

111TH CONGRESS
1ST SESSION

S. 161

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

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources,

A BILL

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

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

3 **TITLE I—SAN JOAQUIN RIVER**
4 **RESTORATION SETTLEMENT**
5 **ACT**

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “San Joaquin River
8 Restoration Settlement Act”.

1 **SEC. 102. PURPOSE.**

2 The purpose of this title is to authorize implementa-
3 tion of the Settlement.

4 **SEC. 103. DEFINITIONS.**

5 In this title:

6 (1) The terms “Friant Division long-term con-
7 tractors”, “Interim Flows”, “Restoration Flows”,
8 “Recovered Water Account”, “Restoration Goal”,
9 and “Water Management Goal” have the meanings
10 given the terms in the Settlement.

11 (2) The term “Secretary” means the Secretary
12 of the Interior.

13 (3) The term “Settlement” means the Stipula-
14 tion of Settlement dated September 13, 2006, in the
15 litigation entitled Natural Resources Defense Coun-
16 cil, et al. v. Kirk Rodgers, et al., United States Dis-
17 trict Court, Eastern District of California, No. CIV.
18 S-88-1658-LKK/GGH.

19 **SEC. 104. IMPLEMENTATION OF SETTLEMENT.**

20 (a) IN GENERAL.—The Secretary of the Interior is
21 hereby authorized and directed to implement the terms
22 and conditions of the Settlement in cooperation with the
23 State of California, including the following measures as
24 these measures are prescribed in the Settlement:

25 (1) Design and construct channel and struc-
26 tural improvements as described in paragraph 11 of

1 the Settlement, provided, however, that the Sec-
2 retary shall not make or fund any such improve-
3 ments to facilities or property of the State of Cali-
4 fornia without the approval of the State of Cali-
5 fornia and the State's agreement in 1 or more
6 memoranda of understanding to participate where
7 appropriate.

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

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

15 (4) Implement the terms and conditions of
16 paragraph 16 of the Settlement related to recircula-
17 tion, recapture, reuse, exchange, or transfer of water
18 released for Restoration Flows or Interim Flows, for
19 the purpose of accomplishing the Water Manage-
20 ment Goal of the Settlement, subject to—

21 (A) applicable provisions of California
22 water law;

23 (B) the Secretary's use of Central Valley
24 Project facilities to make Project water (other
25 than water released from Friant Dam pursuant

1 to the Settlement) and water acquired through
2 transfers available to existing south-of-Delta
3 Central Valley Project contractors; and

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

14 (5) Develop and implement the Recovered
15 Water Account as specified in paragraph 16(b) of
16 the Settlement, including the pricing and payment
17 crediting provisions described in paragraph 16(b)(3)
18 of the Settlement, provided that all other provisions
19 of Federal reclamation law shall remain applicable.

20 (b) AGREEMENTS.—

21 (1) AGREEMENTS WITH THE STATE.—In order
22 to facilitate or expedite implementation of the Settle-
23 ment, the Secretary is authorized and directed to
24 enter into appropriate agreements, including cost-
25 sharing agreements, with the State of California.

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

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

15 (d) MITIGATION OF IMPACTS.—Prior to the imple-
16 mentation of decisions or agreements to construct, im-
17 prove, operate, or maintain facilities that the Secretary de-
18 termines are needed to implement the Settlement, the Sec-
19 retary shall identify—

20 (1) the impacts associated with such actions;
21 and

22 (2) the measures which shall be implemented to
23 mitigate impacts on adjacent and downstream water
24 users and landowners.

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

4 (f) EFFECT ON CONTRACT WATER ALLOCATIONS.—
 5 Except as otherwise provided in this section, the imple-
 6 mentation of the Settlement and the reintroduction of
 7 California Central Valley Spring Run Chinook salmon
 8 pursuant to the Settlement and section 111, shall not re-
 9 sult in the involuntary reduction in contract water alloca-
 10 tions to Central Valley Project long-term contractors,
 11 other than Friant Division long-term contractors.

12 (g) EFFECT ON EXISTING WATER CONTRACTS.—Ex-
 13 cept as provided in the Settlement and this title, nothing
 14 in this title shall modify or amend the rights and obliga-
 15 tions of the parties to any existing water service, repay-
 16 ment, purchase, or exchange contract.

17 (h) INTERIM FLOWS.—

18 (1) STUDY REQUIRED.—Prior to releasing any
 19 Interim Flows under the Settlement, the Secretary
 20 shall prepare an analysis in compliance with the Na-
 21 tional Environmental Policy Act of 1969 (42 U.S.C.
 22 4321 et seq.), including at a minimum—

23 (A) an analysis of channel conveyance ca-
 24 pacities and potential for levee or groundwater
 25 seepage;

1 (B) a description of the associated seepage
2 monitoring program;

3 (C) an evaluation of—

4 (i) possible impacts associated with
5 the release of Interim Flows; and

6 (ii) mitigation measures for those im-
7 pacts that are determined to be significant;

8 (D) a description of the associated flow
9 monitoring program; and

10 (E) an analysis of the likely Federal costs,
11 if any, of any fish screens, fish bypass facilities,
12 fish salvage facilities, and related operations on
13 the San Joaquin River south of the confluence
14 with the Merced River required under the En-
15 dangered Species Act of 1973 (16 U.S.C. 1531
16 et seq.) as a result of the Interim Flows.

