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Order of Business: H.R. 1837 is expected to come to the House floor on Wednesday, February 29, 2012 under a structured rule. The rule, H.Res. 566, provides for one hour of general debate divided equally between the chair and ranking member of the Committee on Natural Resources. The rule makes in order only those amendments summarized below. The rule also provides for one motion to recommit, with or without instructions.¹

Summary: H.R. 1837 seeks to correct a man-made drought in California that has been created by environmental lawsuits resulting from the Endangered Species Act.

The legislation amends the purposes of the Central Valley Project Improvement Act (CVPIA) to ensure that water dedicated to fish and wildlife is replaced and available to Central Valley Project water contractors by December 31, 2016.²

H.R. 1837 also amends the CVPIA definition of “anadromous fish” to include native stock of salmon and sturgeon, and exclude non-native American shad and striped bass.³ The legislation also directs the Secretary of the Interior (when requested by the contractor) to renew any long-term repayment or water contract from the Central Valley Project (CVP) on a 40 year term. The current term is reported to be 25 years for these contracts. Additionally, the Secretary is only allowed to charge for water that is actually delivered by the CVP.

The legislation further amends CVPIA to state that water transfers and arrangements for Central Valley Project water, that could have been conducted prior to the enactment of CVPIA, may occur and are not subject to CVPIA.

Restoration Fund – H.R. 1837 prohibits the Secretary from requiring donations to the CVP Restoration Fund as a condition to contract for storage or conveyance of non-CVP

¹ http://www.rules.house.gov/Media/file/PDF_112_2/Resolutions/BILLS-112-ORH-Rule-HR1837_xml.pdf

² The Central Valley Project Improvement Act (CVPIA) was included as Title XXXIV of H.R. 429 in the 102nd Congress. This became law on October 30, 1992.

³ An “anadromous fish” is one that spends most of its life at sea and travels to fresh water to spawn.

water. According to the Bureau of Reclamation, this fund was established with the goal of providing funding from project beneficiaries for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area.⁴ The Secretary is required to annually submit a plan to Congress for the expenditure of all funds deposited in the Restoration Fund during the preceding fiscal year.

Fee Cap – Beginning on October 1, 2013, the legislation sets a fee cap of \$4 per megawatt-hour for CVP power that is sold to power contractors.

Advisory Board – H.R. 1837 establishes a Restoration Fund Advisory Board composed of 12 members. The members will be selected by the Secretary for four-year terms. The Board shall make recommendations to the Secretary regarding priorities and spending levels for programs authorized by CVPIA. By December 31, 2013, and annually thereafter, the board will transmit their recommendations to the Secretary and to Congress.

The legislation authorizes the Secretary to enter into water storage/carriage/delivery contracts with any federal agency, California water user or water agency, state agency, or private organization. The Secretary is prohibited from charging rates that exceed the amount required to recover the reasonable costs incurred.

The legislation directs the Secretary to implement a plan, by September 30, 2016, to replace the 800,000 acre-foot of water that is dedicated to fish and wildlife.

Bay-Delta Accord – The legislation mandates that the CVP and the State Water Project (SWP) be operated in a manner that is consistent with the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government.” This agreement is commonly known as the Bay-Delta Accord.⁵ According to the legislation, if the Central Valley Project and the State Water Project are operated in a manner that’s consistent with that Bay-Delta Accord, then they will be considered to have complied with all requirements of the Endangered Species Act. The legislation prohibits any federal department and the state of California from imposing on, or restricting, any valid water right.

The legislation also removes the “take limit” on certain non-native fish that prey upon native fish species that occupy the Sacramento and San Joaquin Rivers or the Sacramento-San Joaquin Rivers Delta. These non-native fish are preying on the native-fish (like the endangered delta smelt), so by removing the take limit this legislation allows for more non-native fish to be caught.

⁴ [http://www.usbr.gov/budget/2007/CVPRF%20\(Restoration%20fund\)/CVPRF_07.pdf](http://www.usbr.gov/budget/2007/CVPRF%20(Restoration%20fund)/CVPRF_07.pdf)

⁵ The Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government was signed on December 15, 1994 by the Secretary of the California Resources Agency, the U.S. Secretary of the Interior, the California Secretary for the Environmental Protection Agency, the U.S. Secretary of the Interior, and the Administrator for the Environmental Protection Agency.
http://www.calwater.ca.gov/Admin_Record/G-000143.pdf

H.R. 1837 prohibits the Secretary's of Interior and Commerce from distinguishing between natural-spawned and hatchery-spawned of a species when making determinations under the Endangered Species Act, relating to any anadromous fish present in the Sacramento and San Joaquin Rivers.

The legislation expands the authorized service area of the Central Valley Project to include the Kettleman City Community Services District. The Secretary is authorized to enter into a long-term contract in the District for the delivery of up to 900 acre-feet of CVP water for municipal and industrial use. In the event of hydrologic circumstances that cause reductions in water flow, the Secretary may reduce deliveries by up to 25%. Any infrastructure related-costs that are needed to include the District into the CVP coverage area will not be the responsibility for the federal government.

