

111TH CONGRESS
1ST SESSION

H. R. 3999

To direct the Commissioner of the Bureau of Reclamation to initiate consultations under the Endangered Species Act of 1973 on the Central Valley Project and the California State Water Project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

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

A BILL

To direct the Commissioner of the Bureau of Reclamation to initiate consultations under the Endangered Species Act of 1973 on the Central Valley Project and the California State Water Project, 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. RECONSULTATION ON CENTRAL VALLEY**
4 **PROJECT AND THE CALIFORNIA STATE**
5 **WATER PROJECT.**

6 (a) FINDINGS AND PURPOSE.—

7 (1) FINDINGS.—The Congress finds and de-
8 clares the following:

1 (A) The United States owns and operates
2 the California Central Valley Project (CVP),
3 originally federally authorized under the Emer-
4 gency Relief Appropriation Act of 1935 (49
5 Stat. 115), and reauthorized multiple times
6 since—

7 (i) to provide for improved navigation,
8 flow regulation and flood control, storage
9 and delivery of water, hydropower produc-
10 tion, construction of distribution systems
11 to deliver water for the reclamation of arid
12 and semiarid lands;

13 (ii) to protect, restore, and enhance
14 fish, wildlife and associated habitats; and

15 (iii) to provide other beneficial uses.

16 (B) The State of California owns and oper-
17 ates the California State Water Project (SWP),
18 the Nation's largest State-built water and
19 power development and conveyance system,
20 which was authorized in 1960 by a State ref-
21 erendum known as the Burns-Porter Act to
22 provide for water storage and delivery, hydro-
23 power generation, flood control, recreation,
24 water quality, fish and wildlife enhancement,
25 and other beneficial uses.

1 (C) California is the world's 8th largest
2 economy and accounts for 13 percent of the
3 Nation's economic output. Water conveyed from
4 northern to southern California through the
5 Bay Delta supports 25 percent of the State's
6 economy, is a source of drinking water for over
7 22 million people, irrigates nearly 50 percent of
8 the Nation's fruits and vegetables, and supplies
9 numerous wildlife management and ecosystem
10 restoration projects.

11 (D) Several species listed under the En-
12 dangered Species Act of 1973 (16 U.S.C. 1531
13 et seq.) and potentially affected by the contin-
14 ued operation of the CVP and SWP are experi-
15 encing historic or near-historic-recorded low
16 population levels.

17 (E) A number of scientific investigations
18 have been initiated by State, Federal, and local
19 agencies, academia, and private interests to
20 identify the causes of these declines and re-
21 corded low population levels. The vast majority
22 of these studies have concluded that these spe-
23 cies are being impacted by a multitude of envi-
24 ronmental factors including predation, competi-
25 tion from invasive species, entrainment by pub-

1 lic and private water diversions, legal and illegal
2 harvest, contamination emanating from urban
3 and industrial wastewater discharges, agricul-
4 tural and urban runoff, ocean conditions, and
5 other environmental consequences associated
6 with climate change.

7 (F) Operations of the CVP and SWP are
8 coordinated to a large degree by the Coordi-
9 nated Operations Agreement between the
10 United States and State of California and im-
11 plemented by Congress in 1986 (Public Law
12 99-546).

13 (G) The existing and proposed operations
14 of the CVP and SWP are subject to consulta-
15 tion with the Unites States Fish & Wildlife
16 Service (FWS) and National Marine Fisheries
17 Service (NMFS) under section 7(a) of the En-
18 dangered Species Act of 1973 (16 U.S.C.
19 1536(a)). The current biological opinions were
20 prepared separately, under direction by the
21 United States District Court for the Eastern
22 District of California, and issued December
23 2008 and June 2009, respectively.

24 (H) The Central Valley Project Improve-
25 ment Act of 1992 (Public Law 102-575) re-al-

1 located on average over 1.6 million acre-feet of
2 water annually away from water users for envi-
3 ronmental restoration, disproportionately im-
4 pacting rural, agricultural communities in the
5 San Joaquin Valley.

6 (I) The 2008 FWS and 2009 NMFS bio-
7 logical opinions are projected to result in an ad-
8 ditional 1,200,000 acre-feet of reductions annu-
9 ally, combined, on average.

10 (J) The State of California has been hard
11 hit by three critically dry years. Coupled with
12 an economic downturn, severely restricted water
13 supply deliveries from the CVP and SWP to
14 water service users has resulted in San Joaquin
15 Valley cities and farm communities suffering
16 unemployment numbers upwards of 30 to 40
17 percent, with tens of thousands of jobs lost,
18 hundreds of thousands of acres fallowed, and
19 other environmental consequences.

20 (K) The current 2008 FWS and 2009
21 NMFS biological opinions consider complex ac-
22 tions taking place in highly altered environ-
23 ments but do not analyze the relative impact of
24 any other environmental factors affecting the
25 survival or recovery of the listed species, though

1 they do acknowledge that conditions and activi-
2 ties not within the control of the CVP and SWP
3 are likely to place substantial stress upon them.
4 Further, as the 2008 FWS and 2009 NMFS
5 biological opinions were developed separate of
6 one another, there exist potential conflicts be-
7 tween them that may adversely impact one list-
8 ed species in an attempt to protect another.

