

AMENDMENTS ADOPTED TO THE
INTERIOR/ENVIRONMENT APPROPRIATIONS BILL
FOR FY 2017

Full Committee
House Appropriations Committee
Wednesday, June 15, 2016

House Appropriations Committee
FY 2017 Interior, Environment and Related Agencies Bill
Full Committee Markup
June 15, 2016

agreed
VV

Manager's Amendment offered by Mr. Calvert of California

In the bill:

On page 61, line 11, before "501(c)(3)", insert "section".

On page 62, line 11, after the colon, remove the line break and indentation.

On page 63, line 2, insert a period after "terms" and before the quotation mark.

On page 68, after line 16, insert the following:

ECHINODERMS

SEC. ____ . Section 14.92(a)(1) of title 50, Code of Federal Regulations, is amended by inserting ", including echinoderms commonly known as sea urchins and sea cucumbers," after "products".

On page 69, line 19, increase the dollar amount by \$6,060,000.

On page 69, line 24, increase the dollar amount by \$6,060,000.

On page 71, line 17, decrease the dollar amount by \$6,060,000.

On page 71, line 21, decrease the dollar amount by \$6,060,000.

On page 74, line 14, after the colon insert the following:

Provided further, That for fiscal year 2017, notwithstanding the provisions of sections 201(g)(1), (h), and (l) of the Federal Water Pollution Control Act, grants under Title II of the Federal Water Pollution Control Act for American Samoa, Guam, the Commonwealth of the Northern Marianas, the United States Virgin Islands, and the District of Columbia may also be made for the purpose of providing assistance: (1) solely for facility plans, design activities, or plans, specification, and estimates for any proposed project for the construction of treatment works; and (2) for the construction, repair, or replacement of privately owned treatment works serving one or more principal residences or small commercial establishments; *Provided further*, That for fiscal year 2017, notwithstanding the provisions of 201(g)(1), (h), and (l) and section 518(c) of the Federal Water Pollution Control Act, funds reserved by the Administrator for grants under section 518(c) of the Federal Water Pollution Control Act may also be used to provide assistance: (1) solely for facility plans, design activities, or plans, specifications, and estimates for any proposed project for the construction of treatment works; and (2) for the construction, repair, or replacement of privately owned treatment works serving one or more principal residences or small commercial establishments; Funds reserved under section 518(c) of such Act shall be available for grants only to Indian tribes, as defined in section 518(h) of such Act and former Indian reservations in Oklahoma (as defined by the Secretary of the Interior) and Native Villages (as defined in Public Law 92–203); *Provided further*, That for fiscal year 2017, notwithstanding any provision of the Clean Water Act and regulations issued pursuant thereof, up to a total of \$2,000,000 of the funds reserved by the Administrator for grants under section 518(c) of the

Federal Water Pollution Control Act may also be used for grants for training, technical assistance, and educational programs relating to the operation and management of the treatment works specified in section 518(c) of such Act; Funds reserved under section 518(c) of such Act shall be available for grants only to Indian tribes, as defined in section 518(h) of such Act and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Native Villages (as defined in Public Law 92–203):

On page 153, line 11, after the colon, remove the line break and indentation.

In the report:

On page 16, under National Wildlife Refuge System, insert the following new paragraph:

The Service is reminded that solutions to recreational-use conflicts in national wildlife refuges should begin with the Refuge Manager engaging their local communities and collaborating with local officials and other representatives of recreational users to find mutually-agreeable solutions to conflicts. Failure to do so can result in significant public backlash, such as has happened with regard to proposed new recreational boating restrictions at Lake Havasu National Wildlife Refuge.

On page 17, under Migratory Bird Management, insert the following new paragraph:

The Service is urged to update permitting requirements at section 21.12 of title 50, Code of Federal Regulations, to account for the addition of other accredited zoological trade organizations that did not exist at the time the regulation was last published.

