the House of Representatives**

__ Recorded Vote Vote #____4__ Total: Yeas: 25 Nays: 15

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV	✓			*Mr. Jindal, LA*			
Mr. Young, AK				Mrs. Bordallo, GUAM	✓		
Mr. Miller, CA	✓			*Mr. Gohmert, TX*		✓	
Mr. Saxton, NJ				Mr. Costa, CA	✓		
Mr. Markey, MA				*Mr. Cole, OK*		✓	
Mr. Gallegly, CA		✓		Mr. Boren, OK	✓		
Mr. Kildee, MI	✓			*Mr. Bishop, UT*		✓	
Mr. Duncan, TN				Mr. Sarbanes, MD	✓		
Mr. DeFazio, OR	✓			*Mr. Shuster, PA*		✓	
Mr. Gilchrest, MD				Mr. Hinchey, NY	✓		
Mr. Faleomavaega, AS	✓			*Mr. Heller, NV*		✓	
Mr. Cannon, UT		✓		Mr. Kennedy, RI			
Mr. Abercrombie, HI	✓			*Mr. Sali, ID*		✓	
Mr. Tancredo, CO		✓		Mr. Kind, WI	✓		
Mr. Ortiz, TX	✓			*Mr. Lamborn, CO*		✓	
Mr. Flake, AZ		✓		Mrs. Capps, CA	✓		
Mr. Pallone, NJ	✓			*Ms. Fallin, OK*		✓	
Mr. Pearce, NM		✓		Mr. Inslee, WA	✓		
Mrs. Christensen, VI	✓			*Vacancy*			
Mr. Brown, SC		✓		Mr. Mark Udall, CO	✓		
Mrs. Napolitano, CA	✓			Mr. Baca, CA	✓		
Mr. Fortuño, PR				Ms. Solis, CA	✓		
Mr. Holt, NJ	✓			Ms. Herseth Sandlin, SD	✓		
Mrs. McMorris Rodgers, WA		✓		Mr. Shuler, NC	✓		
Mr. Grijalva, AZ	✓						
				Total	25	15	

Markups - 1/3 to meet (16), 25 to report
November 19, 2007 (11:14am)

SECTION-BY-SECTION ANALYSIS

TITLE I. THE SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

Section 101. Short title

Provides that this Act may be cited as the "San Joaquin River Restoration Settlement Act."

Section 102. Purpose

States that the purpose of this Act is to authorize the implementation of the Stipulation of Settlement dated September 13, 2006 (hereafter referred to as the "Settlement") in the litigation entitled *Natural Resources Defense Council, et al.* v. *Kirk Rodgers, et al.*, United States District Court, Eastern District of California, No. CIV. S–88–1658–LKK/GGH.

Section 103. Definitions

This section establishes that the definition of the terms "Friant Division long-term contractors," "Interim Flows," "Restoration Flows," "Recovered Water Account," "Restoration Goal," and "Water Management Goal" have the meanings given in the Settlement.

Section 104. Implementation of settlement

(a) IN GENERAL.—This subsection authorizes and directs the Secretary of the Interior (hereafter referred to as the "Secretary") to implement the Settlement in cooperation with the State of California and includes a list of prescribed measures to be carried out.

(b) AGREEMENTS.—This subsection authorizes and directs the Secretary to enter into appropriate agreements, including cost sharing agreements, with the State of California, and authorizes the Secretary to enter into contracts, memoranda of understanding, financial assistance agreements, and other appropriate agreements with State, tribal, and local governmental agencies, and with private parties, to achieve the purposes of the Settlement. This subsection also authorizes the Secretary to accept and expend non-federal funds in order to facilitate implementation of the Settlement. The Secretary is also required to identify measures that shall be implemented to mitigate the impacts of construction, improvement, operation, or maintenance of facilities on adjacent and downstream water users and landowners. This subsection further authorizes the Secretary to conduct any design or engineering studies that are necessary to implement the Settlement. Finally, this subsection provides that except as provided in this section 104, Central Valley Project long-term contractors other than the Friant Division long-term contractors shall not experience an involuntary reduction in contract water allocations due to the implementation of this Settlement, and that this Act shall not modify or amend the rights and obligations of the parties under existing water service, repayment, purchase or exchange contracts.

