

Calendar No. **640**

108TH CONGRESS
2^D SESSION

H. R. 2828

IN THE SENATE OF THE UNITED STATES

JULY 12, 2004

Received

JULY 16, 2004

Read twice and placed on the calendar

AN ACT

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Water Supply, Reli-
3 ability, and Environmental Improvement Act”.

4 **TITLE I—CALIFORNIA WATER**
5 **SECURITY AND ENVIRON-**
6 **MENTAL ENHANCEMENT**

7 **SEC. 101. SHORT TITLE.**

8 This title may be cited as the “California Water Se-
9 curity and Environmental Enhancement Act”.

10 **SEC. 102. DEFINITIONS.**

11 In this title:

12 (1) CALFED BAY-DELTA PROGRAM.—The terms
13 “Calfed Bay-Delta Program” and “Program” mean
14 the programs, projects, complementary actions, and
15 activities undertaken through coordinated planning,
16 implementation, and assessment activities of the
17 State and Federal Agencies in a manner consistent
18 with the Record of Decision.

19 (2) CALIFORNIA BAY-DELTA AUTHORITY.—The
20 terms “California Bay-Delta Authority” and “Author-
21 ity” mean the California Bay-Delta Authority, as set
22 forth in the California Bay-Delta Authority Act
23 (Cal. Water Code 79400 et seq.).

24 (3) ENVIRONMENTAL WATER ACCOUNT.—The
25 term “Environmental Water Account” means the co-

1 operative management program established under
2 the Record of Decision.

3 (4) FEDERAL AGENCIES.—The term “Federal
4 agencies” means—

5 (A) the Department of the Interior, includ-
6 ing—

7 (i) the Bureau of Reclamation;

8 (ii) the United States Fish and Wild-
9 life Service;

10 (iii) the Bureau of Land Management;

11 and

12 (iv) the United States Geological Sur-
13 vey;

14 (B) the Environmental Protection Agency;

15 (C) the Army Corps of Engineers;

16 (D) the Department of Commerce, includ-
17 ing the National Marine Fisheries service (also
18 known as “NOAA Fisheries”);

19 (E) the Department of Agriculture, includ-
20 ing—

21 (i) the Natural Resources Conserva-
22 tion Service;

23 (ii) the Forest Service; and

24 (F) the Western Area Power Administra-
25 tion.

1 (5) GOVERNOR.—The term “Governor” means
2 the Governor of the State of California.

3 (6) RECORD OF DECISION.—The term “Record
4 of Decision” means the Calfed Bay-Delta Program
5 Record of Decision, dated August 28, 2000.

6 (7) SECRETARY.—The term “Secretary” means
7 the Secretary of the Interior.

8 (8) STATE.—The term “State” means the State
9 of California.

10 (9) STATE AGENCIES.—The term “State agen-
11 cies” means the California State agencies that are
12 signatories to Attachment 3 of the Record of Deci-
13 sion.

14 (10) WATER YIELD.—The term “water yield”
15 means a new quantity of water in storage that is re-
16 liably available in critically dry years for beneficial
17 uses.

18 **SEC. 103. BAY DELTA PROGRAM.**

19 (a) IN GENERAL.—

20 (1) RECORD OF DECISION AS GENERAL FRAME-
21 WORK.—The Record of Decision is approved as a
22 general framework for addressing the Calfed Bay-
23 Delta Program, including its components relating to
24 water storage and water yield, ecosystem restoration,
25 water supply reliability, conveyance, water use effi-

1 ciency, water quality, water transfers, watersheds,
2 the Environmental Water Account, levee stability,
3 governance, and science.

4 (2) REQUIREMENTS.—In General.— The Sec-
5 retary and the heads of the Federal agencies are au-
6 thorized to carry out the activities under this title
7 consistent with—

8 (A) the Record of Decision; and

9 (B) the requirement that Program activi-
10 ties consisting of protecting drinking water
11 quality, restoring ecological health, improving
12 water supply reliability (including additional
13 storage and conveyance) and water yield, and
14 protecting Delta levees will progress in a bal-
15 anced manner.

16 (b) AUTHORIZED ACTIVITIES.—

17 (1) IN GENERAL.—The Secretary and the heads
18 of the Federal agencies are authorized to carry out
19 the activities described in paragraphs (2) through
20 (5) in furtherance of the Calfed Bay-Delta Program
21 as set forth in the Record of Decision, subject to the
22 cost-share and other provisions of this title, if the
23 activity has been—

1 (A) subject to environmental review and
2 approval, as required under applicable Federal
3 and State law; and

4 (B) approved and certified by the relevant
5 Federal agency to be consistent with the Record
6 of Decision and within the scope of the agency's
7 authority under existing law.