On page 17, under Law Enforcement, insert the following new paragraph:

The Committee has been made aware of concerns about expeditious inspection of perishable echinoderms, squid, octopus and cuttlefish. Due to the limited shelf life, it is imperative inspections occur in less than 48 hours. The Committee has been informed the Service is working to inspect perishable items in 24 hours or less and requests data from the Law Enforcement Management Information System (LEMIS) to document these efforts and determine if there are any obstacles toward achieving that goal. The Service is also directed to brief the Committee on steps they are taking to review the regulations to ensure no industry is operating at a disadvantage and to provide a status on harvest levels and illegal wildlife interdicted because of these inspections.

At the appropriate place on page 30, insert the following new paragraph:

Ford's Theater.—The Committee understands that while Ford's Theater serves over 650,000 visitors annually, there are many who are unable to visit the site. The Committee supports Ford's Theater's plan to expand virtual access to the site over the next two fiscal years by investing in digital initiatives. Specifically, the theater plans to enhance interpretation and accessibility through expanded wireless connectivity and bandwidth, a new website, virtual field trips and digital interpretive tools. These initiatives will allow Ford's Theater to better serve and engage diverse audiences and create access for youth and others unable to physically visit this historic site.

At the appropriate place on page 35, under the heading "Ecosystems", insert the following new paragraph:

The Committee supports the continuation of USGS research on understanding the prevalence of toxins in the nation's natural bodies of water by expanding their understanding of cyanobacteria and toxins in stream and wetland ecosystems. USGS is encouraged to participate in interagency efforts to expedite the development of remote sensing tools to assist with early event warning delivered through mobile devices and web portals.

On page 35, under the heading "Ecosystems", insert the following sentence at the appropriate place:

The Survey is expected to allocate Great Lakes Restoration Initiative (GLRI) funds in accordance with the funding allocation methodology used in fiscal year 2016.

On page 52, in the second paragraph, strike the "." and insert the following:

"and is aware of the successful firefighting demonstration performed by an unmanned helicopter at an unmanned aircraft technology demonstration in October 2015. The Committee requests that the Department provide a report to coincide with the fiscal year 2018 budget request regarding its plans and recommendations for the use of unmanned aerial systems."

On page 59, under the heading, "*Geographic Programs*", change the dollar amount to \$409,709,000.

On page 59, at the appropriate place, insert the following new paragraph:

Long Island Sound.—The Committee recommends \$10,000,000, \$6,060,000 above the fiscal year 2016 enacted level and \$7,107,000 above the budget request.

On page 61, under the heading "Water Quality Protection", insert the following sentence at the appropriate place:

In addition, the recommended level provides funding for the urban waters program, as requested.

At the appropriate place on page 63, insert the following new paragraph:

Interagency Consultations.—The U.S. Department of Agriculture (USDA) has a robust history of collecting and analyzing data related to agricultural economics and the environmental impact of farming practices upon the environment, including crop protection and pest management. Several provisions in the Federal Insecticide, Fungicide, and Rodenticide Act require USDA and EPA to consult and coordinate together. Given the Department's expertise, the Committee directs EPA to consult with the USDA experts on regulatory decisions impacting America's farmers.

On page 67, under the heading, "*Superfund Cleanup*", change the dollar amount to \$751,722,000.

At the appropriate place on page 67, insert the following new paragraph:

Gold King Mine. – The Committee understands the EPA and the State are currently working through the process to add the Gold King mine and other nearby sites to the National Priorities List. In the interim, EPA continues to maintain and operate a temporary water treatment plant. Using funds provided herein, the Administrator shall maintain and operate the temporary water treatment plant to treat contaminated flows in the area, but only to the capacity of the plant. The Committee believes any long-term solution should be consistent with a site remediation plan following the addition to the National Priorities List. The Committee understands that such plan will take time to develop and directs the EPA to so maintain and operate the temporary water treatment plant until a more permanent water treatment solution is developed.

On page 82, under Land Acquisition, insert the following new paragraph at the appropriate place:

The Committee has become aware of the possibility for resolution of long-standing management challenges regarding school trust lands within the Boundary Waters Canoe Area in the Superior National Forest in Minnesota. Specifically, stakeholders have proposed a combination of sale and exchange of the school trust lands within the boundaries. The Committee understands that this approach was collaboratively designed, and that the Forest Service and the State are committed to this hybrid model. The Forest Service is encouraged to explore all avenues for funding the first phase of this project expeditiously.