Section 105. Acquisition and disposal of property; title to facilities

(a) TITLE TO FACILITIES.—This subsection provides that unless acquired pursuant to subsection (b), title to any facilities, stream channels, levees, or other real property modified or improved in the course of implementing the Settlement, and title to any modifica-

tions or improvements of such property, shall remain with the owner of the property.

(b) ACQUISITION OF PROPERTY.—This subsection authorizes the Secretary to acquire through purchase property, interests in property, or options to acquire real property needed to implement the Settlement. The Secretary is also authorized but not required to exercise all of the authorities provided in section 2 of the Act of August 16, 1937 (50 Stat. 844, chapter 832), which include the power of eminent domain, to carry out the measures authorized in this section and in section 104.

(c) DISPOSAL OF PROPERTY.—This subsection authorizes the Secretary to dispose of property or interests in property acquired pursuant to this Act if the Secretary determines that the U.S. no longer needs to hold title to such property for furtherance of the Settlement. Under this provision, the Secretary could transfer title to such property to the State of California for purposes of implementing the Settlement if the Secretary determined it was in the best interest of the United States to do so. Further, if any property is acquired under this Act through the exercise of eminent domain and the Secretary determines such property is no longer needed for purposes of the Settlement, the Secretary is required to provide a right of first refusal to the property owner from whom the property was initially acquired, or his or her successor in interest, on the same terms on which the property is being offered to other parties. Proceeds from the sale or transfer of any such property or interests shall be deposited in the San Joaquin River Restoration Fund established under section 109(c) of this Act.

Section 106. Compliance with Applicable Law

(a) APPLICABLE LAW.—The Secretaries of the Interior and Commerce are directed to comply with all applicable federal and state laws, rules, and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), in carrying out the measures authorized by this Act

(b) EFFECT ON STATE LAW.—This subsection provides that nothing in this Act preempts state law or modifies any existing obligation of the United States under federal reclamation law to operate the Central Valley Project in conformity with state law.

(c) USE OF FUNDS FOR ENVIRONMENTAL REVIEWS.—The Secretary is authorized to provide funds made available under this Act to affected federal, state, and local agencies, and Indian tribes if necessary to enable such entities to effectively participate in the environmental review process.

(d) NONREIMBURSABLE FUNDS.—This subsection provides that the United States' share of the costs of implementing this Act is nonreimbursable under federal reclamation law, provided that this provision does not limit the use of the funds assessed and collected pursuant to sections 3406(c)(1) and 3407(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4721, 4727) for implementation of the Settlement. In addition, the subsection directs that the legislation shall not be construed to limit or modify existing or future Central Valley Project Ratesetting Policies.

Section 107. Compliance with Central Valley Project Improvement Act

This section establishes that implementation of this Settlement shall satisfy and discharge all of the obligations of the Secretary contained in section 3406(c)(1) of the Central Valley Project Improvement Act (Title XXXIV of Public Law 102–575) to address fish, wildlife, and habitat concerns on the San Joaquin River, including to sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. The Secretary shall continue to assess and collect the charges provided for in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992, in the manner described in the Settlement. Those collections shall continue to be counted toward the requirements of the Secretary in section 3407(c)(2) of that Act, so as to not increase costs to other CVP contractors.

Section 108. No private right of action

This section states that nothing in this Act confers upon any person or entity not a party to the Settlement a private right of action or claim for relief to interpret or enforce this Act or the Settlement. This section also clarifies that it does not alter or curtail any right of action or claim for relief under any other applicable law.

Section 109. Appropriations; Settlement fund

(a) IMPLEMENTATION COSTS.—This subsection provides that costs of implementing this Settlement are to be shared among federal and non-federal entities. Non-federal funding is estimated to be about $200,000,000, reflecting the Friant contractors' agreement in the Settlement to continue to pay the surcharge currently imposed under section 3406(c)(1) of the Central Valley Project Improvement Act. An additional estimated $240,000,000 of capital component payments made by the Friant contractors under their current contracts with the United States, or under repayment contracts executed pursuant to section 110 of this Act, will also be deposited into the newly established San Joaquin River Restoration Fund to fund the Settlement. In addition, this section provides that the cost of implementing the provisions of section 104(a)(1) of this Act must be shared by the State of California, pursuant to the terms of a Memorandum of Understanding executed by the State of California and the Parties to the Settlement on September 13, 2006, which will produce at least $110,000,000 in state funds. The Secretary is directed to enter into one or more agreements, recognizing either monetary or in-kind contributions by the state, to fund or implement improvements on a project-by-project basis with the State of California. Except as provided in the Settlement, costs incurred solely to implement the Settlement that would not have otherwise been incurred by any entity, agency, or subdivision of the State of California shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(b) AUTHORIZATION OF APPROPRIATIONS.—This subsection specifies that, in addition to the other funds made available in the San Joaquin Restoration Fund established in subsection (c), there are authorized to be appropriated up to $250,000,000 (at October 2006

