

117TH CONGRESS
1ST SESSION

H. R. 4018

To provide drought relief in the State of California, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2021

Mr. VALADAO (for himself, Mr. MCCARTHY, Mr. CALVERT, Mr. GARCIA of California, Mr. ISSA, Mrs. KIM of California, Mr. LAMALFA, Mr. MCCLINTOCK, Mr. NUNES, and Mrs. STEEL) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide drought relief in the State of California, and
for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Necessary to Ensure
5 Expeditious Delivery of Water Act” or the “NEED Water
6 Act”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—RESPONDING TO CALIFORNIA’S DROUGHT EMERGENCY

Sec. 101. Definitions.
 Sec. 102. Emergency projects.
 Sec. 103. Progress report.
 Sec. 104. Status of surface storage studies.

TITLE II—PROTECTION OF THIRD-PARTY WATER RIGHTS

Sec. 201. Offset for State Water Project.
 Sec. 202. Area of origin protections.
 Sec. 203. No redirected adverse impacts.

TITLE III—RENEW WHIN ACT

Sec. 301. Short title.
 Sec. 302. Extension of authority.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on existing obligations.
 Sec. 402. Termination of authorities.

1 **TITLE I—RESPONDING TO CALI-** 2 **FORNIA’S DROUGHT EMER-** 3 **GENCY**

4 **SEC. 101. DEFINITIONS.**

5 In this Act:

6 (1) CENTRAL VALLEY PROJECT.—The term
 7 “Central Valley Project” has the meaning given the
 8 term in section 3403 of the Central Valley Project
 9 Improvement Act (106 Stat. 4707).

10 (2) DELTA.—The term “Delta” means the Sac-
 11 ramento-San Joaquin Delta and the Suisun Marsh,
 12 as defined in sections 12220 and 29101 of the Cali-
 13 fornia Public Resources Code.

14 (3) NEGATIVE IMPACT ON THE LONG-TERM
 15 SURVIVAL.—The term “negative impact on the long-
 16 term survival” means to reduce appreciably the like-
 17 lihood of both the survival and recovery of a listed

1 species in the wild by reducing the reproduction,
2 numbers, or distribution of that species.

3 (4) SALMONID BIOLOGICAL OPINION.—The
4 term “salmonid biological opinion” means the bio-
5 logical opinion issued by the National Marine Fish-
6 eries Service for long-term operations of the Central
7 Valley Project and State Water Project on October
8 21, 2019.

9 (5) SECRETARIES.—The term “Secretaries”
10 means—

11 (A) the Secretary of Commerce; and

12 (B) the Secretary of the Interior.

13 (6) SMELT BIOLOGICAL OPINION.—The term
14 “smelt biological opinion” means the biological opin-
15 ion issued by the United States Fish and Wildlife
16 Service for long-term operations of the Central Val-
17 ley Project and State Water Project on October 21,
18 2019.

19 (7) STATE.—The term “State” means the State
20 of California.

21 (8) STATE WATER PROJECT.—The term “State
22 Water Project” means the water project described
23 by California Water Code section 11550 et seq. and
24 operated by the California Department of Water Re-
25 sources.

1 **SEC. 102. EMERGENCY PROJECTS.**

2 (a) IN GENERAL.—Subject to the priority of individ-
3 uals or entities, including those with Sacramento River
4 Settlement Contracts, that have priority to the diversion
5 and use of water over water rights held by the United
6 States for operations of the Central Valley Project and
7 over rights held by the State for operations of the State
8 Water Project and the United States obligation to make
9 a substitute supply of water available to the San Joaquin
10 River Exchange Contractors, the Secretaries shall direct
11 the operations of the Central Valley Project and allow op-
12 erations of the State Water Project to provide the max-
13 imum quantity of water supplies possible to Central Valley
14 Project agricultural, municipal and industrial, and refuge
15 service and repayment contractors, and State Water
16 Project contractors, by approving, consistent with applica-
17 ble laws (including regulations)—

18 (1) any project or operations to provide addi-
19 tional water supplies if there is any possible way
20 whatsoever that the Secretaries can do so unless the
21 project or operations constitute a highly inefficient
22 way of providing additional water supplies; and

23 (2) any projects or operations as quickly as pos-
24 sible based on available information to address the
25 emergency conditions.