On page 86, under Dental Health, insert the following new paragraph:

The Committee understands that the geographic isolation of Indian tribes makes it difficult to attract and retain dentists and may limit access to care as tooth decay continues to be a problem. One way to help address access would be to allow volunteer dentists to treat patients who can provide important services that will improve access to oral health care. The Committee directs the Service to conduct a pilot project to explore establishing a centralized credentialing system to address workforce needs as well as volunteer providers similar to the Departments of Defense and Veterans Affairs who have centralized credentialing systems. The Committee directs the Service to consult with these agencies and private organizations to include the credentialing of dentists in a pilot program.

On page 91, under Office of Navajo and Hopi Indian Relocation, replace "As of May 2016" with "As of June 2016", and replace "170 eligibility appeals are pending" with "166 eligibility appeals are pending".

Make associated conforming changes to the report as necessary.

Agreed to
31-16

**AMENDMENT TO INTERIOR AND ENVIRONMENT
APPROPRIATIONS BILL
OFFERED BY MR. CULBERSON OF TEXAS AND
MR. PALAZZO OF MISSISSIPPI**

At the appropriate place insert the following:

1 LIMITATION ON USE OF FUNDS FOR AIR QUALITY
2 REGULATIONS
3 SEC. _____. (a) LIMITATION.—None of the funds
4 made available by this Act or any other Act may be used
5 by the Secretary of the Interior (referred to in this section
6 as the “Secretary”) to issue, finalize, or implement any
7 final regulations addressing any subject of the proposed
8 rule entitled “Air Quality Control, Reporting, and Compli-
9 ance”, published April 5, 2016, (81 Fed. Reg 19717) be-
10 fore the date on which the Bureau of Ocean Energy Man-
11 agement—
12 (1) completes the two air modeling studies enti-
13 tled “Arctic Air Quality Impact Assessment Mod-
14 eling (AK-13-01)” and “Air Quality Modeling in the
15 Gulf of Mexico Region (GM-14-01)”, and publishes
16 the results of such studies and all supporting data
17 and documentation in a form available to the public;
18 (2) concludes, following peer review of such
19 studies, publication of public notice, and 120 days of

1 opportunity for public comment on the studies, that
2 the activities expressly authorized under the Outer
3 Continental Shelf Lands Act (43 U.S.C. 1331 et
4 seq.) are significantly affecting the air quality of any
5 State for purposes of compliance with the national
6 ambient air quality standards, pursuant to, as re-
7 quired by section 5(a)(8) of such Act (43 U.S.C.
8 1334(a)(8)); and

9 (3) consults with the affected coastal states (as
10 that term is used in that Act) on the results of such
11 studies and analyses, and any actions that may be
12 taken including any incremental burdens on such
13 coastal states that may result.

14 (b) REPROPOSAL OF REGULATIONS.—The Secretary
15 shall—

16 (1) before issuing any such final regulations—

17 (A) repropose the regulations; and

18 (B) provide a period of at least 180 days
19 for the submission of public comment on such
20 reproposed regulations; and

21 (2) delay the effective date of such final regula-
22 tions for at least 180 days after the date they are
23 published.



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Agreed
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**AMENDMENT TO INTERIOR & ENVIRONMENT
APPROPRIATIONS**

OFFERED BY MR. SIMPSON OF IDAHO

At the end of the bill (before the short title), insert
the following new section:

1 BLM PLANNING 2.0 RULEMAKING ON LAND USE
2 PLANNING PROCEDURES

3 SEC. 4____. None of the funds made available by this
4 Act may be used to promulgate, implement, administer,
5 or enforce the rule published by the Bureau of Land Man-
6 agement in the Federal Register on February 25, 2016
7 (81 Fed. Reg. 9673 et seq.; Fed. Reg. Doc. No. 2016-
8 03232), to amend subparts 1601 and 1610 of title 43,
9 Code of Federal Regulations, which establish the proce-
10 dures used to prepare, revise, or amend land use plans
11 pursuant to the Federal Land Policy and Management Act
12 of 1976 (43 U.S.C. 1701 et seq.), until the Secretary of
13 the Interior provides an additional 90-day period for pub-
14 lic comments on the proposed rule and holds at least one
15 more public meeting on the proposed rule in each of the
16 eleven contiguous Western States (as defined in section

- 1 103(o) of such Act (43 U.S.C. 1702(o)), Texas. and
- 2 Oklahoma.



STEWART # 1
agreed to VV

AMENDMENT TO H.R. _____
OFFERED BY MR. STEWART OF UTAH
INTERIOR APPROPRIATIONS BILL

At the end of the bill (before the short title), insert
the following:

1 HUMANE TRANSFER OF EXCESS ANIMALS
2 SEC. _____. Notwithstanding any other provision of
3 law, the Secretary of the Interior may transfer excess wild
4 horses or burros that have been removed from the public
5 lands to other Federal, State, and local government agen-
6 cies for use as work animals: *Provided*, That the Secretary
7 may make any such transfer immediately upon request of
8 such Federal, State, or local government agency: *Provided*
9 *further*, That any excess animal transferred under this
10 provision shall lose its status as a wild free-roaming horse
11 or burro as defined in the Wild Free-Roaming Horses and
12 Burros Act: *Provided further*, That any Federal, State, or
13 local government agency receiving excess wild horses or
14 burros as authorized in this section shall not destroy the
15 horses or burros in a way that results in their destruction
16 into commercial products, or sell or otherwise transfer the

- 1 horses in a way that results in their destruction for proc-
- 2 essing into commercial products.



Aderholt

Alabama
VV

AMENDMENT TO H.R. _____
(INTERIOR AND ENVIRONMENT APPROPRIATIONS
BILL)
OFFERED BY MR. ADERHOLT OF ALABAMA AND
MR. VISCLOSKY OF INDIANA

Page 147, strike line 24 and all that follows through
page 148, line 4.

Page 149, strike lines 11 through 20.

In the Committee Report, on page 70, strike the
third and fourth full paragraphs.



AMENDMENT TO H.R. _____
(INTERIOR AND ENVIRONMENT APPROPRIATIONS
BILL)

OFFERED BY MR. COLE OF OKLAHOMA

Page 68, after line 16, insert the following:

- 1. TRUST LAND
- 2. SEC. _____. All land taken into trust by the United
- 3 States under or pursuant to the Act of June 18, 1934
- 4 (25 U.S.C. 465) before February 24, 2009, for the benefit
- 5 of an Indian tribe that was federally recognized on the
- 6 date that the land was taken into trust is hereby re-
- 7 affirmed as trust land.



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*agreed to
29-20*

**AMENDMENT TO H.R. _____
(INTERIOR AND ENVIRONMENT APPROPRIATIONS)
OFFERED BY MR. AMODEI OF NEVADA**

Page 60, strike lines 8 through 15 and insert the following:

- 1 **GREATER SAGE-GROUSE**
- 2 **SEC. 114. (a)** None of the funds made available by
- 3 this or any other Act may be used—
- 4 (1) to review the status of or determine whether
- 5 the greater sage-grouse is an endangered species or
- 6 a threatened species pursuant to section 4 of the
- 7 Endangered Species Act of 1973 (16 U.S.C. 1533),
- 8 or to issue a regulation with respect thereto that ap-
- 9 plies to any State with a State management plan;
- 10 (2) to make, modify, or extend any withdrawal
- 11 pursuant to section 204 of the Federal Land Policy
- 12 and Management Act of 1976 (43 U.S.C. 1714)
- 13 within any Sagebrush Focal Area published in the
- 14 Federal Register on September 24, 2015 (80 Fed.
- 15 Reg. 57635 et seq.), in a manner inconsistent with
- 16 a State management plan; or
- 17 (3) to implement, amend, or otherwise modify
- 18 any Federal resource management plan applicable to