price levels) to implement this Act, to be available until expended. The Secretary may expend such additional appropriations only in amounts equal to amounts deposited into the San Joaquin River Restoration Fund, in-kind contributions, and other non-federal payments actually committed to implementation of the Settlement. Payments made under subsection 109(c)(2) and proceeds under subsection 109(c)(3) of the Act shall not be counted in determining the amount of additional appropriations the Secretary may expend. The Secretary is also authorized to use monies from the Central Valley Project Restoration Fund created under section 3407 of the Reclamation Projects Authorization and Adjustment Act of 1992 for purposes of this Act, which are in addition to the $250 million authorized for appropriations.

(c) FUND.—This subsection establishes within the Treasury of the United States a fund to be known as the "San Joaquin River Restoration Fund." Money in this Fund shall be used solely for the purpose of implementing the Settlement and is to be available for expenditure without further appropriation. Money shall be deposited into the San Joaquin River Restoration Fund from the following sources: (1) starting at the beginning of the fiscal year following enactment of this Act, all payments received pursuant to section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992; (2) the capital component (not otherwise needed to cover operation and maintenance costs) of payments made by Friant Division long-term contractors pursuant to long-term water service contracts or repayment contracts, which includes construction costs as well as any other capitalized costs; (3) proceeds from the sale of water pursuant to the Settlement, or from the sale of property or interests in property as provided in section 105; and (4) any non-federal funds, including state cost-sharing funds, contributed to the United States for implementation of the Settlement, which the Secretary may expend without further appropriation for the purposes for which contributed.

The Committee is also mindful of and remains committed to progress in implementing and funding the December 19, 2000, Trinity River restoration record of decision and the Hoopa Valley Tribe's comanagement of the decision's important goal of restoring the fishery resources that the United States holds in trust for the Hoopa Valley Tribe.

(d) LIMITATION ON CONTRIBUTIONS.—This subsection directs that payments made by long-term contractors who receive water from the Friant Division and Hidden and Buchanan Units of the Central Valley Project pursuant to sections 3406(c)(1) and 3407(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 and payments made pursuant to paragraph 16(b)(3) of the Settlement and section 109(c)(2) of this Act shall be the maximum of the settlement parties' direct financial contribution to the Settlement, subject to the terms and conditions of paragraph 21 of the Settlement.

(e) NO ADDITIONAL EXPENDITURES REQUIRED.—This subsection provides that nothing in this Act shall be construed to require a federal official to expend federal funds not appropriated by Congress or to seek the appropriation of additional funds by Congress, for the implementation of the Settlement.

(f) REACH 4B.—This subsection provides that, prior to restoring any flows other than Interim Flows in Reach 4B, the Secretary shall conduct a study that specifies the cost of any work required to ensure conveyance of at least 475 cubic feet per second through Reach 4B, the impact of such flows, and measures that are to be implemented to mitigate any such impacts. Reach 4B of the San Joaquin River extends from the Sand Slough Control Structure downstream to the Bear Creek confluence. The subsection also requires the Secretary to file a report with Congress within 90 days after issuing a determination on whether to expand channel conveyance capacity to 4500 cubic feet per second in Reach 4B of the San Joaquin River, or use an alternative route for pulse flows. This report shall address the basis for the Secretary's determination, the Secretary's final cost estimates for expanding Reach 4B or any alternative route selected, and the Secretary's plan for funding such costs. If the estimated federal cost for expanding Reach 4B would exceed remaining federal funding authorized by this Act, then before the Secretary commences actual construction work in Reach 4B to expand capacity to 4500 cubic feet per second, Congress must have increased the applicable authorization ceiling provided in this Act in an amount at least sufficient to cover the higher estimated federal costs. This limitation does not apply to planning, design, feasibility, or other preliminary measures.

