

1 using the best scientific and commercial data avail-
2 able, that a less negative OMR flow rate is necessary
3 to avoid a significant negative impact on the long-
4 term survival of the species covered by the smelt bio-
5 logical opinion or salmonid biological opinion. If the
6 best scientific and commercial data available to the
7 Secretary indicates that a reverse OMR flow rate
8 more negative than -5,000 cubic feet per second can
9 be established without an imminent negative impact
10 on the long-term survival of the species covered by
11 the smelt biological opinion or salmonid biological
12 opinion, the Secretary shall manage export pumping
13 rates to achieve that more negative OMR flow rate;

14 (3) document, in writing, any significant facts
15 about real-time conditions relevant to the determina-
16 tions of OMR reverse flow rates, including—

17 (A) whether targeted real-time fish moni-
18 toring pursuant to this section, including moni-
19 toring in the vicinity of Station 902, indicates
20 that a significant negative impact on the long-
21 term survival of species covered by the smelt bi-
22 ological opinion or salmonid biological opinion is
23 imminent; and

24 (B) whether near-term forecasts with avail-
25 able models show under prevailing conditions

1 that OMR flow of -5,000 cubic feet per second
2 or higher will cause a significant negative im-
3 pact on the long-term survival of species cov-
4 ered by the smelt biological opinion or salmonid
5 biological opinion;

6 (4) show, in writing, that any determination to
7 manage OMR reverse flow at rates less negative
8 than -5,000 cubic feet per second is necessary to
9 avoid a significant negative impact on the long-term
10 survival of species covered by the smelt biological
11 opinion or salmonid biological opinion, and provide,
12 in writing, an explanation of the data examined and
13 the connection between those data and the choice
14 made, after considering—

15 (A) the distribution of Delta smelt
16 throughout the Delta;

17 (B) the potential effects of documented,
18 quantified entrainment on subsequent Delta
19 smelt abundance;

20 (C) the water temperature;

21 (D) other significant factors relevant to
22 the determination; and

23 (E) whether any alternative measures
24 could have a substantially lesser water supply
25 impact; and

1 (5) for any subsequent smelt biological opinion
2 or salmonid biological opinion, make the showing re-
3 quired in paragraph (4) for any determination to
4 manage OMR reverse flow at rates less negative
5 than the most negative limit in the biological opinion
6 if the most negative limit in the biological opinion is
7 more negative than -5,000 cubic feet per second.

8 (b) NO REINITIATION OF CONSULTATION.—In imple-
9 menting or at the conclusion of actions under subsection
10 (a), the Secretary of the Interior or the Secretary of Com-
11 merce shall not reinitiate consultation on those adjusted
12 operations unless there is a significant negative impact on
13 the long-term survival of the species covered by the smelt
14 biological opinion or salmonid biological opinion. Any ac-
15 tion taken under subsection (a) that does not create a sig-
16 nificant negative impact on the long-term survival to spe-
17 cies covered by the smelt biological opinion or salmonid
18 biological opinion will not alter application of the take per-
19 mitted by the incidental take statement in the biological
20 opinion under section 7(o)(2) of the Endangered Species
21 Act of 1973.

22 (c) CALCULATION OF REVERSE FLOW IN OMR.—
23 Within 90 days of the enactment of this title, the Sec-
24 retary of the Interior is directed, in consultation with the
25 California Department of Water Resources to revise the

1 method used to calculate reverse flow in Old and Middle
2 Rivers, for implementation of the reasonable and prudent
3 alternatives in the smelt biological opinion and the
4 salmonid biological opinion, and any succeeding biological
5 opinions, for the purpose of increasing Central Valley
6 Project and State Water Project water supplies. The
7 method of calculating reverse flow in Old and Middle Riv-
8 ers shall be reevaluated not less than every five years
9 thereafter to achieve maximum export pumping rates
10 within limits established by the smelt biological opinion,
11 the salmonid biological opinion, and any succeeding bio-
12 logical opinions.