1 Federal land in a State with a State management
2 plan, in a manner inconsistent with such State man-
3 agement plan.

4 (b) For the purposes of this section—

5 (1) the term “Federal resource management
6 plan” means—

7 (A) a land use plan prepared by the Bu-
8 reau of Land Management for public lands pur-
9 suant to section 202 of the Federal Land Policy
10 and Management Act of 1976 (43 U.S.C.
11 1712); or

12 (B) a land and resource management plan
13 prepared by the Forest Service for National
14 Forest System lands pursuant to section 6 of
15 the Forest and Rangeland Renewable Resources
16 Planning Act of 1974 (16 U.S.C. 1604);

17 (2) the term “greater sage-grouse” means the
18 species *Centrocercus urophasianus* or the Columbia
19 Basin distinct population segment of greater sage-
20 grouse; and

21 (3) the term “State management plan” means
22 a State-wide plan for the protection and recovery of
23 greater sage-grouse that has been approved by the
24 Governor of such State.



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agreed to
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AMENDMENT TO H.R. _____
(INTERIOR AND ENVIRONMENT APPROPRIATIONS
BILL)

OFFERED BY MR. YODER OF KANSAS

At the end of the bill (before the short title) add the following:

1 LIMITATION ON USE OF FUNDS FOR TREATMENT OF
2 LESSER PRAIRIE CHICKEN UNDER ENDANGERED
3 SPECIES ACT OF 1973
4 SEC. _____. None of the funds made available by this
5 Act shall be used to treat the lesser prairie chicken as an
6 endangered species or threatened species, or a candidate
7 for listing as such a species, under the Endangered Spe-
8 cies Act of 1973 (16 U.S.C. 1531 et seq.).

SEN. FORTENBERRY # 1
agreed +
✓✓

#18

**AMENDMENT TO INTERIOR AND ENVIRONMENT
APPROPRIATIONS BILL
OFFERED BY MR. FORTENBERRY OF NEBRASKA**

At the end of the bill (before the spending reduction account), insert the following:

1 SEC. _____. Not later than six months after the date
2 of receipt by the Secretary of Health and Human Services
3 of a written request from the tribe or tribes served by a
4 hospital operated by the Indian Health Service, the Sec-
5 retary shall install a governance board exclusively for such
6 hospital for a trial period of three years: *Provided*, That
7 the governance board shall be comprised of Indian Health
8 Service senior executives, elected tribal officials, and hos-
9 pital administration experts outside of the Indian Health
10 Service system: *Provided further*, that the governance
11 board shall follow industry-wide best practices: *Provided*
12 *further*, that the governance board shall approve, oversee
13 the implementation of, and evaluate metrics of quality
14 care, patient safety and satisfaction, and finance: *Provided*
15 *further*, that the governance board shall work with the In-
16 dian Health Service on developing standards and proce-
17 dures for employee recruitment, retention, training, com-
18 munication, and dismissal to assure consistency with other

1 high performing federally run health facilities: *Provided*
2 *further*, that the hospital shall have a chief executive offi-
3 cer hired and accountable to the Director of the Indian
4 Health Service who shall be a liaison between the Indian
5 Health Service and the governance board: *Provided fur-*
6 *ther*, that the chief executive officer shall retain authority
7 for all hospital personnel matters in accordance with exist-
8 ing law: *Provided further*, that the chief executive officer
9 and the governance board shall sign a memorandum of
10 understanding to share all pertinent hospital information
11 while protecting individual privacy rights in accordance
12 with existing law: *Provided further*, that the Secretary
13 shall replace the chief executive officer upon receipt of a
14 written request by the governance board: *Provided further*,
15 that the governance board shall meet at the hospital regu-
16 larly: *Provided further*, that the governance board shall
17 regularly communicate to the affected tribe or tribes, to
18 the Secretary, and to the Congress: *Provided further*, that
19 at the end of the trial period, the governance board shall
20 publish and disseminate a report evaluating the aforemen-
21 tioned metrics and providing recommendations for any
22 other tribe or tribes wanting to establish a similar govern-
23 ance board at any other hospital operated by the Indian
24 Health Service: *Provided further*, that if a tribe moves
25 from direct service delivery to delivery through contracting

