

113TH CONGRESS
2^D SESSION

S. 2198

AN ACT

To direct the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency to take actions to provide additional water supplies to the State of California due to drought, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Emergency Drought Relief Act of 2014”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Emergency projects.
- Sec. 5. Emergency environmental reviews.
- Sec. 6. State revolving funds.
- Sec. 7. Effect on State laws.
- Sec. 8. Termination of authorities.

8 **SEC. 2. FINDINGS.**

9 Congress finds that—

10 (1) as established in the Proclamation of a
 11 State of Emergency issued by the Governor of the
 12 State on January 17, 2014, the State is experi-
 13 encing record dry conditions;

14 (2) extremely dry conditions have persisted in
 15 the State since 2012, and the drought conditions are
 16 likely to persist into the future;

17 (3) the water supplies of the State are at
 18 record-low levels, as indicated by a statewide average
 19 snowpack of 12 percent of the normal average for
 20 winter as of February 1, 2014, and the fact that all
 21 major Central Valley Project reservoir levels are at

1 or below 50 percent of the capacity of the reservoirs
2 as of April 1, 2014;

3 (4) the 2013–2014 drought constitutes a seri-
4 ous emergency posing immediate and severe risks to
5 human life and safety and to the environment
6 throughout the State;

7 (5) the emergency requires—

8 (A) immediate and credible action that re-
9 spects the complexity of the water system of the
10 State and the importance of the water system
11 to the entire State; and

12 (B) policies that do not pit stakeholders
13 against one another, which history has shown
14 only leads to costly litigation that benefits no
15 one and prevents any real solutions;

16 (6) Federal law (including regulations) directly
17 authorizes expedited decisionmaking procedures and
18 environmental and public review procedures to en-
19 able timely and appropriate implementation of ac-
20 tions to respond to such a type and severity of emer-
21 gency; and

22 (7) the serious emergency posed by the 2013–
23 2014 drought in the State fully satisfies the condi-
24 tions necessary for the exercise of emergency deci-

1 sionmaking, analytical, and public review require-
2 ments under—

3 (A) the Endangered Species Act of 1973
4 (16 U.S.C. 1531 et seq.);

5 (B) the National Environmental Policy Act
6 of 1969 (42 U.S.C. 4321 et seq.);

7 (C) water control management procedures
8 of the Corps of Engineers described in section
9 222.5 of title 33, Code of Federal Regulations
10 (including successor regulations); and

11 (D) the Reclamation States Emergency
12 Drought Relief Act of 1991 (Public Law 102–
13 250; 106 Stat. 53).

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) **CENTRAL VALLEY PROJECT.**—The term
17 “Central Valley Project” has the meaning given the
18 term in section 3403 of the Central Valley Project
19 Improvement Act (106 Stat. 4707).

20 (2) **KLAMATH PROJECT.**—The term “Klamath
21 Project” means the Bureau of Reclamation project
22 in the States of California and Oregon, as author-
23 ized under the Act of June 17, 1902 (32 Stat. 388,
24 chapter 1093).

1 (3) RECLAMATION PROJECT.—The term “Rec-
2 lamation Project” means a project constructed pur-
3 suant to the authorities of the reclamation laws and
4 whose facilities are wholly or partially located in the
5 State.

6 (4) SECRETARIES.—The term “Secretaries”
7 means—

8 (A) the Administrator of the Environ-
9 mental Protection Agency;

10 (B) the Secretary of Agriculture;

11 (C) the Secretary of Commerce; and

12 (D) the Secretary of the Interior.

13 (5) STATE.—The term “State” means the State
14 of California.

15 (6) STATE WATER PROJECT.—The term “State
16 Water Project” means the water project described
17 by California Water Code section 11550 et seq., and
18 operated by the California Department of Water Re-
19 sources.

20 **SEC. 4. EMERGENCY PROJECTS.**

21 (a) WATER SUPPLIES.—

22 (1) IN GENERAL.—In response to the declara-
23 tion of a state of drought emergency by the Gov-
24 ernor of the State, the Secretaries shall provide the
25 maximum quantity of water supplies possible to Cen-

1 tral Valley Project agricultural, municipal and indus-
2 trial, and refuge service and repayment contractors,
3 State Water Project contractors, and any other lo-
4 cality or municipality in the State, by approving,
5 consistent with applicable laws (including regula-
6 tions), projects and operations to provide additional
7 water supplies as quickly as possible based on avail-
8 able information to address the emergency condi-
9 tions.