The legislation states that the filing of a Notice of Determination or a Notice of Exemption that was prepared pursuant to the California Environmental Quality Act will be considered to met the requirements of the National Environmental Policy Act.

H.R. 1837 repeals the San Joaquin River Settlement, and repeals all references relating the implementation of the Settlement.⁶ The legislation makes technical corrections to P.L. 111-11.⁷ The sponsor's office states that this changes the purpose of P.L. 111-11 to end the settlement and replace it with a warm water fishery restoration. The intent is to save water for local farmers while creating a viable fishery. P.L. 111-11 is further amended by removing language that implements the Settlement, and allows the Secretary to use the power of eminent domain.

Beginning on March 1, 2013, the Secretary is directed to modify Friant Dam operations to release "Restoration Flows," except in any Critical Water Year. These flows are to improve the fishery in the San Joaquin River below Friant Dam and upstream of Gravelly Ford.

The legislation requires the Secretary of the Interior to allow for the pre-payment of all contracts associated with the construction costs of the CVP. The legislation also directs the Secretary, at the request of a water contractor, to convert long-term contracts into shorter-term repayment contracts.

Precedent: Section 501 of the bill declares that nothing in this legislation shall serve as precedent for any other state.

This section also states: "Congress finds and declares that:

⁶ This settlement was filed in federal court of the Eastern District of California. The Sierra Club, and others, initiated the lawsuit in order to maintain certain salmon populations. The [National Taxpayers Union](#) called it "another dubious (not to mention expensive) salmon and [Citizens Against Government Waste](#) called it "Extreme Makeover: San Joaquin River ... Watch your wallets."

⁷ The the Omnibus Public Land Management Act of 2009 passed the House on February 25, 2009, by a [roll-call vote of 245-178](#).

- “Coordinated operations between the Central Valley Project and the State Water Project, previously requested and consented to by the State of California and the Federal Government, require assertion of Federal supremacy to protect existing water rights throughout the system; and
- “These circumstances are unique to California.”

State Preemption: Some opponents may argue that the bill preempts California water law. However, it does not. Since 1986, at the request of the state of California and by federal law, the Central Valley Project and the State Water Project are required to operate in coordination with one another. At that time, the state of California relinquished its rights to water produced by the federal project.

California requested and initiated this Accord. Therefore, state compliance with the accord isn't state preemption, the state is simply being held to a prior agreement.

Additional Information: The Central Valley Project (CVP) was authorized by the federal government in 1935. The federal government stepped in during the Great Depression to finance and construct the CVP, which is currently managed by the Bureau of Reclamation under the Department of the Interior. The CVP is a series of canals and reservoirs that transfer water from the north to the south. The state of California manages the State Water Project. This is another series of canals and reservoirs. Since 1986, at the request of California, the two projects work together to transfer from the north to the south.

Environmentalists have repeatedly sued, under the Endangered Species Act (ESA), to save a 3 inch fish, known as the Delta smelt which is listed as endangered. Environmentalists claim that the CVP and SWP water pumps in the Sacramento-San Joaquin Delta Rivers are the main cause for the smelt decline. However, others blame the smelt decline on the presence of non-native fish species that prey on the smelt, as well as chemical discharges into the rivers. According to the sponsor, “hundreds of millions of taxpayer and ratepayer dollars have been spent to investigate the specific causes of smelt declines and to protect the species from the operation of the pumps.”

In order to save the fish, environmentalists have been successful at diverting water resources that would have otherwise gone south. These resources have been pumped into the Pacific Ocean and this has caused a devastating man-made drought. Much more background information can be found using the links below.

Rep. Nunes' office has [several publications](#) that provide additional information. They are:

- Historical Background:
http://nunes.house.gov/UploadedFiles/Historical_Background_of_the_Sacramento-San_Joaquin_Valley_Water_Reliability_Act.pdf

- Legislative Summary:
http://nunes.house.gov/UploadedFiles/Legislative_Summary_of_the_Sacramento-San_Joaquin_Valley_Water_Reliability_Act.pdf
- Section-by-Section: http://nunes.house.gov/UploadedFiles/Section-by-Section_of_the_Sacramento-San_Joaquin_Valley_Water_Reliability_Act.pdf
- Distorted Water (Response to Opponents):
http://nunes.house.gov/UploadedFiles/Distorted_Water_2012LR.pdf

Americans for Limited Government have also written on this issue:
<http://netrightdaily.com/2012/02/the-government-imposed-california-dust-bowl/>.