1 (b) MANDATE.—In carrying out subsection (a), the
2 applicable Secretary shall—

3 (1) operate the Central Valley Project to meet
4 the United States contractual obligations under Sac-
5 ramento River Settlement Contracts and to make a
6 substitute supply of water available to the San Joa-
7 quin River Exchange Contractors;

8 (2) except as provided by this subsection, oper-
9 ate the Central Valley Project in a manner con-
10 sistent with the salmonid biological opinion and the
11 smelt biological opinion;

12 (3) authorize and implement actions to ensure
13 that the Delta Cross Channel Gates remain open to
14 the maximum extent practicable;

15 (4)(A) operate the Central Valley Project and
16 allow operations of the State Water Project within
17 the ranges provided for in the smelt biological opin-
18 ion and the salmonid biological opinion to minimize
19 water supply reductions for the Central Valley
20 Project and the State Water Project, manage re-
21 verse flow in Old and Middle Rivers at —5000 cubic
22 feet per second (cfs) unless current scientific data
23 indicate a less negative Old and Middle River flow
24 is necessary to avoid a significant negative impact
25 on the long-term survival of a listed species; and

1 (B) show in writing that any determination to
2 manage OMR reverse flow at rates less negative
3 than -5000 cubic feet per second is necessary to
4 avoid a significant negative impact on the long-term
5 survival of the Delta smelt, including an explanation
6 of the data examined and the connection between
7 those data and the choice made prior to reducing
8 pumping to a rate less negative than -5000 cfs;

9 (5) adopt a 1:1 inflow to export ratio for the in-
10 crement of increased flow of the San Joaquin River,
11 as measured as a 3-day running average at Vernalis
12 during the period from April 1 through May 31, re-
13 sulting from voluntary sale, transfers, or exchanges
14 of water from agencies with rights to divert water
15 from the San Joaquin River or its tributaries con-
16 sistent with the Central Valley Project's and the
17 State Water Project's permitted water rights;

18 (6) issue all necessary permit decisions under
19 the authority of the Secretaries within 30 days of re-
20 ceiving a completed application by the State to place
21 and use temporary barriers or operable gates in
22 Delta channels to improve water quantity and qual-
23 ity for Central Valley Project and State Water
24 Project contractors and other water users, which
25 barriers or gates should provide benefits for species

1 protection and in-Delta water user water quality and
2 shall be designed such that formal consultations
3 under section 7 of the Endangered Species Act of
4 1973 (16 U.S.C. 1536) would not be necessary;

5 (7)(A) complete all requirements under the Na-
6 tional Environmental Policy Act of 1969 (42 U.S.C.
7 4321 et seq.) and the Endangered Species Act of
8 1973 (16 U.S.C. 1531 et seq.) necessary to make
9 final permit decisions on water transfer requests as-
10 sociated with voluntarily fallowing nonpermanent
11 crops in the State, within 30 days of receiving such
12 a request; and

13 (B) allow any water transfer request associated
14 with fallowing to maximize the quantity of water
15 supplies available for nonhabitat uses as long as the
16 fallowing and associated water transfer are in com-
17 pliance with applicable Federal laws (including regu-
18 lations);

19 (8) allow any North of Delta agricultural water
20 service or repayment contractor with unused Central
21 Valley Project water to take delivery of such unused
22 water through April 15 of the contract year imme-
23 diately following the contract year in which such
24 water was allocated, if—

1 (A) the contractor requests the extension;
2 and

3 (B) the requesting contractor certifies
4 that, without the extension, the contractor
5 would have insufficient supplies to adequately
6 meet requests for water deliveries within the
7 contractor's service area;

8 (9) to the maximum extent possible based on
9 the availability and quality of groundwater and with-
10 out causing land subsidence—

11 (A) meet the Level 2 and Level 4 water
12 supply needs of units of the National Wildlife
13 Refuge System in the Central Valley of Cali-
14 fornia, the Gray Lodge, Los Banos, Volta,
15 North Grasslands, and Mendota State wildlife
16 management areas, and the Grasslands Re-
17 sources Conservation District in the Central
18 Valley of California through the improvement
19 or installation of wells to use groundwater re-
20 sources and the purchase of water from willing
21 sellers; and

22 (B) make a quantity of Central Valley
23 Project water obtained from the measures im-
24 plemented under subparagraph (A) available to

1 Central Valley Project water service or repay-
2 ment contractors; and

3 (10) implement instream and offsite projects in
4 the Delta and upstream in the Sacramento River
5 and San Joaquin basins, in coordination with the
6 California Department of Water Resources and the
7 California Department of Fish and Wildlife, that
8 offset the effects on species listed as threatened or
9 endangered under the Endangered Species Act of
10 1973 (16 U.S.C. 1531 et seq.) due to actions taken
11 under this Act.