10 (2) APPLICATION.—Paragraph (1) applies to
11 projects or operations involving the Klamath Project
12 if the projects or operations would benefit Federal
13 water contractors in the State.

14 (b) LIMITATION.—Nothing in this section allows
15 agencies to approve projects—

16 (1) that would otherwise require congressional
17 authorization; or

18 (2) without following procedures required by
19 applicable law.

20 (c) ADMINISTRATION.—In carrying out subsection
21 (a), the Secretaries shall, consistent with applicable laws
22 (including regulations)—

23 (1) authorize and implement actions to ensure
24 that the Delta Cross Channel Gates shall remain
25 open to the greatest extent possible, timed to maxi-

1 mize the peak flood tide period and provide water
2 supply and water quality benefits for the duration of
3 the drought emergency declaration of the State, con-
4 sistent with operational criteria and monitoring cri-
5 teria developed pursuant to the California State
6 Water Resources Control Board's Order Approving a
7 Temporary Urgency Change in License and Permit
8 Terms in Response to Drought Conditions, effective
9 January 31, 2014, or a successor order;

10 (2)(A) collect data associated with the operation
11 of the Delta Cross Channel Gates described in para-
12 graph (1) and the impact of the operation on species
13 listed as threatened or endangered under the Endan-
14 gered Species Act of 1973 (16 U.S.C. 1531 et seq.),
15 water quality, and water supply; and

16 (B) after assessing the data described in sub-
17 paragraph (A), require the Director of the National
18 Marine Fisheries Service to recommend revisions to
19 operations of the Central Valley Project and the
20 California State Water Project, including, if appro-
21 priate, the reasonable and prudent alternatives con-
22 tained in the biological opinion issued by the Na-
23 tional Marine Fisheries Service on June 4, 2009,
24 that are likely to produce fishery, water quality, and
25 water supply benefits;

1 (3)(A) implement turbidity control strategies
2 that allow for increased water deliveries while avoid-
3 ing jeopardy to adult delta smelt (*Hypomesus*
4 *transpacificus*) due to entrainment at Central Valley
5 Project and State Water Project pumping plants;
6 and

7 (B) manage reverse flow in the Old and Middle
8 Rivers as prescribed by the biological opinions issued
9 by the United States Fish and Wildlife Service on
10 December 15, 2008, for Delta smelt and by the Na-
11 tional Marine Fisheries Service on June 4, 2009, for
12 salmonids, to minimize water supply reductions for
13 the Central Valley Project and the State Water
14 Project;

15 (4) adopt a 1:1 inflow to export ratio for the in-
16 creased flow of the San Joaquin River, as measured
17 as a 3-day running average at Vernalis during the
18 period from April 1 through May 31, resulting from
19 voluntary transfers and exchanges of water supplies,
20 among other purposes;

21 (5) issue all necessary permit decisions under
22 the authority of the Secretaries within 30 days of re-
23 ceiving a completed application by the State to place
24 and use temporary barriers or operable gates in
25 Delta channels to improve water quantity and qual-

1 ity for State Water Project and Central Valley
2 Project South of Delta water contractors and other
3 water users, which barriers or gates should provide
4 benefits for species protection and in-Delta water
5 user water quality and shall be designed such that
6 formal consultations under section 7 of the Endan-
7 gered Species Act of 1973 (16 U.S.C. 1536) would
8 not be necessary;

9 (6)(A) require the Director of the United States
10 Fish and Wildlife Service and the Commissioner of
11 the Bureau of Reclamation to complete all require-
12 ments under the National Environmental Policy Act
13 of 1969 (42 U.S.C. 4321 et seq.) and the Endan-
14 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)
15 necessary to make final permit decisions on water
16 transfer requests associated with voluntarily
17 fallowing nonpermanent crops in the State, within
18 30 days of receiving such a request; and