9 (2) PURPOSE.—The purpose of this section is
10 to resolve these potential conflicts and to address the
11 full range of environmental factors that are likely
12 jeopardizing the continued existence or recovery of
13 the listed species or resulting in the destruction or
14 adverse modification of their critical habitat.

15 (b) RECONSULTATION REQUIRED.—

16 (1) IN GENERAL.—Within 90 days after the
17 date of enactment of this Act, the Commissioner of
18 the Bureau of Reclamation shall initiate consultation
19 with the Secretary of the Interior and the Secretary
20 of Commerce regarding the existing and proposed
21 operations of the Central Valley Project and the
22 California State Water Project, including as de-
23 scribed in the Operations Criteria and Plan for the
24 Central Valley Project, California, under section 7(a)

1 of the Endangered Species Act of 1973 (16 U.S.C.
2 1536(a)).

3 (2) COVERED SPECIES.—The consultation shall
4 include all species listed under section 4(c) of such
5 Act (16 U.S.C. 1533(c)) and all candidate species
6 (as that term is used in that Act) that are or will
7 be affected by such proposed operations.

8 (3) ANALYSIS OF FACTORS.—In conducting the
9 consultation required by this subsection, the Sec-
10 retary of the Interior and the Secretary of Com-
11 merce shall each—

12 (A) identify, analyze, and describe all fac-
13 tors affecting the survival and recovery of the
14 species referred to in paragraph (2), other than
15 operations of the Central Valley Project and the
16 California State Water Project, including—

- 17 (i) municipal wastewater discharges;
18 (ii) urban and agricultural runoff;
19 (iii) industrial discharges;
20 (iv) major power plant water diver-
21 sions and discharges;
22 (v) private water diversions within the
23 Sacramento-San Joaquin River Delta; and
24 (vi) predation by invasive species, in-
25 cluding striped bass;

1 (B) identify, analyze, and describe the ef-
2 fect of invasive species and wastewater dis-
3 charges on food availability on the survival and
4 recovery of the species referred to in paragraph
5 (2), including changes in the composition or
6 availability of prey; changes in climate; and al-
7 terations in the species' critical habitat;

8 (C) identify, analyze, and to the greatest
9 extent practicable quantify the relative effect of
10 each factor affecting the survival and recovery
11 of the subject species;

12 (D) rank each such factor in the order of
13 its relative effect on the likelihood of the sur-
14 vival and recovery of the species referred to in
15 paragraph (2); and

16 (E) identify the specific, additional incre-
17 mental effect of existing and proposed discre-
18 tionary operations of the Central Valley Project
19 and California State Water Project on the sur-
20 vival and recovery of the species referred to in
21 paragraph (2), in relation to all other factors
22 affecting such survival and recovery.

23 (c) BIOLOGICAL OPINION.—

24 (1) IN GENERAL.—The Secretary of the Inte-
25 rior and the Secretary of Commerce shall issue a

1 statement under section 7(b)(3) of the Endangered
2 Species Act of 1973 (16 U.S.C. 1536(b)(3)) with re-
3 spect to the existing and proposed operations that
4 are the subject of the consultation under subsection
5 (b) of this section.

6 (2) REASONABLE AND PRUDENT ALTER-
7 NATIVES.—If the Secretary of the Interior and the
8 Secretary of Commerce include in the statement rea-
9 sonable and prudent alternatives to discretionary
10 project operations, they shall—

11 (A) specify and specifically describe in the
12 statement the increased species abundance they
13 estimate will result from such alternatives; and

14 (B) limit the measures required by the rea-
15 sonable and prudent alternative to no more
16 than the proportionate effects of those discre-
17 tionary project operations in relation to the fac-
18 tors referred to in subsection (b)(3)(A) affect-
19 ing the species referred to in subsection (b)(2).

20 (3) OTHER ACTIONS OR MEASURES.—The Sec-
21 retary of the Interior and the Secretary of Com-
22 merce shall identify and recommend in the state-
23 ment actions or measures that are not within the ju-
24 risdiction of the Bureau of Reclamation, but are
25 necessary to address any factors referred to in sub-

1 section (b)(3)(A) that are jeopardizing the species
2 referred to in subsection (b)(2) or adversely modi-
3 fying their critical habitat.

4 (d) DEADLINE FOR COMPLETION.—

5 (1) IN GENERAL.—The Commissioner and each
6 such Secretary shall conclude consultation under
7 subsection (b) and issue a statement under sub-
8 section (c) by the end of the 90-day period on which
9 the consultation under subsection (b) is initiated by
10 the Commissioner.

11 (2) NO EXTENSION.—Notwithstanding any
12 other law, including paragraphs (1) and (2) of sec-
13 tion 7(b) of the Endangered Species Act of 1973 (16
14 U.S.C. 1536(b)), the period under paragraph (1)
15 may not be extended.

16 (e) CITIZEN SUITS.—For purposes of section 11(g)
17 of the of the Endangered Species Act of 1973 (16 U.S.C.
18 1540(g)), this section is deemed to be a provision of that
19 Act.

20 (f) OTHER CONSULTATION AND BIOLOGICAL OPIN-
21 ION NOT EFFECTIVE.—Any consultation conducted or
22 statement issued before the date of enactment of this Act
23 under section 7 of the Endangered Species Act of 1973
24 (16 U.S.C. 1536) with respect to the existing and pro-
25 posed operations referred to in subsection (b)(1) shall have

- 1 no force or effect after the date of the issuance of the
- 2 statement under this section.

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