13 TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW
14 STORMS OF THE WATER YEAR

15 SEC. _____. (a) IN GENERAL.—Consistent with avoid-
16 ing an immediate significant negative impact on the long-
17 term survival upon listed fish species over and above the
18 range of impacts authorized under the Endangered Spe-
19 cies Act of 1973 and other environmental protections
20 under subsection (d), the Secretary of the Interior and the
21 Secretary of Commerce shall authorize the Central Valley
22 Project and the California State Water Project, combined,
23 to operate at levels that result in negative OMR flows at
24 -7,500 cubic feet per second (based on United States Geo-
25 logical Survey gauges on Old and Middle Rivers) daily av-

1 erage as described in subsections (b) and (c) to capture
2 peak flows during storm events.

3 (b) DAYS OF TEMPORARY OPERATIONAL FLEXI-
4 BILITY.—The temporary operational flexibility described
5 in subsection (a) shall be authorized on days that the Cali-
6 fornia Department of Water Resources determines the net
7 Sacramento-San Joaquin River Delta outflow index is at,
8 or above, 13,000 cubic feet per second.

9 (c) COMPLIANCE WITH ENDANGERED SPECIES ACT
10 AUTHORIZATIONS.—In carrying out this section, the Sec-
11 retary of the Interior and the Secretary of Commerce may
12 continue to impose any requirements under the smelt bio-
13 logical opinion and salmonid biological opinion during any
14 period of temporary operational flexibility as they deter-
15 mine are reasonably necessary to avoid additional signifi-
16 cant negative impacts on the long-term survival of a listed
17 fish species over and above the range of impacts author-
18 ized under the Endangered Species Act of 1973, provided
19 that the requirements imposed do not reduce water sup-
20 plies available for the Central Valley Project and the Cali-
21 fornia State Water Project.

22 (d) OTHER ENVIRONMENTAL PROTECTIONS.—

23 (1) STATE LAW.—The actions of the Secretary
24 of the Interior and the Secretary of Commerce under
25 this section shall be consistent with applicable regu-

1 latory requirements under State law. The foregoing
2 does not constitute a waiver of sovereign immunity.

3 (2) FIRST SEDIMENT FLUSH.—During the first
4 flush of sediment out of the Sacramento-San Joa-
5 quin River Delta in each water year, and provided
6 that such determination is based upon objective evi-
7 dence, OMR flow may be managed at rates less neg-
8 ative than -5,000 cubic feet per second for a min-
9 imum duration to avoid movement of adult Delta
10 smelt (*Hypomesus transpacificus*) to areas in the
11 southern Sacramento-San Joaquin River Delta that
12 would be likely to increase entrainment at Central
13 Valley Project and California State Water Project
14 pumping plants.

15 (3) APPLICABILITY OF OPINION.—This section
16 shall not affect the application of the salmonid bio-
17 logical opinion from April 1 to May 31, unless the
18 Secretary of Commerce finds, based on the best sci-
19 entific and commercial data available, that some or
20 all of such applicable requirements may be adjusted
21 during this time period to provide emergency water
22 supply relief without resulting in additional adverse
23 effects over and above the range of impacts author-
24 ized under the Endangered Species Act of 1973. In
25 addition to any other actions to benefit water sup-

1 ply, the Secretary of the Interior and the Secretary
2 of Commerce shall consider allowing through-Delta
3 water transfers to occur during this period if they
4 can be accomplished consistent with section
5 3405(a)(1)(H) of the Central Valley Project Im-
6 provement Act. Water transfers solely or exclusively
7 through the California State Water Project that do
8 not require any use of Reclamation facilities or ap-
9 proval by Reclamation are not required to be con-
10 sistent with section 3405(a)(1)(H) of the Central
11 Valley Project Improvement Act.