19 (B) require the Director of the United States
20 Fish and Wildlife Service to allow any water transfer
21 request associated with fallowing to maximize the
22 quantity of water supplies available for nonhabitat
23 uses as long as the fallowing and associated water
24 transfer are in compliance with applicable Federal
25 laws (including regulations);

1 (7) participate in, issue grants, or otherwise
2 provide funding for, as soon as practicable after the
3 date of enactment of this Act, under existing author-
4 ity available to the Secretary of the Interior, pilot
5 projects to increase water in reservoirs in regional
6 river basins experiencing extreme, exceptional, or
7 sustained drought that have a direct impact on the
8 water supply of the State, including the Colorado
9 River Basin, provided that any participation, grant,
10 or funding by the Secretary with respect to the
11 Upper Division shall be with or to the respective
12 State;

13 (8) maintain all rescheduled water supplies held
14 in the San Luis Reservoir and Millerton Reservoir
15 for all water users for delivery in the immediately
16 following contract water year unless precluded by
17 reservoir storage capacity limitations;

18 (9) to the maximum extent possible based on
19 the availability of water and without causing land
20 subsidence or violating water quality standards—

21 (A) meet the contract water supply needs
22 of Central Valley Project refuges through the
23 improvement or installation of water conserva-
24 tion measures, water conveyance facilities, and
25 wells to use groundwater resources, which ac-

1 activities may be accomplished by using funding
2 made available under the Water Assistance Pro-
3 gram or the WaterSMART program of the De-
4 partment of the Interior; and

5 (B) make a quantity of Central Valley
6 Project surface water obtained from the meas-
7 ures implemented under subparagraph (A)
8 available to Central Valley Project contractors;

9 (10) in coordination with the Secretary of Agri-
10 culture, enter into an agreement with the National
11 Academy of Sciences to conduct a comprehensive
12 study, to be completed not later than 1 year after
13 the date of enactment of this Act, on the effective-
14 ness and environmental impacts of saltcedar biologi-
15 cal control efforts on increasing water supplies and
16 improving riparian habitats of the Colorado River
17 and its principal tributaries, in the State and else-
18 where;

19 (11) make any WaterSMART grant funding al-
20 located to the State available on a priority and expe-
21 dited basis for projects in the State that—

22 (A) provide emergency drinking and mu-
23 nicipal water supplies to localities in a quantity
24 necessary to meet minimum public health and
25 safety needs;

1 (B) prevent the loss of permanent crops;

2 (C) minimize economic losses resulting
3 from drought conditions; or

4 (D) provide innovative water conservation
5 tools and technology for agriculture and urban
6 water use that can have immediate water sup-
7 ply benefits;

8 (12) implement offsite upstream projects in the
9 Delta and upstream Sacramento River and San Joa-
10 quin basins, in coordination with the California De-
11 partment of Water Resources and the California De-
12 partment of Fish and Wildlife, that offset the effects
13 on species listed as threatened or endangered under
14 the Endangered Species Act of 1973 (16 U.S.C.
15 1531 et seq.) due to actions taken under this Act;
16 and

17 (13) use all available scientific tools to identify
18 any changes to real-time operations of Bureau of
19 Reclamation, State and local water projects that
20 could result in the availability of additional water
21 supplies.

22 (d) OTHER AGENCIES.—To the extent that a Federal
23 agency other than agencies headed by the Secretaries has
24 a role in approving projects described in subsections (a)
25 and (c), this section shall apply to those Federal agencies.

1 (e) ACCELERATED PROJECT DECISION AND ELE-
2 VATION.—

3 (1) IN GENERAL.—Upon the request of the
4 State, the heads of Federal agencies shall use the
5 expedited procedures under this subsection to make
6 final decisions relating to a Federal project or oper-
7 ation to provide additional water supplies or address
8 emergency drought conditions pursuant to sub-
9 sections (a) and (c).

10 (2) REQUEST FOR RESOLUTION.—

11 (A) IN GENERAL.—Upon the request of
12 the State, the head of an agency referred to in
13 subsection (a), or the head of another Federal
14 agency responsible for carrying out a review of
15 a project, as applicable, the Secretary of the In-
16 terior shall convene a final project decision
17 meeting with the heads of all relevant Federal
18 agencies to decide whether to approve a project
19 to provide emergency water supplies.