8 (2) MULTIPLE BENEFIT PROJECTS FAVORED.—

9 In selecting projects and programs for increasing
10 water yield and water supply, improving water qual-
11 ity, and enhancing environmental benefits, projects
12 and programs with multiple benefits shall be empha-
13 sized.

14 (3) BALANCE.—The Secretary shall ensure that
15 all elements of the Calfed Bay-Delta Program need
16 to be completed and operated cooperatively to main-
17 tain the balanced progress in all Calfed Bay-Delta
18 Program areas.

19 (4) AUTHORIZATIONS FOR FEDERAL AGENCIES
20 UNDER APPLICABLE LAW.—

21 (A) SECRETARY OF THE INTERIOR.—The
22 Secretary of the Interior is authorized to carry
23 out the activities described in subparagraphs
24 (A) through (J) of paragraph (5), to the extent
25 authorized under the reclamation laws, the Cen-

1 tral Valley Project Improvement Act (title
2 XXXIV of Public Law 102–575; 106 Stat.
3 4706), the Fish and Wildlife Coordination Act
4 (16 U.S.C. 661 et seq.), the Endangered Spe-
5 cies Act of 1973 (16 U.S.C. 1531 et seq.), and
6 other applicable law.

7 (B) THE ADMINISTRATOR OF THE ENVI-
8 RONMENTAL PROTECTION AGENCY.—The Ad-
9 ministrator of the Environmental Protection
10 Agency may carry out the activities described in
11 subparagraphs (C), (E), (F), (G), (H), and (I)
12 of paragraph (5), in furtherance of the Calfed
13 Bay-Delta program, to the extent authorized
14 under the Federal Water Pollution Control Act
15 (33 U.S.C. 1251 et seq.), the Safe Drinking
16 Water Act (42 U.S.C. 300f et seq.), and other
17 laws in effect on the day before the date of en-
18 actment of this title.

19 (C) THE SECRETARY OF THE ARMY.—The
20 Secretary of the Army may carry out the activi-
21 ties described in subparagraphs (B), (F), (G),
22 (H), and (I) of paragraph (5), in furtherance of
23 the CALFED Bay-Delta Program, to the ex-
24 tent authorized under flood control, water re-
25 source development, and other laws in effect on

1 the day before the date of enactment of this
2 title.

3 (D) SECRETARY OF COMMERCE.—The Sec-
4 retary of Commerce is authorized to carry out
5 the activities described in subparagraphs (B),
6 (F), (G), and (I) of paragraph (5), to the ex-
7 tent authorized under the Fish and Wildlife Co-
8 ordination Act (16 U.S.C. 661 et seq.), the En-
9 dangered Species Act of 1973 (16 U.S.C. 1531
10 et seq.), and other applicable law.

11 (E) SECRETARY OF AGRICULTURE.—The
12 Secretary of Agriculture is authorized to carry
13 out the activities described in subparagraphs
14 (C), (E), (F), (G), (H), and (I) of paragraph
15 (5), to the extent authorized under title XII of
16 the Food Security Act of 1985 (16 U.S.C. 3801
17 et seq.), the Farm Security and Rural Invest-
18 ment Act of 2002 (Public Law 107–171; 116
19 Stat. 134) (including amendments made by that
20 Act), and other applicable law.

21 (5) DESCRIPTION OF ACTIVITIES UNDER EXIST-
22 ING AUTHORIZATIONS.—

23 (A) WATER STORAGE AND WATER
24 YIELD.—Activities under this subparagraph
25 consist of—

1 (i) FEASIBILITY STUDIES AND RESO-
2 LUTION.—

3 (I) For purposes of implementing
4 the Calfed Bay-Delta Program, the
5 Secretary is authorized to undertake
6 all necessary planning activities and
7 feasibility studies required for the de-
8 velopment of recommendations by the
9 Secretary to Congress on the con-
10 struction and implementation of spe-
11 cific water supply and water yield
12 projects, and to conduct comprehen-
13 sive water management planning.