17 (2) CONDITIONS FOR RELEASE.—The Secretary
18 is authorized to release Interim Flows to the extent
19 that such flows would not—

20 (A) impede or delay completion of the
21 measures specified in Paragraph 11(a) of the
22 Settlement; or

23 (B) exceed existing downstream channel
24 capacities.

1 (3) SEEPAGE IMPACTS.—The Secretary shall
2 reduce Interim Flows to the extent necessary to ad-
3 dress any material adverse impacts to third parties
4 from groundwater seepage caused by such flows that
5 the Secretary identifies based on the monitoring pro-
6 gram of the Secretary.

7 (4) TEMPORARY FISH BARRIER PROGRAM.—The
8 Secretary, in consultation with the California De-
9 partment of Fish and Game, shall evaluate the effec-
10 tiveness of the Hills Ferry barrier in preventing the
11 unintended upstream migration of anadromous fish
12 in the San Joaquin River and any false migratory
13 pathways. If that evaluation determines that any
14 such migration past the barrier is caused by the in-
15 troduction of the Interim Flows and that the pres-
16 ence of such fish will result in the imposition of ad-
17 ditional regulatory actions against third parties, the
18 Secretary is authorized to assist the Department of
19 Fish and Game in making improvements to the bar-
20 rier. From funding made available in accordance
21 with section 109, if third parties along the San Joa-
22 quin River south of its confluence with the Merced
23 River are required to install fish screens or fish by-
24 pass facilities due to the release of Interim Flows in
25 order to comply with the Endangered Species Act of

1 1973 (16 U.S.C. 1531 et seq.), the Secretary shall
2 bear the costs of the installation of such screens or
3 facilities if such costs would be borne by the Federal
4 Government under section 109(a)(3), except to the
5 extent that such costs are already or are further
6 willingly borne by the State of California or by the
7 third parties.

8 (i) FUNDING AVAILABILITY.—

9 (1) IN GENERAL.—Funds shall be collected in
10 the San Joaquin River Restoration Fund through
11 October 1, 2019, and thereafter, with substantial
12 amounts available through October 1, 2019, pursu-
13 ant to section 109 for implementation of the Settle-
14 ment and titles I and III, including—

15 (A) \$88,000,000, to be available without
16 further appropriation pursuant to section
17 109(c)(2);

18 (B) additional amounts authorized to be
19 appropriated, including the charges required
20 under section 107 and an estimated
21 \$20,000,000 from the CVP Restoration Fund
22 pursuant to section 109(b)(2); and

23 (C) an aggregate commitment of at least
24 \$200,000,000 by the State of California.

1 improvements of such facility or facilities, stream channel,
2 levees, or other real property—

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

4 and

5 (2) shall not be transferred to the United
6 States on account of such modifications or improve-
7 ments.

8 (b) ACQUISITION OF PROPERTY.—

9 (1) IN GENERAL.—The Secretary is authorized
10 to acquire through purchase from willing sellers any
11 property, interests in property, or options to acquire
12 real property needed to implement the Settlement
13 authorized by this title.

14 (2) APPLICABLE LAW.—The Secretary is au-
15 thorized, but not required, to exercise all of the au-
16 thorities provided in section 2 of the Act of August
17 26, 1937 (50 Stat. 844, chapter 832), to carry out
18 the measures authorized in this section and section
19 104.

20 (c) DISPOSAL OF PROPERTY.—

21 (1) IN GENERAL.—Upon the Secretary's deter-
22 mination that retention of title to property or inter-
23 ests in property acquired pursuant to this title is no
24 longer needed to be held by the United States for
25 the furtherance of the Settlement, the Secretary is

1 authorized to dispose of such property or interest in
2 property on such terms and conditions as the Sec-
3 retary deems appropriate and in the best interest of
4 the United States, including possible transfer of
5 such property to the State of California.

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

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

20 (d) GROUNDWATER BANK.—Nothing in this title au-
21 thorizes the Secretary to operate a groundwater bank
22 along or adjacent to the San Joaquin River upstream of
23 the confluence with the Merced River, and any such
24 groundwater bank shall be operated by a non-Federal enti-
25 ty.

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

2 (a) APPLICABLE LAW.—

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

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

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

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

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

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

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

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

18 (d) NONREIMBURSABLE FUNDS.—The United
19 States' share of the costs of implementing this title shall
20 be nonreimbursable under Federal reclamation law, pro-
21 vided that nothing in this subsection shall limit or be con-
22 strued to limit the use of the funds assessed and collected
23 pursuant to sections 3406(e)(1) and 3407(d)(2) of the
24 Reclamation Projects Authorization and Adjustment Act
25 of 1992 (Public Law 102–575; 106 Stat. 4721, 4727), for

1 implementation of the Settlement, nor shall it be con-
2 strued to limit or modify existing or future Central Valley
3 Project ratesetting policies.

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

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

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

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

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

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

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

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

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

7 (a) IMPLEMENTATION COSTS.—

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

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

3 (2) ADDITIONAL AGREEMENTS.—

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

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

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

22 (b) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—In addition to the funding
24 provided in subsection (c), there are also authorized
25 to be appropriated not to exceed \$250,000,000 (at

1 October 2006 price levels) to implement this title
2 and the Settlement, to be available until expended;
3 provided however, that the Secretary is authorized to
4 spend such additional appropriations only in
5 amounts equal to the amount of funds deposited in
6 the San Joaquin River Restoration Fund (not in-
7 cluding payments under subsection (c)(1)(B) and
8 proceeds under subsection (c)(1)(C)), the amount of
9 in-kind contributions, and other non-Federal pay-
10 ments actually committed to the implementation of
11 this title or the Settlement.