12 (4) MONITORING.—During operations under
13 this section, the Commissioner of Reclamation, in
14 coordination with the United States Fish and Wild-
15 life Service, National Marine Fisheries Service, and
16 California Department of Fish and Wildlife, shall
17 undertake expanded monitoring programs and other
18 data gathering to improve Central Valley Project
19 and California State Water Project water supplies,
20 to ensure incidental take levels are not exceeded, and
21 to identify potential negative impacts, if any, and ac-
22 tions necessary to mitigate impacts of the temporary
23 operational flexibility to species listed under the En-
24 dangered Species Act of 1973 (16 U.S.C. 1531 et
25 seq.).

1 (e) EFFECT OF HIGH OUTFLOWS.—In recognition of
2 the high outflow levels from the Sacramento-San Joaquin
3 River Delta during the days this section is in effect under
4 subsection (b), the Secretary of the Interior and the Sec-
5 retary of Commerce shall not count such days toward the
6 5-day and 14-day running averages of tidally filtered daily
7 Old and Middle River flow requirements under the smelt
8 biological opinion and salmonid biological opinion, as long
9 as the Secretaries avoid significant negative impact on the
10 long-term survival of listed fish species over and above the
11 range of impacts authorized under the Endangered Spe-
12 cies Act of 1973.

13 (f) LEVEL OF DETAIL REQUIRED FOR ANALYSIS.—
14 In articulating the determinations required under this sec-
15 tion, the Secretary of the Interior and the Secretary of
16 Commerce shall fully satisfy the requirements herein but
17 shall not be expected to provide a greater level of sup-
18 porting detail for the analysis than feasible to provide
19 within the short timeframe permitted for timely decision
20 making in response to changing conditions in the Sac-
21 ramento-San Joaquin River Delta.

22 (g) OMR FLOWS.—The Secretary of the Interior and
23 the Secretary of Commerce shall, through the adaptive
24 management provisions in the salmonid biological opinion,
25 limit OMR reverse flow to -5,000 cubic feet per second

1 based on date-certain triggers in the salmonid biological
2 opinions only if using real-time migration information on
3 salmonids demonstrates that such action is necessary to
4 avoid a significant negative impact on the long-term sur-
5 vival of listed fish species over and above the range of im-
6 pacts authorized under the Endangered Species Act of
7 1973.

8 (h) NO REINITIATION OF CONSULTATION.—In imple-
9 menting or at the conclusion of actions under this section,
10 the Secretary of the Interior shall not reinitiate consulta-
11 tion on those adjusted operations if there is no immediate
12 significant negative impact on the long-term survival of
13 listed fish species over and above the range of impacts au-
14 thorized under the Endangered Species Act of 1973. Any
15 action taken under this section that does not create an
16 immediate significant negative impact on the long-term
17 survival of listed fish species over and above the range of
18 impacts authorized under the Endangered Species Act of
19 1973 will not alter application of the take permitted by
20 the incidental take statement in those biological opinions
21 under section 7(o)(2) of the Endangered Species Act of
22 1973.

23 STATE WATER PROJECT OFFSET AND WATER RIGHTS
24 PROTECTIONS

25 SEC. _____. (a) OFFSET FOR STATE WATER
26 PROJECT.—

1 (1) IMPLEMENTATION IMPACTS.—The Sec-
2 retary of the Interior shall confer with the California
3 Department of Fish and Wildlife in connection with
4 the implementation of this section on potential im-
5 pacts to any consistency determination for oper-
6 ations of the State Water Project issued pursuant to
7 California Fish and Game Code section 2080.1.

8 (2) ADDITIONAL YIELD.—If, as a result of the
9 application of this section, the California Depart-
10 ment of Fish and Wildlife—

11 (A) determines that operations of the State
12 Water Project are inconsistent with the consist-
13 ency determinations issued pursuant to Cali-
14 fornia Fish and Game Code section 2080.1 for
15 operations of the State Water Project; or

16 (B) requires take authorization under Cali-
17 fornia Fish and Game Code section 2081 for
18 operation of the State Water Project in a man-
19 ner that directly or indirectly results in reduced
20 water supply to the State Water Project as
21 compared with the water supply available under
22 the smelt biological opinion and the salmonid
23 biological opinion; and as a result, Central Val-
24 ley Project yield is greater than it otherwise
25 would have been, then that additional yield

1 shall be made available to the State Water
2 Project for delivery to State Water Project con-
3 tractors to offset that reduced water supply.