14 (II) FEASIBILITY STUDIES RE-
15 QUIREMENTS.—All feasibility studies
16 completed for storage projects as a re-
17 sult of this section shall include iden-
18 tification of project benefits and bene-
19 ficiaries and a cost allocation plan
20 consistent with the benefits to be re-
21 ceived, for both governmental and
22 non-governmental entities.

23 (III) DISAPPROVAL RESOLU-
24 TION.—If the Secretary determines a
25 project to be feasible, and meets the

1 requirements under subparagraph
2 (II), the report shall be submitted to
3 Congress. If Congress does not pass a
4 disapproval resolution of the feasi-
5 bility study during the first 120 days
6 before Congress (not including days
7 on which either the House of Rep-
8 resentatives or the Senate is not in
9 session because of an adjournment of
10 more than three calendar days to a
11 day certain) the project shall be au-
12 thorized, subject to appropriations.

13 (ii) WATER SUPPLY AND WATER
14 YIELD STUDY.—The Secretary, acting
15 through the Bureau of Reclamation and in
16 consultation with the State, shall conduct a
17 study of available water supplies and water
18 yield and existing demand and future
19 needs for water—

20 (I) within the units of the Cen-
21 tral Valley Project;

22 (II) within the area served by
23 Central Valley Project agricultural
24 water service contractors and munic-

1 ipal and industrial water service con-
2 tractors; and

3 (III) within the Bay-Delta solu-
4 tion area.

5 (iii) RELATIONSHIP TO PRIOR
6 STUDY.—The study under clause (ii) shall
7 incorporate and revise as necessary the
8 study required by section 3408(j) of the
9 Central Valley Project Improvement Act of
10 1992 (Public Law 102–575).

11 (iv) MANAGEMENT.—The Secretary
12 shall conduct activities related to devel-
13 oping groundwater storage projects to the
14 extent authorized under existing law.

15 (v) COMPREHENSIVE WATER PLAN-
16 NING.—The Secretary shall conduct activi-
17 ties related to comprehensive water man-
18 agement planning to the extent authorized
19 under existing law.

20 (vi) REPORT.—The Secretary shall
21 submit a report to the congressional au-
22 thorizing committees by not later than 180
23 days after the State’s completion of the
24 updated Bulletin 160 describing the fol-
25 lowing:

1 (I) Water yield and water supply
2 improvements, if any, for Central Val-
3 ley Project agricultural water service
4 contractors and municipal and indus-
5 trial water service contractors, includ-
6 ing those identified in Bulletin 160.

7 (II) All water management ac-
8 tions or projects, including those iden-
9 tified in Bulletin 160, that would im-
10 prove water yield or water supply and
11 that, if taken or constructed, would
12 balance available water supplies and
13 existing demand for those contractors
14 and other water users of the Bay-
15 Delta watershed with due recognition
16 of water right priorities and environ-
17 mental needs.

18 (III) The financial costs of the
19 actions and projects described under
20 clause (II).

21 (IV) The beneficiaries of those
22 actions and projects and an assess-
23 ment of their willingness to pay the
24 capital costs and operation and main-
25 tenance costs thereof.

1 (B) CONVEYANCE.—

2 (i) SOUTH DELTA ACTIONS.—In the
3 case of the South Delta, activities under
4 this clause consist of the following:

5 (I) The South Delta Improve-
6 ment Program through actions to ac-
7 complish the following:

8 (aa) Increase the State
9 Water Project export limit to
10 8,500 cfs.

11 (bb) Install permanent, op-
12 erable barriers in the south
13 Delta. The Federal Agencies
14 shall cooperate with the State to
15 accelerate installation of the per-
16 manent, operable barriers in the
17 south Delta, with the intent to
18 complete that installation not
19 later than the end of fiscal year
20 2007.

21 (cc) Increase the State
22 Water Project export to the max-
23 imum capability of 10,300 cfs.

24 (II) Reduction of agricultural
25 drainage in south Delta channels, and

1 other actions necessary to minimize
2 the impact of drainage on drinking
3 water quality.

4 (III) Evaluation of lower San
5 Joaquin River floodway improve-
6 ments.

7 (IV) Installation and operation of
8 temporary barriers in the south Delta
9 until fully operable barriers are con-
10 structed.

11 (V) Actions to protect navigation
12 and local diversions not adequately
13 protected by temporary barriers.