12 (2) USE OF THE CENTRAL VALLEY PROJECT
13 RESTORATION FUND.—The Secretary is authorized
14 to use monies from the Central Valley Project Res-
15 toration Fund created under section 3407 of the
16 Reclamation Projects Authorization and Adjustment
17 Act of 1992 (Public Law 102–575; 106 Stat. 4727)
18 for purposes of this title in an amount not to exceed
19 \$2,000,000 (October 2006 price levels) in any fiscal
20 year.

21 (c) FUND.—

22 (1) IN GENERAL.—There is hereby established
23 within the Treasury of the United States a fund, to
24 be known as the San Joaquin River Restoration
25 Fund, into which the following funds shall be depos-

1 ited and used solely for the purpose of implementing
2 the Settlement except as otherwise provided in sub-
3 sections (a) and (b) of section 303:

4 (A) All payments received pursuant to sec-
5 tion 3406(e)(1) of the Reclamation Projects
6 Authorization and Adjustment Act of 1992
7 (Public Law 102–575; 106 Stat. 4721).

8 (B) The construction cost component (not
9 otherwise needed to cover operation and main-
10 tenance costs) of payments made by Friant Di-
11 vision, Hidden Unit, and Buchanan Unit long-
12 term contractors pursuant to long-term water
13 service contracts or pursuant to repayment con-
14 tracts, including repayment contracts executed
15 pursuant to section 110. The construction cost
16 repayment obligation assigned such contractors
17 under such contracts shall be reduced by the
18 amount paid pursuant to this paragraph and
19 the appropriate share of the existing Federal
20 investment in the Central Valley Project to be
21 recovered by the Secretary pursuant to Public
22 Law 99–546 (100 Stat. 3050) shall be reduced
23 by an equivalent sum.

24 (C) Proceeds from the sale of water pursu-
25 ant to the Settlement, or from the sale of prop-

1 erty or interests in property as provided in sec-
2 tion 105.

3 (D) Any non-Federal funds, including
4 State cost-sharing funds, contributed to the
5 United States for implementation of the Settle-
6 ment, which the Secretary may expend without
7 further appropriation for the purposes for
8 which contributed.

9 (2) AVAILABILITY.—All funds deposited into
10 the Fund pursuant to subparagraphs (A), (B), and
11 (C) of paragraph (1) are authorized for appropria-
12 tion to implement the Settlement and this title, in
13 addition to the authorization provided in subsections
14 (a) and (b) of section 303, except that \$88,000,000
15 of such funds are available for expenditure without
16 further appropriation; provided that after October 1,
17 2019, all funds in the Fund shall be available for ex-
18 penditure without further appropriation.

19 (d) LIMITATION ON CONTRIBUTIONS.—Payments
20 made by long-term contractors who receive water from the
21 Friant Division and Hidden and Buchanan Units of the
22 Central Valley Project pursuant to sections 3406(e)(1)
23 and 3407(d)(2) of the Reclamation Projects Authorization
24 and Adjustment Act of 1992 (Public Law 102–575; 106
25 Stat. 4721, 4727) and payments made pursuant to para-

1 graph 16(b)(3) of the Settlement and subsection (c)(1)(B)
2 shall be the limitation of such entities' direct financial con-
3 tribution to the Settlement, subject to the terms and con-
4 ditions of paragraph 21 of the Settlement.

5 (e) NO ADDITIONAL EXPENDITURES REQUIRED.—
6 Nothing in this title shall be construed to require a Fed-
7 eral official to expend Federal funds not appropriated by
8 Congress, or to seek the appropriation of additional funds
9 by Congress, for the implementation of the Settlement.

10 (f) REACH 4B.—

11 (1) STUDY.—

12 (A) IN GENERAL.—In accordance with the
13 Settlement and the memorandum of under-
14 standing executed pursuant to paragraph 6 of
15 the Settlement, the Secretary shall conduct a
16 study that specifies—

17 (i) the costs of undertaking any work
18 required under paragraph 11(a)(3) of the
19 Settlement to increase the capacity of
20 reach 4B prior to reinitiation of Restora-
21 tion Flows;

22 (ii) the impacts associated with re-
23 initiation of such flows; and

24 (iii) measures that shall be imple-
25 mented to mitigate impacts.

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

4 (2) REPORT.—

5 (A) IN GENERAL.—The Secretary shall file
6 a report with Congress not later than 90 days
7 after issuing a determination, as required by
8 the Settlement, on whether to expand channel
9 conveyance capacity to 4500 cubic feet per sec-
10 ond in reach 4B of the San Joaquin River, or
11 use an alternative route for pulse flows, that—

12 (i) explains whether the Secretary has
13 decided to expand Reach 4B capacity to
14 4500 cubic feet per second; and

15 (ii) addresses the following matters:

16 (I) The basis for the Secretary's
17 determination, whether set out in en-
18 vironmental review documents or oth-
19 erwise, as to whether the expansion of
20 Reach 4B would be the preferable
21 means to achieve the Restoration Goal
22 as provided in the Settlement, includ-
23 ing how different factors were as-
24 sessed such as comparative biological
25 and habitat benefits, comparative

1 costs, relative availability of State
2 cost-sharing funds, and the compara-
3 tive benefits and impacts on water
4 temperature, water supply, private
5 property, and local and downstream
6 flood control.