Section 110. Repayment contracts and acceleration of repayment of construction costs

(a) CONVERSION OF CONTRACTS.—This subsection authorizes and directs the Secretary to convert, before December 31, 2010, all existing Friant division, Hidden Unit, and Buchanan Unit long-term water service contracts to repayment contracts. The Secretary would also be authorized, but not required, to convert existing long-term water service contracts for municipal water deliveries to repayment contracts by the same date. All such contracts must require the repayment of the remaining amount of construction costs allocated to each contractor no later than January 31, 2011, or by January 31, 2014 if payment is made in approximately equal annual installments. The subsection also provides for payment of additional construction or other capitalized costs properly assignable to such contractor, and makes clear that power revenues will not be available to aid the contractors in fulfilling the repayment obligations, and specifies that the repayment contracts will continue as long as the contractors pay applicable charges. The Committee is aware that the affected contractors as well as various Third Parties have not yet determined whether they support the provisions that have been included in Section 110. The sponsors of the legislation have committed that the amended bill with Section 110 included will not progress unless the Settling Parties and the Third Parties support those provisions.

(b) FINAL ADJUSTMENT.—This subsection directs that payments made under subsection a) shall be adjusted following a final cost allocation of the costs of the Central Valley Project. In the event that the costs properly assignable to a contractor are greater than what has been paid, the contractor shall be obligated to pay the remaining allocated costs. In the event the costs properly assignable to the contractor are less than what has been paid, the Secretary

is authorized and directed to credit the overpayment as an offset against any outstanding or future obligation of the contractor.

(c) APPLICABILITY OF CERTAIN PROVISIONS.—This subsection provides that upon a contractor's compliance with and discharge of the repayment obligations set out in subsection 110(a)(1), the acreage and pricing provisions of the Reclamation Reform Act shall not apply to lands in the district, and the Secretary is to waive the tiered pricing provisions of section 3405(d) of the Reclamation Projects Authorization and Adjustment Act of 1992. The contractor must continue to pay all applicable operation and maintenance costs and other charges applicable to the repayment contracts under then-current rate-setting policy and applicable law.

(d) REDUCTION OF CHARGE.—This subsection provides that beginning in 2019, the Secretary shall reduce the charge mandated in section 107(1) of the Act in recognition of financing costs incurred by the districts in making the payments under subsection 110(a)(1). As with other parts of this new section 110, the Committee recognizes that the Settling Parties and Third Parties have not yet approved this subsection (d) but have deferred final judgment pending more specific information on what reduction is envisioned in connection with the conversion to repayment contracts and accelerated payments.

(e) SATISFACTION OF CERTAIN PROVISIONS.—

(1) GENERAL.—This subsection provides that upon the first release of Interim Flows or Restoration Flows pursuant to paragraphs 13 or 15 of the Settlement, any agreement to which one or more long-term Friant water service or repayment contractor is a party that provides for the transfer or exchange of water (other than water released as Interim Flows or Restoration Flows) shall be deemed to satisfy the provisions of subsection 3405(a)(1)(A) and (I) of Public Law 102–575. However, the contractor must provide to the Secretary, not later than 90 days before commencement of the transfer or exchange, written notice stating how the proposed transfer or exchange is intended to reduce, avoid, or mitigate impacts to water deliveries caused by the Interim Flows or Restoration Flows or is intended to otherwise facilitate the Water Management Goal. The Secretary is to promptly make all such notices publicly available.

(2) DETERMINATION OF REDUCTIONS TO WATER DELIVERIES.—This subsection establishes that water transferred or exchanged under an agreement that meets the terms of section 110(e) shall not be counted as a replacement or offset for purposes of determining reductions to water deliveries to any Friant Division long-term contractor except as called for by paragraph 16(b) of the Settlement. At least annually, the Secretary must publish information about all transfers and exchanges that invoke the provisions of this subsection.

(3) STATE LAW.—This subsection provides that nothing in this subsection alters state law or permit conditions.

(f) CERTAIN REPAYMENT OBLIGATIONS NOT ALTERED.—This subsection provides that nothing in the Act shall be construed to alter the repayment obligation of any long term water contractor receiving water from the CVP, other than those identified in subsection 110(a), because of implementation of section 110 of the Act.

(g) STATUTORY INTERPRETATION.—This subsection states that the Act does not affect the right of any Friant Division long-term contractor to use a particular type of financing to make the payments required in subsection 109(a)(1). The Committee understands that the contractors may issue tax-exempt bonds to finance the obligations under this section.