14 (VI) Actions to increase pumping
15 shall be accomplished in a manner
16 consistent with applicable California
17 and Federal law protecting—

18 (aa) deliveries to, costs of,
19 and water supplies for in-delta
20 water users, including in-delta
21 agricultural users that have his-
22 torically relied on water diverted
23 for use in the Delta;

1 (bb) the quality of water for
2 existing municipal, industrial,
3 and agricultural uses;

4 (cc) water supplies for areas
5 of origin; and

6 (dd) Delta dependent native
7 fish species.

8 (ii) NORTH DELTA ACTIONS.—In the
9 case of the North Delta, activities under
10 this clause consist of—

11 (I) evaluation and implementa-
12 tion of improved operational proce-
13 dures for the Delta Cross Channel to
14 address fishery and water quality con-
15 cerns;

16 (II) evaluation of a screened
17 through-Delta facility on the Sac-
18 ramento River; and

19 (III) evaluation of lower
20 Mokelumne River floodway improve-
21 ments.

22 (iii) INTERTIES.—Activities under this
23 clause consist of—

24 (I) evaluation and construction of
25 an intertie between the State Water

1 Project California Aqueduct and the
2 Central Valley Project Delta Mendota
3 Canal, near the City of Tracy; and

4 (II) assessment of a connection
5 of the Central Valley Project to the
6 Clifton Court Forebay of the State
7 Water Project, with a corresponding
8 increase in the screened intake of the
9 Forebay.

10 (iv) PROGRAM TO MEET STAND-
11 ARDS.—Prior to increasing export limits
12 from the Delta for the purposes of con-
13 veying water to south-of-Delta Central Val-
14 ley Project contractors or increasing deliv-
15 eries through an intertie, the Secretary
16 shall, within one year of the date of enact-
17 ment of this title, in consultation with the
18 Governor, develop and initiate implementa-
19 tion of a program to meet all existing
20 water quality standards and objectives for
21 which the CVP has responsibility. In devel-
22 oping and implementing the program the
23 Secretary shall include, to the maximum
24 extent feasible, the following:

1 (I) A recirculation program to
2 provide flow, reduce salinity con-
3 centrations in the San Joaquin River,
4 and reduce the reliance on New
5 Melones Reservoir for meeting water
6 quality and fishery flow objectives
7 through the use of excess capacity in
8 export pumping and conveyance facili-
9 ties.

10 (II) The Secretary shall develop
11 and implement a best management
12 practices plan to reduce the impact of
13 the discharges from wildlife refuges
14 that receive water from the federal
15 government and discharge salt or
16 other constituents into the San Joa-
17 quin River. Such plan shall be devel-
18 oped in coordination with interested
19 parties in the San Joaquin Valley and
20 the Delta. The Secretary shall also co-
21 ordinate activities with other entities
22 that discharge water into the San
23 Joaquin River to reduce salinity con-
24 centrations discharged into the River,

1 including the timing of discharges to
2 optimize their assimilation.

3 (III) The acquisition from willing
4 sellers of water from streams tribu-
5 tary to the San Joaquin River or
6 other sources to provide flow, dilute
7 discharges from wildlife refuges, and
8 to improve water quality in the San
9 Joaquin River below the confluence of
10 the Merced and San Joaquin rivers
11 and to reduce the reliance on New
12 Melones Reservoir for meeting water
13 quality and fishery flow objectives.

14 (IV) Use of existing funding
15 mechanisms.--In implementing the
16 Program, the Secretary may use
17 money collected pursuant to Section
18 3407 of the Central Valley Project
19 Improvement Act (Public Law 102-
20 575; 106 Stat. 4727) to acquire from
21 voluntary sellers water from streams
22 tributary to the San Joaquin River or
23 other sources for the purposes set
24 forth in subclauses (I) through (III)
25 of clause (iv).

1 (V) The purpose of the authority
2 and direction provided to the Sec-
3 retary in clause (iv) is to provide
4 greater flexibility in meeting the exist-
5 ing water quality standards and objec-
6 tives for which the Central Valley
7 Project has responsibility so as to re-
8 duce the demand on water from New
9 Melones Reservoir used for that pur-
10 pose and to allow the Secretary to
11 meet with greater frequency the Sec-
12 retary's obligations to Central Valley
13 Project contractors from the New
14 Melones Project. The Secretary shall
15 update the New Melones operating
16 plan to consider, among other things,
17 the actions outlined in this Act de-
18 signed to reduce the reliance on new
19 Melones Reservoir for meeting water
20 quality and fishery flow objectives and
21 to insure that operation of New
22 Melones Reservoir is governed by the
23 best available science.