7 (II) The Secretary's final cost es-
8 timate for expanding Reach 4B capac-
9 ity to 4500 cubic feet per second, or
10 any alternative route selected, as well
11 as the alternative cost estimates pro-
12 vided by the State, by the Restoration
13 Administrator, and by the other par-
14 ties to the Settlement.

15 (III) The Secretary's plan for
16 funding the costs of expanding Reach
17 4B or any alternative route selected,
18 whether by existing Federal funds
19 provided under this title, by non-Fed-
20 eral funds, by future Federal appro-
21 priations, or some combination of
22 such sources.

23 (B) DETERMINATION REQUIRED.—The
24 Secretary shall, to the extent feasible, make the
25 determination in subparagraph (A) prior to un-

1 dertaking any substantial construction work to
2 increase capacity in reach 4B.

3 (3) COSTS.—If the Secretary’s estimated Fed-
4 eral cost for expanding reach 4B in paragraph (2),
5 in light of the Secretary’s funding plan set out in
6 that paragraph, would exceed the remaining Federal
7 funding authorized by this title (including all funds
8 reallocated, all funds dedicated, and all new funds
9 authorized by this title and separate from all com-
10 mitments of State and other non-Federal funds and
11 in-kind commitments), then before the Secretary
12 commences actual construction work in reach 4B
13 (other than planning, design, feasibility, or other
14 preliminary measures) to expand capacity to 4500
15 cubic feet per second to implement this Settlement,
16 Congress must have increased the applicable author-
17 ization ceiling provided by this title in an amount at
18 least sufficient to cover the higher estimated Federal
19 costs.

20 **SEC. 110. REPAYMENT CONTRACTS AND ACCELERATION OF**
21 **REPAYMENT OF CONSTRUCTION COSTS.**

22 (a) CONVERSION OF CONTRACTS.—

23 (1) The Secretary is authorized and directed to
24 convert, prior to December 31, 2010, all existing
25 long-term contracts with the following Friant Divi-

1 sion, Hidden Unit, and Buchanan Unit contractors,
2 entered under subsection (e) of section 9 of the Act
3 of August 4, 1939 (53 Stat. 1196), to contracts
4 under subsection (d) of section 9 of said Act (53
5 Stat. 1195), under mutually agreeable terms and
6 conditions: Arvin-Edison Water Storage District;
7 Delano-Earlimart Irrigation District; Exeter Irriga-
8 tion District; Fresno Irrigation District; Ivanhoe Ir-
9 rigation District; Lindmore Irrigation District; Lind-
10 say-Strathmore Irrigation District; Lower Tule
11 River Irrigation District; Orange Cove Irrigation
12 District; Porterville Irrigation District; Saucelito Ir-
13 rigation District; Shafter-Wasco Irrigation District;
14 Southern San Joaquin Municipal Utility District;
15 Stone Corral Irrigation District; Tea Pot Dome
16 Water District; Terra Bella Irrigation District;
17 Tulare Irrigation District; Madera Irrigation Dis-
18 trict; and Chowchilla Water District. Upon request
19 of the contractor, the Secretary is authorized to con-
20 vert, prior to December 31, 2010, other existing
21 long-term contracts with Friant Division contractors
22 entered under subsection (e) of section 9 of the Act
23 of August 4, 1939 (53 Stat. 1196), to contracts
24 under subsection (d) of section 9 of said Act (53

1 Stat. 1195), under mutually agreeable terms and
2 conditions.

3 (2) Upon request of the contractor, the Sec-
4 retary is further authorized to convert, prior to De-
5 cember 31, 2010, any existing Friant Division long-
6 term contract entered under subsection (c)(2) of sec-
7 tion 9 of the Act of August 4, 1939 (53 Stat. 1194),
8 to a contract under subsection (c)(1) of section 9 of
9 said Act, under mutually agreeable terms and condi-
10 tions.

11 (3) All such contracts entered into pursuant to
12 paragraph (1) shall—

13 (A) require the repayment, either in lump
14 sum or by accelerated prepayment, of the re-
15 maining amount of construction costs identified
16 in the Central Valley Project Schedule of Irriga-
17 tion Capital Rates by Contractor 2007 Irriga-
18 tion Water Rates, dated January 25, 2007, as
19 adjusted to reflect payments not reflected in
20 such schedule, and properly assignable for ulti-
21 mate return by the contractor, no later than
22 January 31, 2011, or if made in approximately
23 equal annual installments, no later than Janu-
24 ary 31, 2014; such amount to be discounted by
25 $\frac{1}{2}$ the Treasury Rate. An estimate of the re-

1 maintaining amount of construction costs as of
2 January 31, 2011, as adjusted, shall be pro-
3 vided by the Secretary to each contractor no
4 later than June 30, 2010;

5 (B) require that, notwithstanding sub-
6 section (c)(2), construction costs or other cap-
7 italized costs incurred after the effective date of
8 the contract or not reflected in the schedule ref-
9 erenced in subparagraph (A), and properly as-
10 signable to such contractor, shall be repaid in
11 not more than 5 years after notification of the
12 allocation if such amount is a result of a collec-
13 tive annual allocation of capital costs to the
14 contractors exercising contract conversions
15 under this subsection of less than \$5,000,000.
16 If such amount is \$5,000,000 or greater, such
17 cost shall be repaid as provided by applicable
18 Reclamation law, provided that the reference to
19 the amount of \$5,000,000 shall not be a prece-
20 dent in any other context;

21 (C) provide that power revenues will not be
22 available to aid in repayment of construction
23 costs allocated to irrigation under the contract;
24 and

1 (D) conform to the Settlement and this
2 title and shall continue so long as the con-
3 tractor pays applicable charges, consistent with
4 subsection (c)(2) and applicable law.