4 (3) NOTIFICATION RELATED TO ENVIRON-
5 MENTAL PROTECTIONS.—The Secretary of the Inte-
6 rior and Secretary of Commerce shall—

7 (A) notify the Director of the California
8 Department of Fish and Wildlife regarding any
9 changes in the manner in which the smelt bio-
10 logical opinion or the salmonid biological opin-
11 ion is implemented; and

12 (B) confirm that those changes are con-
13 sistent with the Endangered Species Act of
14 1973 (16 U.S.C. 1531 et seq.).

15 (b) AREA OF ORIGIN AND WATER RIGHTS PROTEC-
16 TIONS.—

17 (1) IN GENERAL.—The Secretary of the Inte-
18 rior and the Secretary of Commerce, in carrying out
19 the mandates of this section, shall take no action
20 that—

21 (A) diminishes, impairs, or otherwise af-
22 fects in any manner any area of origin, water-
23 shed of origin, county of origin, or any other
24 water rights protection, including rights to

1 water appropriated before December 19, 1914,
2 provided under State law;

3 (B) limits, expands or otherwise affects the
4 application of section 10505, 10505.5, 11128,
5 11460, 11461, 11462, 11463 or 12200 through
6 12220 of the California Water Code or any
7 other provision of State water rights law, with-
8 out respect to whether such a provision is spe-
9 cifically referred to in this section; or

10 (C) diminishes, impairs, or otherwise af-
11 fects in any manner any water rights or water
12 rights priorities under applicable law.

13 (2) SECTION 7 OF THE ENDANGERED SPECIES
14 ACT.—Any action proposed to be undertaken by the
15 Secretary of the Interior and the Secretary of Com-
16 merce pursuant to both this section and section 7 of
17 the Endangered Species Act of 1973 (16 U.S.C.
18 1531 et seq.) shall be undertaken in a manner that
19 does not alter water rights or water rights priorities
20 established by California law or it shall not be un-
21 dertaken at all. Nothing in this subsection affects
22 the obligations of the Secretary of the Interior and
23 the Secretary of Commerce under section 7 of the
24 Endangered Species Act of 1973.

25 (3) EFFECT OF ACT.—

1 (A) Nothing in this section affects or modi-
2 fies any obligation of the Secretary of the Inte-
3 rior under section 8 of the Act of June 17,
4 1902 (32 Stat. 390, chapter 1093).

5 (B) Nothing in this section diminishes, im-
6 pairs, or otherwise affects in any manner any
7 Project purposes or priorities for the allocation,
8 delivery or use of water under applicable law,
9 including the Project purposes and priorities es-
10 tablished under section 3402 and section 3406
11 of the Central Valley Project Improvement Act
12 (Public Law 102–575; 106 Stat. 4706).

13 (c) NO REDIRECTED ADVERSE IMPACTS.—

14 (1) IN GENERAL.—The Secretary of the Inte-
15 rior and Secretary of Commerce shall not carry out
16 any specific action authorized under this section that
17 will directly or through State agency action indi-
18 rectly result in the involuntary reduction of water
19 supply to an individual, district, or agency that has
20 in effect a contract for water with the State Water
21 Project or the Central Valley Project, including Set-
22 tlement and Exchange contracts, refuge contracts,
23 and Friant Division contracts, as compared to the
24 water supply that would be provided in the absence
25 of action under this section, and nothing in this sec-

1 tion is intended to modify, amend or affect any of
2 the rights and obligations of the parties to such con-
3 tracts.