24 (C) WATER USE EFFICIENCY.—Activities
25 under this subparagraph consist of—

1 (i) water conservation projects that
2 provide water supply reliability, water
3 quality, and ecosystem benefits to the Bay-
4 Delta system;

5 (ii) technical assistance for urban and
6 agricultural water conservation projects;

7 (iii) water recycling and desalination
8 projects, including groundwater remedi-
9 ation projects and projects identified in the
10 Bay Area Water Plan and the Southern
11 California Comprehensive Water Reclama-
12 tion and Reuse Study and other projects,
13 giving priority to projects that include re-
14 gional solutions to benefit regional water
15 supply and reliability needs;

16 (I) The Secretary shall review
17 any feasibility level studies for sea-
18 water desalination and regional brine
19 line projects that have been com-
20 pleted, whether or not those studies
21 were prepared with financial assist-
22 ance from the Secretary.

23 (II) The Secretary shall report to
24 the Congress not later than 90 days
25 after the completion of a feasibility

1 study or the review of a feasibility
2 study. For the purposes of this Act,
3 the Secretary is authorized to provide
4 assistance for projects as set forth
5 and pursuant to the existing require-
6 ments of the Reclamation Wastewater
7 and Groundwater Study and Facilities
8 Act (Public Law 102–9575; title 16)
9 as amended, and Reclamation Recy-
10 cling and Water Conservation Act of
11 1996 (Public Law 104–266).

12 (iv) water measurement and transfer
13 actions;

14 (v) implementation of best manage-
15 ment practices for urban water conserva-
16 tion;– and

17 (vi) projects identified in the Southern
18 California Comprehensive Water Reclama-
19 tion and Reuse Study, dated April 2001
20 and authorized by section 1606 of the Rec-
21 lamation Wastewater and Groundwater
22 Study and Facilities Act (43 U.S.C. 390h–
23 4); and the San Francisco Bay Area Re-
24 gional Water Recycling Program described
25 in the San Francisco Bay Area Regional

1 Water Recycling Program Recycled Water
2 Master Plan, dated December 1999 and
3 authorized by section 1611 of the Rec-
4 lamation Wastewater and Groundwater
5 Study and Facilities Act (43 U.S.C. 390h-
6 9) are determined to be feasible.

7 (D) WATER TRANSFERS.—Activities under
8 this subparagraph consist of—

9 (i) increasing the availability of exist-
10 ing facilities for water transfers;

11 (ii) lowering transaction costs through
12 regulatory coordination; and

13 (iii) maintaining a water transfer in-
14 formation clearinghouse.

15 (E) INTEGRATED REGIONAL WATER MAN-
16 AGEMENT PLANS.—Activities under this sub-
17 paragraph consist of assisting local and regional
18 communities in the State in developing and im-
19 plementing integrated regional water manage-
20 ment plans to carry out projects and programs
21 that improve water supply reliability, water
22 quality, ecosystem restoration, and flood protec-
23 tion, or meet other local and regional needs, in
24 a manner that is consistent with, and makes a

1 significant contribution to, the Calfed Bay-
2 Delta Program.

3 (F) ECOSYSTEM RESTORATION.—

4 (i) ACTIVITIES UNDER THIS SUBPARA-
5 GRAPH CONSIST OF—

6 (I) implementation of large-scale
7 restoration projects in San Francisco
8 Bay and the Delta and its tributaries;

9 (II) restoration of habitat in the
10 Delta, San Pablo Bay, and Suisun
11 Bay and Marsh, including tidal wet-
12 land and riparian habitat;

13 (III) fish screen and fish passage
14 improvement projects; including the
15 Sacramento River Small Diversion
16 Fish Screen Program.

17 (IV) implementation of an
18 invasive species program, including
19 prevention, control, and eradication;

20 (V) development and integration
21 of Federal and State agricultural pro-
22 grams that benefit wildlife into the
23 Ecosystem Restoration Program;

24 (VI) financial and technical sup-
25 port for locally-based collaborative

1 programs to restore habitat while ad-
2 dressing the concerns of local commu-
3 nities;

4 (VII) water quality improvement
5 projects to manage and reduce con-
6 centrations of salinity, selenium, mer-
7 cury, pesticides, trace metals, dis-
8 solved oxygen, turbidity, sediment,
9 and other pollutants;

10 (VIII) land and water acquisi-
11 tions to improve habitat and fish
12 spawning and survival in the Delta
13 and its tributaries;

14 (IX) integrated flood manage-
15 ment, ecosystem restoration, and levee
16 protection projects;

17 (X) scientific evaluations and tar-
18 geted research on Program activities;
19 and

20 (XI) strategic planning and
21 tracking of Program performance.