20 (B) MEETING.—The Secretary of the Inte-
21 rior shall convene a meeting requested under
22 subparagraph (A) not later than 7 days after
23 receiving the meeting request.

24 (3) NOTIFICATION.—Upon receipt of a request
25 for a meeting under this subsection, the Secretary of

1 the Interior shall notify the heads of all relevant
2 Federal agencies of the request, including the
3 project to be reviewed and the date for the meeting.

4 (4) DECISION.—Not later than 10 days after
5 the date on which a meeting is requested under
6 paragraph (2), the head of the relevant Federal
7 agency shall issue a final decision on the project.

8 (5) MEETING CONVENED BY SECRETARY.—The
9 Secretary of the Interior may convene a final project
10 decision meeting under this subsection at any time,
11 at the discretion of the Secretary, regardless of
12 whether a meeting is requested under paragraph (2).

13 **SEC. 5. EMERGENCY ENVIRONMENTAL REVIEWS.**

14 To minimize the time spent carrying out environ-
15 mental reviews and to deliver water quickly that is needed
16 to address emergency drought conditions in the State, the
17 head of each applicable Federal agency shall, in carrying
18 out this Act, consult with the Council on Environmental
19 Quality in accordance with section 1506.11 of title 40,
20 Code of Federal Regulations (including successor regula-
21 tions) to develop alternative arrangements to comply with
22 the National Environmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.) during the emergency.

1 **SEC. 6. STATE REVOLVING FUNDS.**

2 (a) IN GENERAL.—The Administrator of the Envi-
3 ronmental Protection Agency, in allocating amounts for
4 each of the fiscal years during which the emergency
5 drought declaration of the State is in force to State water
6 pollution control revolving funds established under title VI
7 of the Federal Water Pollution Control Act (33 U.S.C.
8 1381 et seq.) and the State drinking water treatment re-
9 volving loan funds established under section 1452 of the
10 Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for
11 those projects that are eligible to receive assistance under
12 section 603 of the Federal Water Pollution Control Act
13 (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drink-
14 ing Water Act (42 U.S.C. 300j–12(a)(2)), respectively,
15 that the State determines will provide additional water
16 supplies most expeditiously to areas that are at risk of
17 having an inadequate supply of water for public health and
18 safety purposes or to improve resiliency to drought—

19 (1) require the State to review and prioritize
20 funding for such projects;

21 (2) issue a determination of waivers within 30
22 days of the conclusion of the informal public com-
23 ment period pursuant to section 436(c) of title IV of
24 division G of Public Law 113–76; and

25 (3) authorize, at the request of the State, 40-
26 year financing for assistance under section

1 603(d)(2) of the Federal Water Pollution Control
2 Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of
3 the Safe Drinking Water Act (42 U.S.C. 300j–
4 12(f)(2)).

5 (b) **EFFECT OF SECTION.**—Nothing in this section
6 authorizes the Administrator of the Environmental Pro-
7 tection Agency to modify any funding allocation, funding
8 criteria, or other requirement relating to State water pol-
9 lution control revolving funds established under title VI
10 of the Federal Water Pollution Control Act (33 U.S.C.
11 1381 et seq.) and the State drinking water treatment re-
12 volving loan funds established under section 1452 of the
13 Safe Drinking Water Act (42 U.S.C. 300j–12) for any
14 other State.

15 **SEC. 7. EFFECT ON STATE LAWS.**

16 Nothing in this Act preempts any State law in effect
17 on the date of enactment of this Act, including area of
18 origin and other water rights protections.

19 **SEC. 8. TERMINATION OF AUTHORITIES.**

20 The authorities under section 4(a), paragraphs (1)
21 through (6) of section 4(c), paragraphs (8) and (9) of sec-
22 tion 4(c), paragraphs (11) through (13) of section 4(c),
23 section 5, and section 6 permanently expire on the date

- 1 on which the Governor of the State suspends the state of
- 2 drought emergency declaration.

Passed the Senate May 22, 2014.

Attest:

Secretary.

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To direct the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency to take actions to provide additional water supplies to the State of California due to drought, and for other purposes.