Outside Groups: The following national organizations have expressed support for passage of H.R. 1837:

U.S. Chamber of Commerce
National Federation of Independent Business
Americans for Limited Government
National Taxpayers Union
Americans for Tax Reform
Citizens Against Government Waste
American Land Rights Association
Small Business & Entrepreneurship Council
Western Business Roundtable

Below is a multi-page list of other agencies, and various state/national/local organizations that support H.R. 1837:

http://nunes.house.gov/UploadedFiles/Support_for_the_Sacramento-San_Joaquin_Valley_Water_Reliability_Act.pdf

Summary of Amendments Made In Order by the Rule:

1. **McClintock (R-CA):** The amendment makes several technical corrections to the legislation. The text of the amendment can be [found here](#).
2. **Thompson (D-CA) & Eshoo (D-CA):** The amendment halts the majority of the bill from taking effect until the Secretaries of Agriculture, Interior, Commerce, and Labor certify that the legislation would not reduce the number of agriculture, agriculture-related, fishery, or fishery-related jobs or revenue in California counties north of the Sacramento-San Joaquin River Delta. The text of the amendment can be [found here](#).
3. **McNerney (D-CA):** The amendment halts the majority of the bill from taking effect until the Secretary of Interior determines that the legislation would not have a harmful effect on the quality or safety of drinking water supplies for residents of the following California counties: Contra Costa, Sacramento, San Joaquin, Solano, and Yolo. The text of the amendment can be [found here](#).

4. **McNerney (D-CA):** The amendment halts the majority of the bill from taking effect until the Secretary of Interior and the Secretary of Agriculture both determine that the legislation would not have a harmful effect on the quality or safety of drinking water supplies for residents of the following California counties: Contra Costa, Sacramento, San Joaquin, Solano, and Yolo. The text of the amendment can be [found here](#).
5. **Garamendi (D-CA):** The amendment strikes section 103 of the legislation. This section directs the Secretary of the Interior (when requested by the contractor) to renew any long-term repayment or water contract from the Central Valley Project (CVP) on a 40 year term. The current term is reported to be 25 years for these contracts. The text of the amendment can be [found here](#).
6. **Napolitano (D-CA):** The underlying legislation requires the Secretary of the Interior to include in contracts a delivery charge. This amendment adds a charge for interest which will be determined by the Secretary of the Treasury. The text of the amendment can be [found here](#).
7. **Garamendi (D-CA):** The amendment strikes section 105 of the legislation. This section amends CVPIA to clarify that the CVP yield of 800,000 acre-feet for fish, wildlife and habitat purposes is a maximum amount, rather than a minimum amount. The text of the amendment can be [found here](#).
8. **Markey (D-MA), Thompson (D-CA), Matsui (D-CA):** The amendment alters section 108 of the underlying bill. This section states that when the CVP and the SWP are operated in a matter that is consistent with the Bay-Delta Accord, they will be considered to have complied with all requirements of the Endangered Species Act. The amendment strikes all mentions of being compliant with the Endangered Species Act, which has been the main driver of lawsuits that has resulted in the man-made drought.

Also, the amendment states that the CVP and the SWP shall be operated in a matter that meets all obligations under state and federal law, with operational constraints that are based on the best available science. The text of the amendment can be [found here](#).

9. **Garamendi (D-CA):** The underlying legislation expands the authorized service area of the Central Valley Project to include the Kettleman City Community Services District. It authorizes the Secretary to enter into a long-term contract in the District for the delivery of up to 900 acre-feet of CVP water for municipal and industrial use.

This amendment requires that the aforementioned 900 acre-feet be derived from existing allocations, as opposed to new allocations. The text of the amendment can be [found here](#).

Committee Action: H.R. 1837 was introduced on May 11, 2011, and was referred to the House Natural Resources Subcommittee on Water and Power. The full committee held a markup on February 16, 2012, and Rep. McClintock offered an amendment in the nature of a substitute that was agreed to by voice vote. The legislation was then approved, as amended, by a [roll call vote of 27-17](#).

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase offsetting receipts (a credit against direct spending) by \$254 million and decrease revenues by \$33 million over the 2013-2022 period. Together, those changes would reduce future budget deficits by \$221 million over the next 10 years.

Does the Bill Expand the Size and Scope of the Federal Government?: H.R. 1837 makes several amendments to existing federal law in order to streamline and expedite the flow of water from Northern California to areas in the south. This is arguably a reduction in the size and scope of the federal government.

Section 106 establishes a Restoration Fund Advisory Board, detailed above. This provision, taken alone, is arguably an increase in the size and scope of the federal government. The legislation does not authorize for appropriation any additional spending for this Advisory Board.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to [House Report 112-403](#), H.R. 1837 “would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by preempting state laws and requiring or prohibiting some activities related to water management and wildlife preservation.” The House Report also states: “The legislation contains no private-sector mandates.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: According the sponsor, “Congress has the power to enact this legislation pursuant to the following: Clauses 1, 3, and 18 of section 8 and clause 7 of section 9 of article I, of the Constitution of the United States.” Rep. Nunes’ statement can be [viewed here](#).

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