22 (ii) ANNUAL ECOSYSTEM PROGRAM
23 PLAN.—

24 (I) Prior to October 1 of each
25 year, with respect to an ecosystem

1 restoration action carried out by or
2 for the Secretary, the Secretary shall
3 submit an annual ecosystem program
4 plan report to the appropriate author-
5 izing and appropriating committees of
6 the Senate and the House of Rep-
7 resentatives. The purpose of the re-
8 port is to describe the projects and
9 programs to implement the activities
10 under this subsection in the following
11 fiscal year, and to establish priorities
12 for funding in subsequent years. For
13 the ecosystem program, and each eco-
14 system project the report shall de-
15 scribe—

16 (aa) the goals and objec-
17 tives;

18 (bb) program accomplish-
19 ments;

20 (cc) major activities;

21 (dd) the administration re-
22 sponsibilities of land and water
23 areas and associated environ-
24 mental resources, in the affected
25 project area including an ac-

1 counting of all habitat types.
2 Cost-share arrangements with co-
3 operating agencies should be in-
4 cluded in the report;

5 (ee) the resource data and
6 ecological monitoring data to be
7 collected for the restoration
8 projects and how the data are to
9 be integrated, streamlined, and
10 designed to measure the effec-
11 tiveness and overall trend of eco-
12 system health in the Bay-Delta
13 watershed;

14 (ff) implementation sched-
15 ules and budgets;

16 (gg) monitoring programs
17 and performance measures;

18 (hh) the status and effec-
19 tiveness of minimizing and miti-
20 gating the impacts of the pro-
21 gram on agricultural lands; and

22 (ii) a description of expected
23 benefits of the restoration pro-
24 gram relative to the cost.

1 (II) For Federal projects and
2 programs to be carried out by or for
3 the Secretary not specifically identi-
4 fied in the annual program plans the
5 Secretary, in coordination with the
6 State, shall submit recommendations
7 on proposed plans, no later than 45
8 days prior to approval, to the Senate
9 Committee on Energy and Natural
10 Resources, the House Resources Com-
11 mittee, and the public. The rec-
12 ommendations shall—

13 (aa) describe the project se-
14 lection process, including the
15 level of public involvement and
16 independent science review;

17 (bb) describe the goals, ob-
18 jectives, and implementation
19 schedule of the projects, and the
20 extent to which the projects ad-
21 dress regional and programmatic
22 goals and priorities;

23 (cc) describe the monitoring
24 plans and performance measures
25 that will be used for evaluating

1 the performance of the proposed
2 projects;

3 (dd) identify any cost-shar-
4 ing arrangements with cooper-
5 ating entities; and

6 (ee) identify how the pro-
7 posed projects will comply with
8 all applicable Federal and State
9 laws, including the National En-
10 vironmental Policy Act.

11 (III) Projects involving acquisi-
12 tion of private lands shall be included
13 in subsection (I) of the Annual Eco-
14 system Program Plan. Each project
15 identified shall—

16 (aa) describe the process
17 and timing of notification of in-
18 terested members of the public
19 and local governments;

20 (bb) minimize and mitigate
21 impacts on agricultural lands;

22 (cc) include preliminary
23 management plans for all prop-
24 erties to be acquired with Federal
25 funds. Such preliminary manage-

1 ment plans shall include an over-
2 view of existing conditions, the
3 expected ecological benefits, pre-
4 liminary cost estimates, and im-
5 plementation schedules;

6 (dd) identify federal land ac-
7 quisition in total, by a county by
8 county basis; and

9 (ee) provide a finding of
10 consistency with all applicable
11 State and Federal law.

12 (G) WATERSHEDS.—Activities under this
13 subparagraph consist of—

14 (i) building local capacity to assess
15 and manage watersheds affecting the
16 CalFed Bay-Delta system;

17 (ii) technical assistance for watershed
18 assessments and management plans; and

19 (iii) developing and implementing lo-
20 cally-based watershed conservation, main-
21 tenance, and restoration actions.