Section 111. California Central Valley Spring Run Chinook salmon

(a) FINDING.—In this subsection, Congress finds that the implementation of the Settlement is a unique and unprecedented circumstance requiring clear expressions of Congressional intent regarding how the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) are to be utilized to achieve the goals of restoration of the San Joaquin River and the successful reintroduction of Central Valley Spring Run Chinook salmon.

(b) REINTRODUCTION IN THE SAN JOAQUIN RIVER.—This subsection directs that California Central Valley Spring Run Chinook salmon shall be reintroduced in the San Joaquin River below Friant Dam as an experimental population pursuant to section 10(j) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)) and the Settlement, provided that the Secretary of Commerce finds that a permit for the reintroduction of California Central Valley Spring Run Chinook salmon may be issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(A)).

(c) FINAL RULE.—This subsection directs the Secretary of Commerce to issue a final rule pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) governing the incidental take of reintroduced Central Valley Spring Run Chinook salmon prior to the reintroduction. This rule shall provide that the reintroduction will not impose more than *de minimis* water supply reductions, additional storage releases, or bypass flows on unwilling third parties. For purposes of this subsection, third parties are defined as persons or entities that divert or receive water pursuant to applicable state and federal law, including Central Valley Project contractors outside of the Friant Division of the Central Valley Project and the State Water Project. Nothing in this section diminishes the statutory or regulatory protections provided in the Endangered Species Act for listed species other than the reintroduced population of California Central Valley Spring Run Chinook salmon or precludes the Secretary or Secretary of Commerce from imposing protections under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for other listed species on the ground that such protections also provide incidental benefits to the reintroduced Central Valley Spring Run Chinook salmon.

(d) REPORT.—This subsection provides that no later than December 31, 2024, the Secretary of Commerce is required to report to Congress on the progress made on the reintroduction set forth in this section and the Secretary's plans for further implementation of the reintroduction.

(e) FERC PROJECTS.—With regard to California Central Valley Spring Run Chinook salmon reintroduced pursuant to the Settlement, this subsection directs the Secretary of Commerce to exercise his or her authority under Section 18 of the Federal Power Act (16 U.S.C. 811) by reserving the right to file prescriptions in proceedings for projects licensed by the Federal Energy Regulatory

Commission on the Calaveras, Stanislaus, Tuolumne, Merced, and San Joaquin rivers and otherwise consistent with the incidental take provisions established pursuant to subsection (c) of this Act until after the expiration of the term of the Settlement, December 31, 2025, or the expiration of the designation of an experimental population made pursuant to subsection (b) of this Act, whichever ends first. Nothing in this subsection shall preclude the Secretary of Commerce from imposing prescriptions pursuant to section 18 of the Federal Power Act (16 U.S.C. 811) solely for other anadromous fish species on the ground that those prescriptions also provide incidental benefits to reintroduced Central Valley Spring Run Chinook salmon.

(f) EFFECT OF SECTION.—Provides that nothing in this section modifies or establishes a precedent with respect to any other application of the Endangered Species Act of 1973 or the Federal Power Act (16 U.S.C. 791a et seq.).

Section 112. Offsetting receipts

This section provides additional revenues for the United States and treats those revenues as offsetting receipts by raising the fee for non-producing federal oil and gas leases in the Gulf of Mexico. Specifically, this section establishes a "conservation of resources" fee for certain deepwater leases entered into in 1998 and 1999 that provided royalty relief regardless of the market price of oil and gas. CBO's subsequent preliminary analysis of the cost of Title I of H.R. 4074 revealed that the costs of implementing the settlement legislation had indeed been reduced, but that Title I of H.R. 4074 still involves between $170 million and $190 million in direct spending.

In anticipation of the passage of legislation related to the San Joaquin Settlement, the FY 2008 House Budget Resolution contains a special reserve fund that allows the offset for the legislation to come from any source, not just those within the jurisdiction of the House Committee on Natural Resources. To meet Chairman Rahall's policy that all legislation reported out of the Committee meets House PAYGO guidelines, H.R. 4074 includes an offset for the $170 million in direct spending. Past CBO analysis have estimated this "conservation of resources" fee would generate in excess of $170 million in revenues for the U.S. Treasury.

TITLE II. STUDY TO DEVELOP WATER PLAN; REPORT

Section 201. Study to develop water plan; Report

This section authorizes direct financial assistance to the California Water Institute to study coordination and integration of subregional integrated regional water management plans into a unified Integrated Regional Water Management Plan. The study area includes the San Joaquin River Hydrologic Region and the Tulare Lake Hydrologic Region. Appropriations of $1,000,000 are authorized by this section, to remain available until expended. The section also requires the Secretary of the Interior to submit a report to the authorizing committees of jurisdiction in the House of Representatives and the Senate.