5 (4) All such contracts entered into pursuant to
6 paragraph (2) shall—

7 (A) require the repayment in lump sum of
8 the remaining amount of construction costs
9 identified in the most current version of the
10 Central Valley Project Schedule of Municipal
11 and Industrial Water Rates, as adjusted to re-
12 flect payments not reflected in such schedule,
13 and properly assignable for ultimate return by
14 the contractor, no later than January 31, 2014.
15 An estimate of the remaining amount of con-
16 struction costs as of January 31, 2014, as ad-
17 justed, shall be provided by the Secretary to
18 each contractor no later than June 30, 2013;

19 (B) require that, notwithstanding sub-
20 section (c)(2), construction costs or other cap-
21 italized costs incurred after the effective date of
22 the contract or not reflected in the schedule ref-
23 erenced in subparagraph (A), and properly as-
24 signable to such contractor, shall be repaid in
25 not more than 5 years after notification of the

1 allocation if such amount is a result of a collec-
2 tive annual allocation of capital costs to the
3 contractors exercising contract conversions
4 under this subsection of less than \$5,000,000.
5 If such amount is \$5,000,000 or greater, such
6 cost shall be repaid as provided by applicable
7 Reclamation law, provided that the reference to
8 the amount of \$5,000,000 shall not be a prece-
9 dent in any other context; and

10 (C) conform to the Settlement and this
11 title and shall continue so long as the con-
12 tractor pays applicable charges, consistent with
13 subsection (c)(2) and applicable law.

14 (b) FINAL ADJUSTMENT.—The amounts paid pursu-
15 ant to subsection (a) shall be subject to adjustment fol-
16 lowing a final cost allocation by the Secretary upon com-
17 pletion of the construction of the Central Valley Project.
18 In the event that the final cost allocation indicates that
19 the costs properly assignable to the contractor are greater
20 than what has been paid by the contractor, the contractor
21 shall be obligated to pay the remaining allocated costs.
22 The term of such additional repayment contract shall be
23 no less than 1 year and no more than 10 years, however,
24 mutually agreeable provisions regarding the rate of repay-
25 ment of such amount may be developed by the parties.

1 In the event that the final cost allocation indicates that
2 the costs properly assignable to the contractor are less
3 than what the contractor has paid, the Secretary is au-
4 thorized and directed to credit such overpayment as an
5 offset against any outstanding or future obligation of the
6 contractor.

7 (c) APPLICABILITY OF CERTAIN PROVISIONS.—

8 (1) Notwithstanding any repayment obligation
9 under subsection (a)(3)(B) or subsection (b), upon a
10 contractor's compliance with and discharge of the
11 obligation of repayment of the construction costs as
12 provided in subsection (a)(3)(A), the provisions of
13 section 213(a) and (b) of the Reclamation Reform
14 Act of 1982 (96 Stat. 1269) shall apply to lands in
15 such district.

16 (2) Notwithstanding any repayment obligation
17 under paragraph (3)(B) or (4)(B) of subsection (a),
18 or subsection (b), upon a contractor's compliance
19 with and discharge of the obligation of repayment of
20 the construction costs as provided in paragraphs
21 (3)(A) and (4)(A) of subsection (a), the Secretary
22 shall waive the pricing provisions of section 3405(d)
23 of the Reclamation Projects Authorization and Ad-
24 justment Act of 1992 (Public Law 102-575) for
25 such contractor, provided that such contractor shall

1 continue to pay applicable operation and mainte-
2 nance costs and other charges applicable to such re-
3 payment contracts pursuant to the then-current
4 rate-setting policy and applicable law.

5 (3) Provisions of the Settlement applying to
6 Friant Division, Hidden Unit, and Buchanan Unit
7 long-term water service contracts shall also apply to
8 contracts executed pursuant to this section.

9 (d) REDUCTION OF CHARGE FOR THOSE CONTRACTS
10 CONVERTED PURSUANT TO SUBSECTION (A)(1).—

11 (1) At the time all payments by the contractor
12 required by subsection (a)(3)(A) have been com-
13 pleted, the Secretary shall reduce the charge man-
14 dated in section 107(1) of this title, from 2020
15 through 2039, to offset the financing costs as de-
16 fined in section 110(d)(3). The reduction shall be
17 calculated at the time all payments by the contractor
18 required by subsection (a)(3)(A) have been com-
19 pleted. The calculation shall remain fixed from 2020
20 through 2039 and shall be based upon anticipated
21 average annual water deliveries, as mutually agreed
22 upon by the Secretary and the contractor, for the
23 period from 2020 through 2039, and the amounts of
24 such reductions shall be discounted using the Treas-
25 ury Rate; provided, that such charge shall not be re-

1 duced to less than \$4.00 per acre foot of project
2 water delivered; provided further, that such reduc-
3 tion shall be implemented annually unless the Sec-
4 retary determines, based on the availability of other
5 monies, that the charges mandated in section 107(1)
6 are otherwise needed to cover ongoing federal costs
7 of the Settlement, including any federal operation
8 and maintenance costs of facilities that the Sec-
9 retary determines are needed to implement the Set-
10 tlement. If the Secretary determines that such
11 charges are necessary to cover such ongoing federal
12 costs, the Secretary shall, instead of making the re-
13 duction in such charges, reduce the contractor's op-
14 eration and maintenance obligation by an equivalent
15 amount, and such amount shall not be recovered by
16 the United States from any Central Valley Project
17 contractor, provided nothing herein shall affect the
18 obligation of the contractor to make payments pur-
19 suant to a transfer agreement with a non-federal op-
20 erating entity.