22 (H) WATER QUALITY.—Activities under
23 this subparagraph consist of—

24 (i) addressing drainage problems in
25 the San Joaquin Valley to improve down-

1 stream water quality (including habitat
2 restoration projects that reduce drainage
3 and improve water quality) if—

4 (I) a plan is in place for moni-
5 toring downstream water quality im-
6 provements;

7 (II) State and local agencies are
8 consulted on the activities to be fund-
9 ed; and

10 (III) except that no right, ben-
11 efit, or privilege is created as a result
12 of this clause;

13 (ii) implementation of source control
14 programs in the Delta and its tributaries;

15 (iii) developing recommendations
16 through scientific panels and advisory
17 council processes to meet the Calfed Bay-
18 Delta Program goal of continuous improve-
19 ment in Delta water quality for all uses;

20 (iv) investing in treatment technology
21 demonstration projects;

22 (v) controlling runoff into the Cali-
23 fornia aqueduct, the Delta-Mendota Canal,
24 and other similar conveyances;

1 (vi) addressing water quality problems
2 at the North Bay Aqueduct;

3 (vii) supporting and participating in
4 the development of projects to enable San
5 Francisco Area water districts and water
6 entities in San Joaquin and Sacramento
7 counties to work cooperatively to address
8 their water quality and supply reliability
9 issues, including—

10 (I) connections between aque-
11 ducts, water transfers, water con-
12 servation measures, institutional ar-
13 rangements, and infrastructure im-
14 provements that encourage regional
15 approaches; and

16 (II) investigations and studies of
17 available capacity in a project to de-
18 liver water to the East Bay Municipal
19 Utility District under its contract with
20 the Bureau of Reclamation, dated
21 July 20, 2001, in order to determine
22 if such capacity can be used to meet
23 the objectives of this clause;

24 (viii) development of water quality ex-
25 changes and other programs to make high

1 quality water available for urban and other
2 users;

3 (ix) development and implementation
4 of a plan to meet all water quality stand-
5 ards for which the Federal and State water
6 projects have responsibility;

7 (x) development of recommendations
8 through technical panels and advisory
9 council processes to meet the Calfed Bay-
10 Delta Program goal of continuous improve-
11 ment in water quality for all uses; and

12 (xi) projects that may meet the frame-
13 work of the water quality component of the
14 Calfed Bay-Delta Program.

15 (I) SCIENCE.—Activities under this sub-
16 paragraph consist of—

17 (i) supporting establishment and
18 maintenance of an independent science
19 board, technical panels, and standing
20 boards to provide oversight and peer review
21 of the Program;

22 (ii) conducting expert evaluations and
23 scientific assessments of all Program ele-
24 ments;

1 (iii) coordinating existing monitoring
2 and scientific research programs;

3 (iv) developing and implementing
4 adaptive management experiments to test,
5 refine, and improve scientific under-
6 standings;

7 (v) establishing performance meas-
8 ures, and monitoring and evaluating the
9 performance of all Program elements; and

10 (vi) preparing an annual science re-
11 port.

12 (J) DIVERSIFICATION OF WATER SUP-
13 PLIES.—Activities under this subparagraph con-
14 sist of actions to diversify sources of level 2 ref-
15 uge supplies and modes of delivery to refuges
16 while maintaining the diversity of level 4 sup-
17 plies pursuant to Central Valley Project Im-
18 provement Act section 3406(d)(2), Public Law
19 102–575 (106 Stat. 4723).

20 (6) NEW AND EXPANDED AUTHORIZATIONS FOR
21 FEDERAL AGENCIES.—

22 (A) SECRETARY OF THE INTERIOR.—The
23 Secretary of the Interior is authorized to carry
24 out the activities described in subparagraphs
25 (A) , (B), (C) and (D) of paragraph (7) during

1 each of fiscal years 2005 through 2008, in co-
2 ordination with the State of California.

3 (B) THE ADMINISTRATOR OF THE ENVI-
4 RONMENTAL PROTECTION AGENCY AND THE
5 SECRETARY OF THE ARMY.—The Administrator
6 of the Environmental Protection Agency and
7 the Secretary of the Army may carry out activi-
8 ties described in subparagraph (D) of para-
9 graph 7 during each of fiscal years 2005
10 through 2008, in coordination with the State of
11 California.

12 (C) THE SECRETARIES OF AGRICULTURE
13 AND COMMERCE.—The Secretary of Commerce,
14 and the Department of Agriculture, are author-
15 ized to carry out the activities described in
16 paragraph (7)(D) during each of fiscal years
17 2005 through 2008, in coordination with the
18 State of California.