In addition to the revised text to implement the settlement, H.R. 4074 contains a new Title II that encompasses the text of the subcommittee-passed version of H.R. 2498. This provision authorizes

appropriations in the amount of $1,000,000 to assist in the preparation of an Integrated Regional Water Management Plan for an eight-county area in Central California.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the implementation of the San Joaquin River Restoration Settlement, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4074—San Joaquin River Restoration Settlement Act

Summary: H.R. 4074 would implement a judicial settlement between the federal government—specifically, the Bureau of Reclamation's Friant Division of the Central Valley Project (CVP) in California—and a coalition of conservation and fishing groups. The bill would authorize and direct the Secretary of the Interior to design and construct improvements to the San Joaquin River; modify operations of the Friant Dam; acquire water or water rights; and implement terms of the settlement relating to recapture and reuse of water to minimize water supply disruptions to the Friant Dam. The bill also would impose a new conservation of resources fee on certain oil and gas leases on lands on the Outer Continental Shelf (OCS).

CBO estimates that enacting this legislation would decrease net direct spending by $1.7 billion over the 2009–2018 period. (It also would increase direct spending by $19 million a year over the

2019–2030 period.) We estimate that implementing H.R. 4074 also would increase discretionary spending $221 million over the 2009–2018 period, assuming appropriation of the authorized amounts. Additional discretionary spending would occur after 2018 for further construction and operation and maintenance of the project.

H.R. 4074 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would benefit state, local, and tribal governments, and any costs they incur would result from complying with conditions for receiving federal assistance.

H.R. 4074 contains private-sector mandates as defined in UMRA. The bill would require holders of oil or gas leases of lands on the outer continental shelf to pay a conservation of resources fee. In addition, the bill would impose a mandate if the Secretary of the Interior acquires land from private landowners through eminent domain in order to implement the settlement. CBO estimates that the aggregate cost of the mandates would exceed the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4074 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment) and 950 (undistributed offsetting receipts).

	By fiscal year, in millions of dollars—											
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009–2013	2009–2018
CHANGES IN DIRECT SPENDING												
Early Repayment of Capital Debt:												
Estimated Budget Authority	0	0	−44	−44	−44	−44	11	11	11	11	−132	−132
Estimated Outlays	0	0	−44	−44	−44	−44	11	11	11	11	−132	−132
Authority to Spend Certain Collections:												
Estimated Budget Authority	19	19	63	63	63	63	8	8	8	8	227	322
Estimated Outlays	15	15	50	58	59	58	33	18	8	8	197	322
Conservation of Resources Fees:												
Estimated Budget Authority	−92	−114	−121	−257	−283	−294	−178	−177	−182	−192	−867	−1,890
Estimated Outlays	−92	−114	−121	−257	−283	−294	−178	−177	−182	−192	−867	−1,890
Total Changes in Spending Under H.R. 4074:												
Estimated Budget Authority	−73	−95	−102	−238	−264	−275	−159	−158	−163	−173	−772	−1,700
Estimated Outlays	−77	−99	−115	−243	−268	−280	−134	−148	−163	−173	−802	−1,700
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	3	2	2	62	32	52	32	42	7	7	101	241
Estimated Outlays	2	3	2	52	27	52	27	42	7	7	86	221

Basis of estimate: For this estimate, CBO assumes that H.R. 4074 will be enacted at the end of fiscal year 2008 and that the authorized amounts will be appropriated for each fiscal year.

Direct spending

H.R. 4074 would allow the capital debt incurred for the original construction of the Friant Dam to be repaid early and would authorize the expenditure of certain federal collections that, under current law, cannot be spent without an appropriation. The bill also would impose a conservation of resources fee on certain oil and gas leases on OCS lands in the Gulf of Mexico.

CBO estimates that enacting those changes would increase direct spending by $190 million over the 2008–2018 period and increase offsetting receipts (from new OCS fees) by about $1.9 billion over the same period. The net effect of those changes would be a decrease in direct spending of $1.7 billion.

Early Repayment of Capital Debt. Section 110 of the bill would require the Secretary to convert certain existing contracts of the Central Valley Project from water service to repayment contracts. Under the new agreements, the contractors of CVP's Friant Division would be required to repay their share of the capital investment in the project, either in a lump sum or on an accelerated schedule.

