



NATURAL RESOURCES

The Western Water and American Food Security Act of 2015

Major Provisions/Analysis of H.R. 2898:

Title I: Adjusting Delta Smelt Management Based on Increased Real-Time Monitoring and Updated Science

This title would ensure that changes to operational pumping levels are based on the best and most up-to-date science, while also requiring agencies to use the most accurate survey methods to help determine how these water projects may be maximized without causing significant impacts to the Delta smelt. Only three years of data were used to calculate the incidental take limit (ITL) of Delta smelt in the most recent Biological Opinion, and the data is up to a decade old (2006-2008).

Section 102 requires federal agencies to modify the methodology used to calculate the ITL's for the Delta smelt using the best scientific and commercial data available to allow for a more accurate and robust ITL. Section 103 requires the agencies to use real-time data to make informed decisions about operational changes to the pumps and to maximize project operations pumping at a specified level provided there is no harm to Delta smelt. Although the text is not identical, this title, and titles II and III, reflect parts of the framework negotiated with the Senate last year.

Title II: Ensuring Salmonid Management is Responsive to New Science

This title aims to ease water project pumping restrictions by identifying management actions other than reductions in pumping that can be utilized to better contribute to salmon recovery. Section 201 requires the federal agencies to evaluate and quantify the benefit to salmon species from reductions in pumping. In addition, the Secretary of Commerce is required to consider alternative measures including barriers to fish entrainment, habitat enhancements and predation control programs.

The evaluation of these alternative measures will allow the National Marine Fisheries Service (NMFS) to demonstrate the effectiveness of existing reasonable and prudent alternatives (RPA's) and identify potential additional actions to protect species while reducing adverse water impacts to CVP and SWP contractors. Section 203 authorizes a non-federally financed predator fish removal program on the Stanislaus River. This program is designed to remove nonnative striped bass, smallmouth bass, largemouth bass, black bass, and other nonnative predator fish species that prey on protected salmonid species.

Title III: Operational Flexibility and Drought Relief

This title works within current law to provide federal agencies the operational flexibility to maximize Delta pumping levels while still satisfying the needs of protected listed species, as well as directs the federal agencies to maximize the amount of water pumped south of the Delta during

drought and for two subsequent normal water years. Section 302 requires the Secretaries of Agriculture, Commerce and the Interior to expeditiously issue all necessary permits for water transfers and the use of temporary barriers or operable gates to improve the quantity and quality of water available to CVP and SWP water users.

This section also creates a streamlined project elevation and decision-making process to ensure that decisions related to projects that provide additional water supplies or address emergency drought conditions are made expeditiously. Additional provisions require the Cross Channel gates in the Delta remain open for longer periods of time to prevent water from being lost to the Pacific Ocean.

Section 306 requires federal agencies to increase regular project operations pumping at specific levels if there is no harm to protected species, and Section 307 authorizes pumping at specific levels to capture water during the first few storms of the year. Section 310 authorizes the transfer of the New Melones Dam to local stakeholders pending agreement. Section 313 replaces and satisfies the requirements of the San Joaquin River Restoration Settlement with a warm water fishery.

Title IV: CALFED Storage Feasibility Studies

This title requires Reclamation to complete five feasibility studies for storage projects in California by certain timelines. These timelines are based on the language inserted by Congressman Valadao into the Fiscal Year 2016 House Energy and Water Development Appropriations bill. This title also prohibits an administrative Wild & Scenic River designation from hindering the completion of the proposed Temperance Flat storage facility.

Title V: Water Rights Protections

This title includes provisions designed to preserve water rights seniority and to protect the joint operation of the CVP and SWP. Last Congress' H.R. 5781 included this title.

Title VI: Miscellaneous California Water Provisions

This title allows artificially-spawned Delta smelt and Chinook salmon to be counted when counting fish populations and requires the federal government to develop and implement a plan to replace the 800,000 acre-feet of CVP water, as required by the Central Valley Project Improvement Act, within 180 days of enactment.

Title VII: Water Supply Permitting Act

The regulatory process of constructing new surface water storage -- whether federally or non-federally owned -- often involves a host of federal, state, and local permits and approvals from various agencies. Throughout this process federal agencies are not required to coordinate their permits and approvals with one another and have little incentive to do so. As a result, conflicting agency permit requirements add time to the project planning and implementation process and increases the potential for last-minute surprises that could endanger the success of a project or require significant additional work. As an example, it took **fourteen years to permit** but just two

years to build the 22,400 acre-foot High Savery Dam Project in Wyoming. A local rancher testified on the permitting time: “the lead federal agency wasted a great deal of time making decisions on the project and at times seemed unable to make decisions. These delays not only postponed the project, they resulted in wasted time and money.”

Title VII creates a “one-stop-shop” permitting process to expedite construction of non-federal surface storage facilities. Specifically, this title establishes Reclamation as the lead agency for purposes of coordinating all reviews, analysis, opinions, statements, permits, licenses, or other federal approvals required under federal law. As the point of contact for the federal government, Reclamation shall coordinate the preparation of the unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands, as well as coordinate the project development and construction of qualifying projects. The consolidated permitting process authorized under this Title is modeled after the Obama Administration’s “Interagency Rapid Response Team for Transmission”.

The House Natural Resources Committee passed identical legislation [H.R. 3980 (McClintock, R-CA, and Lummis, R-WY)] last Congress. The title also allows the Secretary of the Interior to accept and spend funds contributed by a non-federal public entity to expedite the evaluation of a permit relating to the qualifying project. This process is based on provisions authorized under Section 140 of P.L. 108-137 to finance upgrades to the Hetch Hetchy project, which provides water supplies to San Francisco California.