4 (2) ACTION ON DETERMINATION.—If, after ex-
5 ploring all options, the Secretary of the Interior or
6 the Secretary of Commerce makes a final determina-
7 tion that a proposed action under this section cannot
8 be carried out in accordance with paragraph (1),
9 that Secretary—

10 (A) shall document that determination in
11 writing for that action, including a statement of
12 the facts relied on, and an explanation of the
13 basis, for the decision;

14 (B) may exercise the Secretary’s existing
15 authority, including authority to undertake the
16 drought-related actions otherwise addressed in
17 this title, or to otherwise comply with other ap-
18 plicable law, including the Endangered Species
19 Act of 1973 (16 U.S.C. 1531 et seq.); and

20 (C) shall comply with subsection (a).

21 (d) ALLOCATIONS FOR SACRAMENTO VALLEY WATER
22 SERVICE CONTRACTORS.—

23 (1) DEFINITIONS.—In this subsection:

24 (A) EXISTING CENTRAL VALLEY PROJECT
25 AGRICULTURAL WATER SERVICE CONTRACTOR

1 WITHIN THE SACRAMENTO RIVER WATER-
2 SHED.—The term “existing Central Valley
3 Project agricultural water service contractor
4 within the Sacramento River Watershed”
5 means any water service contractor within the
6 Shasta, Trinity, or Sacramento River division of
7 the Central Valley Project that has in effect a
8 water service contract on the date of enactment
9 of this section that provides water for irriga-
10 tion.

11 (B) YEAR TERMS.—The terms “Above
12 Normal”, “Below Normal”, “Dry”, and “Wet”,
13 with respect to a year, have the meanings given
14 those terms in the Sacramento Valley Water
15 Year Type (40–30–30) Index.

16 (2) ALLOCATIONS OF WATER.—

17 (A) ALLOCATIONS.—Subject to subsection
18 (c), the Secretary of the Interior shall make
19 every reasonable effort in the operation of the
20 Central Valley Project to allocate water pro-
21 vided for irrigation purposes to each existing
22 Central Valley Project agricultural water service
23 contractor within the Sacramento River Water-
24 shed in accordance with the following:

1 (i) Not less than 100 percent of the
2 contract quantity of the existing Central
3 Valley Project agricultural water service
4 contractor within the Sacramento River
5 Watershed in a “Wet” year.

6 (ii) Not less than 100 percent of the
7 contract quantity of the existing Central
8 Valley Project agricultural water service
9 Contractor within the Sacramento River
10 Watershed in an “Above Normal” year.

11 (iii) Not less than 100 percent of the
12 contract quantity of the existing Central
13 Valley Project agricultural water service
14 contractor within the Sacramento River
15 Watershed in a “Below Normal” year that
16 is preceded by an “Above Normal” or
17 “Wet” year.

18 (iv) Not less than 50 percent of the
19 contract quantity of the existing Central
20 Valley Project agricultural water service
21 contractor within the Sacramento River
22 Watershed in a “Dry” year that is pre-
23 ceded by a “Below Normal”, “Above Nor-
24 mal”, or “Wet” year.

1 (v) Subject to clause (ii), in any other
2 year not identified in any of clauses (i)
3 through (iv), not less than twice the alloca-
4 tion percentage to south-of-Delta Central
5 Valley Project agricultural water service
6 contractors, up to 100 percent.

7 (B) EFFECT OF CLAUSE.—Nothing in
8 clause (A)(v) precludes an allocation to an ex-
9isting Central Valley Project agricultural water
10 service contractor within the Sacramento River
11 Watershed that is greater than twice the alloca-
12 tion percentage to a south-of-Delta Central Val-
13 ley Project agricultural water service con-
14 tractor.