CBO expects that enacting section 110 would cause CVP contractors to make four equal payments totaling $220 million over the 2011–2014 period, rather than paying $11 million annually through 2030 as they would under current law. The net effect of the expedited repayment schedule would be an increase in collections of $132 million over the 2011–2018 period and a loss of $11 million per year from 2019 to 2030. In addition, section 110 stipulates that the Secretary would be required to reduce a surcharge for environmental restoration paid by Friant contractors as a result of early repayment of the capital costs. CBO estimates that, beginning in 2019, the surcharge would be eliminated, causing a loss of offsetting receipts of $8 million per year through the life of the project.

Changes in Spending Authority. H.R. 4074 would make available to the Bureau of Reclamation certain federal collections that are not currently available unless appropriated. CBO estimates that making those collections available without further appropriation would increase direct spending by $322 million over the 2009–2018 period.

Under section 109, payments made by Friant contractors would be deposited into a new San Joaquin River Restoration Fund and would be available without further appropriation. The collections to be deposited into the new fund would include amounts paid for the capital cost of the Friant Dam (an estimated $11 million a year through 2010) and amounts collected from the Friant surcharge described above (about $8 million annually). Those collections are currently deposited in the Reclamation Fund and the Central Valley Project Restoration Fund, respectively. The new fund also would receive the $220 million to be paid under the new repayment contracts required by section 110. Deposits into the fund would be available, without further appropriation, to implement the settlement.

Conservation of Resources Fee. Section 112 would impose a new conservation of resources fee on all nonproducing leases for OCS lands in the Gulf of Mexico and would classify those payments as offsetting receipts (a reduction in direct spending). A fee of $3.75 per acre (in 2005 dollars) would apply to nonproducing leases in effect on October 1, 2006, and beyond. Under CBO's baseline projection of the acreage under such leases, enacting this provision would increase offsetting receipts by $1.9 billion over the 2009–2018 period.

Spending subject to appropriation

H.R. 4074 would authorize the appropriation of up to $250 million to help pay for improvements to the Cental Valley watershed, contingent upon the receipt of matching funds from the state of California. By implementing the settlement agreement, the bill also would authorize the appropriation of up to $2 million per year from the Central Valley Project Restoration Fund to implement the settlement. Finally, the bill would require the Secretary to provide assistance to California State University, Fresno, to develop an Integrated Regional Water Management Plan. Assuming that California would match federal funding and that appropriation of the authorized amounts would be made as needed, CBO estimates that implementing those provisions of H.R. 4074 would cost $221 million over the 2009–2018 period and about $75 million after 2018.

Estimated impact on state, local, and tribal governments: H.R. 4074 contains no intergovernmental mandates as defined in UMRA. Water restoration and management activities authorized in the bill would benefit state, local, and tribal governments that implement activities to restore wildlife and water flow of the San Joaquin River in the state of California. Any costs that the state might incur, including matching funds, would result from complying with conditions of federal assistance.

Estimated impact on the private sector: H.R. 4074 contains private-sector mandates as defined in UMRA. CBO estimates that the aggregate cost of those mandates would exceed the annual threshold established in UMRA ($136 million in 2008, adjusted annually for inflation).

The bill would impose a private-sector mandate on holders of oil or gas leases in the Gulf of Mexico by establishing a conservation of resources fee on leased acreage that is not producing. That fee would be set at $3.75 per acre per year (2005 dollars) and would apply retroactively to October 1, 2006. Because any new leases with the fee would be entered into voluntarily, the fee would only constitute a mandate for holders of existing oil or gas leases. CBO estimates that those leaseholders would pay annual fees that total about $700 million over the first five years the mandate is in effect. CBO expects that the fees would exceed the threshold in at least two of those years.

H.R. 4074 also would impose a private-sector mandate if the Secretary of the Interior acquires land from private landowners through eminent domain in order to implement the settlement. The cost of the mandate would be the fair market value of the property and any expenses incurred by private landowners in transferring that property to the federal government. (The Department of the Interior would have to compensate landowners for the fair market

value of the land and the original land owners would have the right of first refusal to repurchase such land if the Secretary determines that it is no longer necessary for implementation of the settlement.) CBO estimates that because the use of eminent domain would be rare, the cost of this mandate would be small.