21 (2) If the calculated reduction in paragraph (1),
22 taking into consideration the minimum amount re-
23 quired, does not result in the contractor offsetting
24 its financing costs, the Secretary is authorized and
25 directed to reduce, after October 1, 2019, any out-

1 standing or future obligations of the contractor to
2 the Bureau of Reclamation, other than the charge
3 assessed and collected under section 3407(d) of Pub-
4 lic law 102–575, by the amount of such deficiency,
5 with such amount indexed to 2020 using the Treas-
6 ury Rate and such amount shall not be recovered by
7 the United States from any Central Valley Project
8 contractor, provided nothing herein shall affect the
9 obligation of the contractor to make payments pur-
10 suant to a transfer agreement with a non-Federal
11 operating entity.

12 (3) Financing costs, for the purposes of this
13 subsection, shall be computed as the difference of
14 the net present value of the construction cost identi-
15 fied in subsection (a)(3)(A) using the full Treasury
16 Rate as compared to using one half of the Treasury
17 Rate and applying those rates against a calculated
18 average annual capital repayment through 2030.

19 (4) Effective in 2040, the charge shall revert to
20 the amount called for in section 107(1) of this title.

21 (5) For purposes of this section, “Treasury
22 Rate” shall be defined as the 20 year Constant Ma-
23 turity Treasury (CMT) rate published by the United
24 States Department of the Treasury as of October 1,
25 2010.

1 (e) SATISFACTION OF CERTAIN PROVISIONS.—

2 (1) IN GENERAL.—Upon the first release of In-
3 terim Flows or Restoration Flows, pursuant to para-
4 graphs 13 or 15 of the Settlement, any short- or
5 long-term agreement, to which 1 or more long-term
6 Friant Division, Hidden Unit, or Buchanan Unit
7 contractor that converts its contract pursuant to
8 subsection (a) is a party, providing for the transfer
9 or exchange of water not released as Interim Flows
10 or Restoration Flows shall be deemed to satisfy the
11 provisions of subsection 3405(a)(1)(A) and (I) of the
12 Reclamation Projects Authorization and Adjustment
13 Act of 1992 (Public Law 102–575) without the fur-
14 ther concurrence of the Secretary as to compliance
15 with said subsections if the contractor provides, not
16 later than 90 days before commencement of any
17 such transfer or exchange for a period in excess of
18 1 year, and not later than 30 days before commence-
19 ment of any proposed transfer or exchange with du-
20 ration of less than 1 year, written notice to the Sec-
21 retary stating how the proposed transfer or ex-
22 change is intended to reduce, avoid, or mitigate im-
23 pacts to water deliveries caused by the Interim
24 Flows or Restoration Flows or is intended to other-
25 wise facilitate the Water Management Goal, as de-

1 scribed in the Settlement. The Secretary shall
2 promptly make such notice publicly available.

3 (2) DETERMINATION OF REDUCTIONS TO
4 WATER DELIVERIES.—Water transferred or ex-
5 changed under an agreement that meets the terms
6 of this subsection shall not be counted as a replace-
7 ment or an offset for purposes of determining reduc-
8 tions to water deliveries to any Friant Division long-
9 term contractor except as provided in paragraph
10 16(b) of the Settlement. The Secretary shall, at least
11 annually, make publicly available a compilation of
12 the number of transfer or exchange agreements exer-
13 cising the provisions of this subsection to reduce,
14 avoid, or mitigate impacts to water deliveries caused
15 by the Interim Flows or Restoration Flows or to fa-
16 cilitate the Water Management Goal, as well as the
17 volume of water transferred or exchanged under
18 such agreements.

19 (3) STATE LAW.—Nothing in this subsection al-
20 ters State law or permit conditions, including any
21 applicable geographical restrictions on the place of
22 use of water transferred or exchanged pursuant to
23 this subsection.

24 (f) CERTAIN REPAYMENT OBLIGATIONS NOT AL-
25 TERED.—Implementation of the provisions of this section

1 shall not alter the repayment obligation of any other long-
2 term water service or repayment contractor receiving
3 water from the Central Valley Project, or shift any costs
4 that would otherwise have been properly assignable to the
5 Friant contractors absent this section, including oper-
6 ations and maintenance costs, construction costs, or other
7 capitalized costs incurred after the date of enactment of
8 this Act, to other such contractors.

9 (g) STATUTORY INTERPRETATION.—Nothing in this
10 title shall be construed to affect the right of any Friant
11 Division, Hidden Unit, or Buchanan Unit long-term con-
12 tractor to use a particular type of financing to make the
13 payments required in paragraph (3)(A) or (4)(A) of sub-
14 section (a).