12 (c) OTHER AGENCIES.—To the extent that a Federal
13 agency other than agencies headed by the Secretaries has
14 a role in approving projects described in subsections (a)
15 and (b), the provisions of this section shall apply to those
16 Federal agencies.

17 (d) ACCELERATED PROJECT DECISION AND ELE-
18 VATION.—

19 (1) IN GENERAL.—Upon the request of the
20 State, the heads of Federal agencies shall use the
21 expedited procedures under this subsection to make
22 final decisions relating to a Federal project or oper-
23 ation to provide additional water supplies or address
24 emergency drought conditions pursuant to sub-
25 sections (a) and (b).

1 (2) REQUEST FOR RESOLUTION.—

2 (A) IN GENERAL.—Upon the request of
3 the State, the head of an agency referred to in
4 subsection (a), or the head of another Federal
5 agency responsible for carrying out a review of
6 a project, as applicable, the Secretary of the In-
7 terior shall convene a final project decision
8 meeting with the heads of all relevant Federal
9 agencies to decide whether to approve a project
10 to provide emergency water supplies.

11 (B) MEETING.—The Secretary of the Inte-
12 rior shall convene a meeting requested under
13 subparagraph (A) not later than 7 days after
14 receiving the meeting request.

15 (3) NOTIFICATION.—Upon receipt of a request
16 for a meeting under this subsection, the Secretary of
17 the Interior shall notify the heads of all relevant
18 Federal agencies of the request, including the
19 project to be reviewed and the date for the meeting.

20 (4) DECISION.—Not later than 10 days after
21 the date on which a meeting is requested under
22 paragraph (2), the head of the relevant Federal
23 agency shall issue a final decision on the project in
24 writing.

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

6 **SEC. 103. PROGRESS REPORT.**

7 Ninety days after the date of the enactment of this
8 Act and every 90 days thereafter, the Secretaries shall
9 provide a progress report describing the implementation
10 of sections 101 and 102 to the Committee on Natural Re-
11 sources in the House of Representatives and the Com-
12 mittee on Energy and Natural Resources in the Senate.

13 **SEC. 104. STATUS OF SURFACE STORAGE STUDIES.**

14 One year after the date of the enactment of this Act,
15 the Secretary of the Interior shall provide a progress re-
16 port on the status of feasibility studies undertaken pursu-
17 ant to section 102(d)(1) to the Committee on Natural Re-
18 sources in the House of Representatives and the Com-
19 mittee on Energy and Natural Resources in the Senate.
20 The report shall include timelines for study completion,
21 draft environmental impact statements, final environ-
22 mental impact statements, and Records of Decision.

TITLE II—PROTECTION OF THIRD-PARTY WATER RIGHTS

SEC. 201. OFFSET FOR STATE WATER PROJECT.

(a) IMPLEMENTATION IMPACTS.—In the event operations of the State Water Project are restricted under an incidental take permit issued by the California Department of Fish and Wildlife for operations of the State Water Project beyond restrictions imposed by the salmonid biological opinion or smelt biological opinion, the Secretary of the Interior shall operate the Central Valley Project, to the extent excess capacity in Central Valley Project facilities exists, to divert water that otherwise would have been diverted by the State Water Project. Additional water diverted by the Central Valley Project pursuant to this subsection shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the restrictions imposed by the incidental take permit.

(b) NOTIFICATION RELATED TO WATER AVAILABILITY.—The Secretary of the Interior shall immediately notify the Director of the California Department of Water Resources in writing if the Secretary of the Interior determines that additional water will be made available to the State Water Project as a result of the implementation of subsection (a).