15 (3) PROTECTION OF ENVIRONMENT, MUNICIPAL
16 AND INDUSTRIAL SUPPLIES, AND OTHER CONTRAC-
17 TORS.—

18 (A) ENVIRONMENT.—Nothing in para-
19 graph (2) shall adversely affect—

20 (i) the cold water pool behind Shasta
21 Dam;

22 (ii) the obligation of the Secretary of
23 the Interior to make water available to
24 managed wetlands pursuant to section
25 3406(d) of the Central Valley Project Im-

1 provement Act (Public Law 102–575; 106
2 Stat. 4722); or

3 (iii) any obligation—

4 (I) of the Secretary of the Inte-
5 rior and the Secretary of Commerce
6 under the smelt biological opinion, the
7 salmonid biological opinion, or any
8 other applicable biological opinion; or

9 (II) under the Endangered Spe-
10 cies Act of 1973 (16 U.S.C. 1531 et
11 seq.) or any other applicable law (in-
12 cluding regulations).

13 (B) MUNICIPAL AND INDUSTRIAL SUP-
14 PLIES.—Nothing in paragraph (2)—

15 (i) modifies any provision of a water
16 Service contract that addresses municipal
17 or industrial water shortage policies of the
18 Secretary of the Interior and the Secretary
19 of Commerce;

20 (ii) affects or limits the authority of
21 the Secretary of the Interior and the Sec-
22 retary of Commerce to adopt or modify
23 municipal and industrial water shortage
24 policies;

1 (iii) affects or limits the authority of
2 the Secretary of the Interior and the Sec-
3 retary of Commerce to implement a munic-
4 ipal or industrial water shortage policy;

5 (iv) constrains, governs, or affects, di-
6 rectly or indirectly, the operations of the
7 American River division of the Central Val-
8 ley Project or any deliveries from that divi-
9 sion or a unit or facility of that division;
10 or

11 (v) affects any allocation to a Central
12 Valley Project municipal or industrial
13 water service contractor by increasing or
14 decreasing allocations to the contractor, as
15 compared to the allocation the contractor
16 would have received absent paragraph (2).

17 (C) OTHER CONTRACTORS.—Nothing in
18 subsection (b)—

19 (i) affects the priority of any indi-
20 vidual or entity with Sacramento River
21 water rights, including an individual or en-
22 tity with a Sacramento River settlement
23 contract, that has priority to the diversion
24 and use of Sacramento River water over

1 water rights held by the United States for
2 operations of the Central Valley Project;

3 (ii) affects the obligation of the
4 United States to make a substitute supply
5 of water available to the San Joaquin
6 River exchange contractors;

7 (iii) affects the allocation of water to
8 Friant division contractors of the Central
9 Valley Project;

10 (iv) results in the involuntary reduc-
11 tion in contract water allocations to indi-
12 viduals or entities with contracts to receive
13 water from the Friant division; or

14 (v) authorizes any actions inconsistent
15 with State water rights law.

16 SEC. _____. None of the funds in this Act shall be
17 available to implement the Stipulation of Settlement (Nat-
18 ural Resources Defense Council, et al. v. Kirk Rodgers,
19 et al., Eastern District of California, No. Civ. 9 S-88-
20 1658 LKK/GGH) or subtitle A of title X of Public Law
21 111-11.

22 SEC. _____. None of the funds in this Act shall be
23 available for the purchase of water in the State of Cali-
24 fornia to supplement instream flow within a river basin
25 that has suffered a drought within the last two years.

1 SEC. _____. The Commissioner of Reclamation is di-
2 rected to work with local water and irrigation districts in
3 the Stanislaus River Basin to ascertain the water storage
4 made available by the Draft Plan of Operations in New
5 Melones Reservoir (DRPO) for water conservation pro-
6 grams, conjunctive use projects, water transfers, resched-
7 uled project water and other projects to maximize water
8 storage and ensure the beneficial use of the water re-
9 sources in the Stanislaus River Basin. All such programs
10 and projects shall be implemented according to all applica-
11 ble laws and regulations. The source of water for any such
12 storage program at New Melones Reservoir shall be made
13 available under a valid water right, consistent with the
14 State water transfer guidelines and any other applicable
15 State water law. The Commissioner shall inform the Con-
16 gress within 18 months setting forth the amount of stor-
17 age made available by the DRPO that has been put to
18 use under this program, including proposals received by
19 the Commissioner from interested parties for the purpose
20 of this section.