1 or compacting pursuant to Public Law 93-638, the tribe
2 involved in the pilot has the opportunity to end the pilot
3 and the opportunity to collaborate with the Indian Health
4 Service to reconfigure a governance structure in which
5 that Indian Health Service may upon request continue its
6 participation in the governance structure in a contracted
7 or compacted arrangement.



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31-18
agreed to

AMENDMENT TO H.R.
OFFERED BY MR. Valadao

[Department of the Interior, environment, and related agencies, FY17]

At the end of the bill (before the short title), insert the following:

1 SCIENTIFICALLY SUPPORTED IMPLEMENTATION OF OMR
2 FLOW REQUIREMENTS

3 SEC. ____ (a) To maximize water supplies for the
4 Central Valley Project and the State Water Project, in im-
5 plementing the provisions of the smelt biological opinion
6 or salmonid biological opinion, or any successor biological
7 opinions or court orders, pertaining to management of re-
8 verse flow in the Old and Middle Rivers, the Secretary
9 of the Interior shall—

10 (1) consider the relevant provisions of the appli-
11 cable biological opinions or any successor biological
12 opinions;

13 (2) manage export pumping rates to achieve a
14 reverse OMR flow rate of -5,000 cubic feet per sec-
15 ond unless existing information or that developed by
16 the Secretary of the Interior under paragraphs (3)
17 and (4) leads the Secretary to reasonably conclude,

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.—

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(1) IMPLEMENTATION IMPACTS.—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this section on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(2) ADDITIONAL YIELD.—If, as a result of the application of this section, the California Department of Fish and Wildlife—

(A) determines that operations of the State Water Project are inconsistent with the consistency determinations issued pursuant to California Fish and Game Code section 2080.1 for operations of the State Water Project; or

(B) requires take authorization under California Fish and Game Code section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion; and as a result, Central Valley Project yield is greater than it otherwise 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:

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(i) Not less than 100 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in a "Wet" year.

(ii) Not less than 100 percent of the contract quantity of the existing Central Valley Project agricultural water service Contractor within the Sacramento River Watershed in an "Above Normal" year.

(iii) Not less than 100 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in a "Below Normal" year that is preceded by an "Above Normal" or "Wet" year.

(iv) Not less than 50 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in a "Dry" year that is preceded by a "Below Normal", "Above Normal", 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.



STEWART #2

20

27-27
agreed to

AMENDMENT TO H.R. _____, AS REPORTED

(INTERIOR APPROPRIATIONS BILL)

OFFERED BY MR. STEWART OF UTAH

At the end of the bill (before the short title), insert the following:

1 SEC. ____ . None of the funds made available by this
2 Act may be used to make a Presidential declaration by
3 public proclamation of a national monument under chap-
4 ter 3203 of title 54, United States Code in the counties
5 of Coconino, Maricopa, Mohave and Yavapai in the State
6 of Arizona, in the counties of Modoc and Siskiyou in the
7 State of California, in the counties of Chaffee, Conejos,
8 Dolores, Moffat, Montezuma, and Park in the State of
9 Colorado, in the counties of Carson City, Churchill, Clark,
10 Douglas, Elko, Eureka, Humboldt, Lander, Lincoln,
11 Lyon, Nye, Pershing, Storey and Washoe in the State of
12 Nevada, in the county of Otero in the State of New Mex-
13 ico, in the counties of Jackson, Josephine and, Malheur
14 in the State of Oregon, in the counties of Beaver, Carbon,
15 Duchesne, Emery, Garfield, Iron, Juab, Kane, Millard,
16 Piute, San Juan, Sanpete, Sevier, Tooele, Uintah, Wash-

- 1 ington, and Wayne in the State of Utah, or in the county
- 2 of Penobscot in the State of Maine.