15 **SEC. 111. CALIFORNIA CENTRAL VALLEY SPRING RUN CHI-**
16 **NOOK SALMON.**

17 (a) FINDING.—Congress finds that the implementa-
18 tion of the Settlement to resolve 18 years of contentious
19 litigation regarding restoration of the San Joaquin River
20 and the reintroduction of the California Central Valley
21 Spring Run Chinook salmon is a unique and unprece-
22 dented circumstance that requires clear expressions of
23 Congressional intent regarding how the provisions of the
24 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
25 are utilized to achieve the goals of restoration of the San

1 Joaquin River and the successful reintroduction of Cali-
2 fornia Central Valley Spring Run Chinook salmon.

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

13 (c) FINAL RULE.—

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

21 (2) ISSUANCE.—The Secretary of Commerce
22 shall issue a final rule pursuant to section 4(d) of
23 the Endangered Species Act of 1973 (16 U.S.C.
24 1533(d)) governing the incidental take of reintro-

1 duced California Central Valley Spring Run Chinook
2 salmon prior to the reintroduction.

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

9 (4) APPLICABLE LAW.—Nothing in this sec-
10 tion—

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

21 (B) precludes the Secretary or Secretary of
22 Commerce from imposing protections under the
23 Endangered Species Act of 1973 (16 U.S.C.
24 1531 et seq.) for other species listed pursuant
25 to section 4 of that Act (16 U.S.C. 1533) be-

1 cause those protections provide incidental bene-
2 fits to such reintroduced California Central Val-
3 ley Spring Run Chinook salmon.

4 (d) REPORT.—

5 (1) IN GENERAL.—Not later than December 31,
6 2024, the Secretary of Commerce shall report to
7 Congress on the progress made on the reintroduction
8 set forth in this section and the Secretary’s plans for
9 future implementation of this section.

10 (2) INCLUSIONS.—The report under paragraph
11 (1) shall include—

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

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

19 (C) an assessment regarding the future of
20 the reintroduction.

21 (e) FERC PROJECTS.—

22 (1) IN GENERAL.—With regard to California
23 Central Valley Spring Run Chinook salmon reintro-
24 duced pursuant to the Settlement, the Secretary of
25 Commerce shall exercise its authority under section

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

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

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

20 (1) to modify the Endangered Species Act of
21 1973 (16 U.S.C. 1531 et seq.) or the Federal Power
22 Act (16 U.S.C. 791a et seq.); or

23 (2) to establish a precedent with respect to any
24 other application of the Endangered Species Act of

1 1973 (16 U.S.C. 1531 et seq.) or the Federal Power
2 Act (16 U.S.C. 791a et seq.).

3 **TITLE II—STUDY TO DEVELOP**
4 **WATER PLAN; REPORT**

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

6 (a) PLAN.—

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

19 (A) water quality;

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

23 (C) water conveyance;

24 (D) water reliability;

- 1 (E) water conservation and efficient use
2 (by distribution systems and by end users);
3 (F) flood control;
4 (G) water resource-related environmental
5 enhancement; and
6 (H) population growth.

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

15 (b) USE OF PLAN.—The Integrated Regional Water
16 Management Plan developed for the 2 hydrologic basins
17 under subsection (a) shall serve as a guide for the counties
18 in the study area described in subsection (a)(2) to use as
19 a mechanism to address and solve long-term water needs
20 in a sustainable and equitable manner.

21 (c) REPORT.—The Secretary shall ensure that a re-
22 port containing the results of the Integrated Regional
23 Water Management Plan for the hydrologic regions is sub-
24 mitted to the Committee on Energy and Natural Re-
25 sources of the Senate and the Committee on Natural Re-

1 sources of the House of Representatives not later than 24
 2 months after financial assistance is made available to the
 3 California Water Institute under subsection (a)(1).

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 5 are authorized to be appropriated to carry out this section
 6 \$1,000,000 to remain available until expended.

7 **TITLE III—FRIANT DIVISION**
 8 **IMPROVEMENTS**

9 **SEC. 301. FEDERAL FACILITY IMPROVEMENTS.**

10 (a) The Secretary of the Interior (hereafter referred
 11 to as the “Secretary”) is authorized and directed to con-
 12 duct feasibility studies in coordination with appropriate
 13 Federal, State, regional, and local authorities on the fol-
 14 lowing improvements and facilities in the Friant Division,
 15 Central Valley Project, California:

16 (1) Restoration of the capacity of the Friant-
 17 Kern Canal and Madera Canal to such capacity as
 18 previously designed and constructed by the Bureau
 19 of Reclamation.

20 (2) Reverse flow pump-back facilities on the
 21 Friant-Kern Canal, with reverse-flow capacity of ap-
 22 proximately 500 cubic feet per second at the Poso
 23 and Shafter Check Structures and approximately
 24 300 cubic feet per second at the Woollomes Check
 25 Structure.

1 (b) Upon completion of and consistent with the appli-
2 cable feasibility studies, the Secretary is authorized to con-
3 struct the improvements and facilities identified in sub-
4 section (a) in accordance with all applicable Federal and
5 State laws.

6 (c) The costs of implementing this section shall be
7 in accordance with section 303, and shall be a nonreim-
8 bursable Federal expenditure.