Previous estimate: On April 18, 2007, CBO transmitted a cost estimate for H.R. 24, the San Joaquin River Restoration Settlement Act, as introduced in the House of Representatives on January 4, 2007. The two versions of the San Joaquin River Restoration Settlement Act are similar but provide different funding mechanisms. The cost estimates reflect those differences.

Estimate prepared by: Federal costs: Tyler Kruzich (Water resources) and Kathleen Gramp (OCS); Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 4074 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

We oppose H.R. 4074 in its current form. While we support the laudable goals of river restoration and the settlement of litigation, we are dismayed that the Majority has turned what was once a bipartisan effort into a partisan debate aimed at raising taxes on the American public. Further, this bill is yet another instance where the Majority has turned a deaf ear to a Member of Congress whose district is most negatively impacted by legislation. We hope that this is not a harbinger of how the Majority will operate for the remainder of this Congress.

The mechanism used to pay for this legislation is very troubling. At a time when energy prices are substantially increasing for America's families, H.R. 4074 imposes a fee on oil and gas outer continental shelf leases in the Gulf of Mexico even though the bill's goal is related to non-coastal river restoration in California. This fee, an illegal breach of contract on existing leases, like all other fees, will only be passed to the consumer through higher energy costs. Despite the Majority's rhetorical promises to reduce costs for energy consumers, the only result thus far in this Congress is to raise energy prices and impede domestic energy production. H.R. 4074 is yet another sad page from that book. Since the Majority has unilaterally imposed their own methods of paying for direct spending impacts, it is also important to note the bill's oil and gas fee has been used three times already to pay for a number of programs. In response, the Majority has indicated that the bill's offset was a mere "placeholder" that could be replaced by yet another proposal, such as energy-consumer financed nuclear cleanup fees. This lack of transparency and financial gimmickry of using the same fund to pay for other proposals lead many to question the legitimacy of the budget process being imposed by the Majority.

Since this bill relates to San Joaquin River restoration, we strongly believe that Californians should pay for more of this effort—especially when the litigation in question primarily revolves around a California Game and Fish statute. For this reason, Rep. Doug Lamborn (R–CO) offered an amendment to increase the rental fees that San Francisco, California pays for using the Hetch Hetchy Reservoir in Yosemite National Park. Currently, San Francisco pays an annual $30,000 to the federal government for its use of the Reservoir, which flooded what famed conservationist John Muir called "one of Nature's rarest and most precious mountain temples." According to the organization Restore Hetch Hetchy, San Francisco generates approximately $40 million in annual hydropower revenues from the Hetch Hetchy system, yet has only paid $30,000 annually or 7 cents an acre for over 70 years. In light of this gross inequity and since H.R. 4074 benefits San Franciscans and many of the City-based organizations party to the San Joaquin River litigation, the Lamborn amendment sought to make Califor-

nians pay a fair share. Unfortunately, the amendment, and all other Republican amendments, were rejected on party lines nor was the Majority open to any negotiation on adopting or compromising on any of the amendments filed by Republicans.

We also note that this bill lacks the support from many of the communities significantly impacted by the water losses resulting from this bill. This is of great concern in light of the economic challenges already facing these communities. In fact, the Congressional Research Service found that this area of the San Joaquin Valley in California is the poorest region in the country, including Appalachia. The water losses stemming from the San Joaquin bill will only make this bad economic situation worse. In testimony to the Committee earlier this year, Tulare County, California Supervisor Allen Ishida asked for "concrete mitigation language in the implementation legislation." H.R. 4074 unfortunately contains no provisions helping those communities cope with what will be a historic and unprecedented shift in water use.

By ignoring these concerns and the related concerns brought up by the Member of Congress whose district will be the most significantly impacted by the water shift and by engaging in nontransparent and faulty offsets, the Majority is setting this bill up for failure on all levels.

Although we oppose H.R. 4074 in its current form because of its partisan nature, we are hopeful that there will be further debate under regular order in the House of Representatives. We take the Chairman at his word that this bill will be considered on the House floor by itself and we look forward to having opportunities to consider amendments under a fair and open rule.

DON YOUNG.
CHRIS CANNON.
TOM TANCREDO.
JEFF FLAKE.
STEVE PEARCE.
HENRY BROWN.
CATHY MCMORRIS RODGERS.
LOUIE GOHMERT.
TOM COLE.
ROB BISHOP.
DOUG LAMBORN.
MARY FALLIN.
ELTON GALLEGLY.
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