1 **SEC. 202. AREA OF ORIGIN PROTECTIONS.**

2 (a) IN GENERAL.—The Secretary of the Interior is
3 directed, in the operation of the Central Valley Project,
4 to adhere to California’s water rights laws governing water
5 rights priorities and to honor water rights senior to those
6 held by the United States for operation of the Central Val-
7 ley Project, regardless of the source of priority, including
8 any appropriative water rights initiated prior to December
9 19, 1914, as well as water rights and other priorities per-
10 fected or to be perfected pursuant to California Water
11 Code Part 2 of Division 2. Article 1.7 (commencing with
12 section 1215 of chapter 1 of part 2 of division 2, sections
13 10505, 10505.5, 11128, 11460, 11461, 11462, and
14 11463, and sections 12200 to 12220, inclusive).

15 (b) DIVERSIONS.—Any action undertaken by the Sec-
16 retaries pursuant to both this Act and section 7 of the
17 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
18 that requires that diversions from the Sacramento River
19 or the San Joaquin River watersheds upstream of the
20 Delta be bypassed shall not be undertaken in a manner
21 that alters the water rights priorities established by Cali-
22 fornia law.

23 (c) ENDANGERED SPECIES ACT.—Nothing in this
24 title alters the existing authorities provided to and obliga-
25 tions placed upon the Federal Government under the En-
26 dangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

1 (d) CONTRACTS.—With respect to individuals and en-
2 tities with water rights on the Sacramento River, the man-
3 dates of this section may be met, in whole or in part,
4 through a contract with the Secretary executed pursuant
5 to section 14 of Public Law 76–260; 53 Stat. 1187 (43
6 U.S.C. 389) that is in conformance with the Sacramento
7 River Settlement Contracts renewed by the Secretary in
8 2005.

9 **SEC. 203. NO REDIRECTED ADVERSE IMPACTS.**

10 (a) IN GENERAL.—The Secretary of the Interior shall
11 ensure that, except as otherwise provided for in a water
12 service or repayment contract, actions taken in compliance
13 with legal obligations imposed pursuant to or as a result
14 of this Act, including such actions under section 7 of the
15 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
16 and other applicable Federal and State laws, shall not di-
17 rectly or indirectly—

18 (1) result in the involuntary reduction of water
19 supply or fiscal impacts to individuals or districts
20 who receive water from either the State Water
21 Project or the United States under water rights set-
22 tlement contracts, exchange contracts, water service
23 contracts, repayment contracts, or water supply con-
24 tracts; or

1 (2) cause redirected adverse water supply or fis-
2 cal impacts to those within the Sacramento River
3 watershed, the San Joaquin River watershed or the
4 State Water Project service area.

5 (b) COSTS.—To the extent that costs are incurred
6 solely pursuant to or as a result of this Act and would
7 not otherwise have been incurred by any entity or public
8 or local agency or subdivision of the State of California,
9 such costs shall not be borne by any such entity, agency,
10 or subdivision of the State of California, unless such costs
11 are incurred on a voluntary basis.

12 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR
13 AMENDED.—Nothing in this Act shall modify or amend
14 the rights and obligations of the parties to any existing—

15 (1) water service, repayment, settlement, pur-
16 chase, or exchange contract with the United States,
17 including the obligation to satisfy exchange contracts
18 and settlement contracts prior to the allocation of
19 any other Central Valley Project water; or

20 (2) State Water Project water supply or settle-
21 ment contract with the State.

TITLE III—RENEW WIIN ACT

SEC. 301. SHORT TITLE.

This title may be cited as the “Responsible, No-Cost Extension of Western Water Infrastructure Improvements Act” or the “RENEW WIIN Act”.

SEC. 302. EXTENSION OF AUTHORITY.

Subtitle J of the Water Infrastructure Improvements for the Nation Act (Public Law 114–322) is amended—

(1) in section 4007 (43 U.S.C. 390(b) note), in subsection (i), by striking “January 1, 2021” and inserting “January 1, 2031”; and

(2) in section 4013 (43 U.S.C. 390(b) note)—

(A) in the first sentence, by striking “the date that is 5 years after the date of its enactment” and inserting “December 31, 2031”; and

(B) in paragraph (1), by striking “10 years after the date of its enactment” and inserting “on December 31, 2036”.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State

1 law relating to the control, appropriation, use, or distribu-
2 tion of water, including established water rights priorities.

3 **SEC. 402. TERMINATION OF AUTHORITIES.**

4 Title I and title II of this Act shall expire on Sep-
5 tember 30, 2023, or the date on which the Governor of
6 the State suspends the state of drought emergency dec-
7 laration, whichever is later.

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