9 **SEC. 302. FINANCIAL ASSISTANCE FOR LOCAL PROJECTS.**

10 (a) AUTHORIZATION.—The Secretary is authorized to
11 provide financial assistance to local agencies within the
12 Central Valley Project, California, for the planning, de-
13 sign, environmental compliance, and construction of local
14 facilities to bank water underground or to recharge
15 groundwater, and that recover such water, provided that
16 the project meets the criteria in subsection (b). The Sec-
17 retary is further authorized to require that any such local
18 agency receiving financial assistance under the terms of
19 this section submit progress reports and accountings to
20 the Secretary, as the Secretary deems appropriate, which
21 such reports shall be publicly available.

22 (b) CRITERIA.—

23 (1) A project shall be eligible for Federal finan-
24 cial assistance under subsection (a) only if all or a
25 portion of the project is designed to reduce, avoid,

1 or offset the quantity of the expected water supply
2 impacts to Friant Division long-term contractors
3 caused by the Interim or Restoration Flows author-
4 ized in title I of this Act, and such quantities have
5 not already been reduced, avoided, or offset by other
6 programs or projects.

7 (2) Federal financial assistance shall only apply
8 to the portion of a project that the local agency des-
9 ignates as reducing, avoiding, or offsetting the ex-
10 pected water supply impacts caused by the Interim
11 or Restoration Flows authorized in title I of this
12 Act, consistent with the methodology developed pur-
13 suant to paragraph (3)(C).

14 (3) No Federal financial assistance shall be pro-
15 vided by the Secretary under this title for construc-
16 tion of a project under subsection (a) unless the Sec-
17 retary—

18 (A) determines that appropriate planning,
19 design, and environmental compliance activities
20 associated with such a project have been com-
21 pleted, and that the Secretary has been offered
22 the opportunity to participate in the project at
23 a price that is no higher than the local agency's
24 own costs, in order to secure necessary storage,
25 extraction, and conveyance rights for water that

1 may be needed to meet the Restoration Goal as
2 described in title I of this Act, where such
3 project has capacity beyond that designated for
4 the purposes in paragraph (2) or where it is
5 feasible to expand such project to allow partici-
6 pation by the Secretary;

7 (B) determines, based on information
8 available at the time, that the local agency has
9 the financial capability and willingness to fund
10 its share of the project's construction and all
11 operation and maintenance costs on an annual
12 basis;

13 (C) determines that a method acceptable to
14 the Secretary has been developed for quanti-
15 fying the benefit, in terms of reduction, avoid-
16 ance, or offset of the water supply impacts ex-
17 pected to be caused by the Interim or Restora-
18 tion Flows authorized in title I of this Act, that
19 will result from the project, and for ensuring
20 appropriate adjustment in the recovered water
21 account pursuant to section 104(a)(5); and

22 (D) has entered into a cost-sharing agree-
23 ment with the local agency which commits the
24 local agency to funding its share of the project's
25 construction costs on an annual basis.

1 (c) GUIDELINES.—Within 1 year from the date of en-
2 actment of this title, the Secretary shall develop, in con-
3 sultation with the Friant Division long-term contractors,
4 proposed guidelines for the application of the criteria de-
5 fined in subsection (b), and will make the proposed guide-
6 lines available for public comment. Such guidelines may
7 consider prioritizing the distribution of available funds to
8 projects that provide the broadest benefit within the af-
9 fected area and the equitable allocation of funds. Upon
10 adoption of such guidelines, the Secretary shall implement
11 such assistance program, subject to the availability of
12 funds appropriated for such purpose.

13 (d) COST SHARING.—The Federal financial assist-
14 ance provided to local agencies under subsection (a) shall
15 not exceed—

16 (1) 50 percent of the costs associated with plan-
17 ning, design, and environmental compliance activities
18 associated with such a project; and

19 (2) 50 percent of the costs associated with con-
20 struction of any such project.

21 (e) PROJECT OWNERSHIP.—

22 (1) Title to, control over, and operation of,
23 projects funded under subsection (a) shall remain in
24 one or more non-Federal local agencies. Nothing in
25 this title authorizes the Secretary to operate a

1 groundwater bank along or adjacent to the San Joa-
2 quin River upstream of the confluence with the
3 Merced River, and any such groundwater bank shall
4 be operated by a non-Federal entity. All projects
5 funded pursuant to this subsection shall comply with
6 all applicable Federal and State laws, including pro-
7 visions of California water law.

8 (2) All operation, maintenance, and replace-
9 ment and rehabilitation costs of such projects shall
10 be the responsibility of the local agency. The Sec-
11 retary shall not provide funding for any operation,
12 maintenance, or replacement and rehabilitation costs
13 of projects funded under subsection (a).

14 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) The Secretary is authorized and directed to use
16 monies from the fund established under section 109 to
17 carry out the provisions of section 301(a)(1), in an
18 amount not to exceed \$35,000,000.

19 (b) In addition to the funds made available pursuant
20 to subsection (a), the Secretary is also authorized to ex-
21 pend such additional funds from the fund established
22 under section 109 to carry out the purposes of section
23 301(a)(2), if such facilities have not already been author-
24 ized and funded under the plan provided for pursuant to
25 section 104(a)(4), in an amount not to exceed

1 \$17,000,000, provided that the Secretary first determines
2 that such expenditure will not conflict with or delay his
3 implementation of actions required by title I of this Act.
4 Notice of the Secretary's determination shall be published
5 not later than his submission of the report to Congress
6 required by section 109(f)(2).

7 (c) In addition to funds made available in subsections
8 (a) and (b), there are authorized to be appropriated
9 \$50,000,000 (October 2008 price levels) to carry out the
10 purposes of this title which shall be non-reimbursable.

○