Title VIII: Bureau of Reclamation Project Streamlining

With the exception of the Animas-La Plata project in southwestern Colorado, Reclamation has not built any large multi-purpose dams and reservoirs over the last generation. One of the primary reasons is over the length of study time and regulatory analysis. While the previous title is intended to help facilitate the construction of non-federal dams by requiring Reclamation to be the lead agency in coordinating multi-agency permitting reviews, Title VIII is designed to speed up Reclamation’s feasibility study process on surface water storage that “would be owned, funded, or operated” by the agency, a water recycling or desalination project under the purview of Title XVI of Public Law 102-575, or a rural water supply project investigated under Public Law 109-451.

Modeled after Title VII in the Water Resources Reform and Development Act of 2014 (P.L. 113-121) – which passed the House by a vote of 412-4 and the Senate by 91-7 – the provisions found in Title VIII would reform bureaucratic permitting procedures, strengthen oversight of the agency, and ultimately allow for a more efficient process of congressional approval of water resource projects.

Specifically, Title VIII requires future Reclamation feasibility studies to be completed within three years after the date of initiation and have a maximum federal cost of \$3 million; providing for a maximum seven year extension of that time and cost if the Interior Secretary provides a detailed justification to the non-federal project sponsor and the Congress. Title VIII also requires the Interior Secretary to expedite the completion of any ongoing feasibility studies initiated before the date of enactment. If the Secretary determines that the project is justified in a completed report, he/she

shall proceed to pre-construction planning, engineering and design of the project.

To reduce the amount of duplicative review, Title VIII directs the Interior Secretary to develop and implement a coordinated environmental review process with Reclamation and the non-federal project sponsor as lead agencies for expedited environmental review of a project. Finally, Title VIII directs the Interior Secretary to develop and submit a report to the relevant committees in Congress that identifies project reports, proposed projects, and proposed modifications to studies and federal and non-federal cost estimates for all three. These activities would be similar to the studies listed in Section 7002 of P.L. 113-121, which authorized construction of projects by Congress. Congressman Newhouse (R-WA) has introduced a bill (H.R. 2097) similar to Title VIII. H.R. 2097's predecessor passed last year in the House Natural Resources Committee.

Title IX: Accelerated Revenue, Repayment, and Surface Water Storage Enhancement

Under federal law, any irrigation district or water utility that receives contracted water from a Reclamation facility must repay its allocated portion of the capital costs of the federal water project if it has a capital repayment contract. These repayment costs are typically set forth in long-term contracts between a water district and the federal government. At the same time, irrigation districts are subject to federal land-use restrictions and paperwork requirements under the Reclamation Reform Act of 1982 (P.L. 97-293), as long as they owe a capital debt to Reclamation. The same law does not allow these water users to make an early repayment to the U.S. Treasury.

Title IX allows water users to pre-pay their repayment contracts. This prepayment arrangement is based on provisions included by the then-Democratic majority in the 111th Congresses to help pay for the San Joaquin River (California) Restoration Settlement Act. Title IX also creates a surface water storage enhancement program by directing the Secretary to use some of the receipts from early repayment to be used for the construction of new surface water storage. The House Natural Resources Committee passed similar legislation (H.R. 3981; Hastings, R-WA) in the last Congress.

Title X: Safety of Dams

Reclamation is responsible for maintaining over 400 dams in the western United States. Of those, 366 would likely cause loss of life if they were to fail. The Safety of Dams program allows modification of Reclamation dams if "the cause of which results from new hydrologic or seismic data or changes in the state-of-the-art criteria deemed necessary for safety purposes." Modifications can include structural strengthening and construction of spillways, filters and drains. Under the current Safety of Dams program, Reclamation can only evaluate the corrective action necessary to repair the facility. Current federal law does not allow the agency to consider various types of dam improvements, including dam raises, while studying or making safety repairs.

This title allows Reclamation to study and construct, if found feasible and in compliance with Reclamation law, other dam improvements that would be paid for by project beneficiaries in conjunction with dam safety repairs under the Safety of Dams Act. Making such improvements is the equivalent of a homeowner installing a rooftop window while replacing the shingles on his/her roof. Title X is identical to bipartisan legislation introduced by Congressman Valadao (H.R. 2749),

for which the Water, Power and Oceans Subcommittee held a legislative hearing last month.

Title XI: Water Rights Protection

Western water law gives states the rights to develop their own systems of water law. Over the past few years, however, Westerners have seen a number of federal proposals that have attempted to extort their water rights in return for special use permits necessary to operate businesses and family farms. For example, in 2011, the U.S. Forest Service (Forest Service) issued an interim directive for ski area special use permits in Region Two (Colorado and Wyoming). The directive included a clause requiring applicant ski areas to relinquish privately held water rights to the United States as a permit condition. Similarly, last year the Forest Service published its draft "Directive on Groundwater Resource Management".

Title XI prohibits the Departments of the Interior and Agriculture from conditioning or withholding issuance, renewal, amendments or extension of any land use permit on the limitation or encumbrance of any water right to the United States. It also prohibits requiring water users to apply for or acquire a water right in the name of the United States under state law as a condition or such a permit, and prohibits the federal government from asserting jurisdiction over groundwater withdrawals or impacts on groundwater resources. Title XI is identical to Congressman Scott Tipton's bill introduced earlier this year (H.R. 1830). A similar bill offered by Mr. Tipton in the last Congress passed the House by a vote of 238-174.