19 (7) DESCRIPTION OF ACTIVITIES UNDER NEW
20 AND EXPANDED AUTHORIZATIONS.—

21 (A) CONVEYANCE.—Of the amounts au-
22 thorized to be appropriated under section 109,
23 not more than \$184,000,000 may be expended
24 for the following:

1 (i) Feasibility studies, evaluation, and
2 implementation of the San Luis Reservoir
3 lowpoint improvement project and in-
4 creased capacity of the intertie between the
5 SWP California Aqueduct and the CVP
6 Delta Mendota Canal, near the City of
7 Tracy.

8 (ii) Feasibility studies and actions at
9 Franks Tract to improve water quality in
10 the Delta.

11 (iii) Feasibility studies and design of
12 fish screen and intake facilities at Clifton
13 Court Forebay and the Tracy Pumping
14 Plant facilities.

15 (iv) Design and construction of the re-
16 location of drinking water intake facilities
17 to delta water users. The Secretary shall
18 coordinate actions for relocating intake fa-
19 cilities on a time schedule consistent with
20 subparagraph (5)(B)(i)(I)(bb) or other ac-
21 tions necessary to offset the degradation of
22 drinking water quality in the Delta due to
23 the South Delta Improvement Program.

24 (v) In addition to the other authoriza-
25 tions granted to the Secretary by this title,

1 the Secretary shall acquire water from will-
2 ing sellers and undertake other actions de-
3 signed to decrease releases from New
4 Melones Reservoir for meeting water qual-
5 ity standards and flow objectives for which
6 the Central Valley Project has responsi-
7 bility in order to meet allocations to Cen-
8 tral Valley Project contractors from the
9 New Melones Project. The authorization
10 under this provision is solely meant to add
11 flexibility for the Secretary to meet the
12 Secretary's obligation to the Central Valley
13 Project contractors from the New Melones
14 Project by reducing demand for water
15 dedicated to meeting water quality stand-
16 ards in the San Joaquin River. Of the
17 amounts authorized to be appropriated
18 under paragraph (7)(A), not more than
19 \$15,260,000 may be expended for this pur-
20 pose.

21 (B) ENVIRONMENTAL WATER ACCOUNT.—

22 Of the amounts authorized to be appropriated
23 under section 109, not more than \$90,000,000
24 may be expended for implementation of the En-
25 vironmental Water Account; *Provided* That

1 such expenditures shall be considered a non-
2 reimbursable Federal expenditure.

3 (C) LEVEE STABILITY.—Of the amounts
4 authorized to be appropriated under section
5 109, not more than \$90,000,000 may be ex-
6 pended for—

7 (i) reconstructing Delta levees to a
8 base level of protection;

9 (ii) enhancing the stability of levees
10 that have particular importance in the sys-
11 tem through the Delta Levee Special Im-
12 provement Projects program;

13 (iii) developing best management
14 practices to control and reverse land sub-
15 sidence on Delta islands;

16 (iv) refining the Delta Emergency
17 Management Plan;

18 (v) developing a Delta Risk Manage-
19 ment Strategy after assessing the con-
20 sequences of Delta levee failure from
21 floods, seepage, subsidence, and earth-
22 quakes;

23 (vi) developing a strategy for reuse of
24 dredged materials on Delta islands; and

1 (vii) evaluating, and where appro-
2 priate, rehabilitating the Suisun Marsh lev-
3 ees.

4 (D) PROGRAM MANAGEMENT, OVERSIGHT,
5 AND COORDINATION.—Of the amounts author-
6 ized to be appropriated under section 109, not
7 more than \$25,000,000 may be expended by
8 the Secretary or the other heads of Federal
9 agencies, either directly or through grants, con-
10 tracts, or cooperative agreements with agencies
11 of the State, for—

12 (i) program support;

13 (ii) program-wide tracking of sched-
14 ules, finances, and performance;

15 (iii) multiagency oversight and coordi-
16 nation of Program activities to ensure Pro-
17 gram balance and integration;

18 (iv) development of interagency cross-
19 cut budgets and a comprehensive finance
20 plan to allocate costs in accordance with
21 the beneficiary pays provisions of the
22 Record of Decision;

23 (v) coordination of public outreach
24 and involvement, including tribal, environ-
25 mental justice, and public advisory activi-

1 ties in accordance with the Federal Advi-
2 sory Committee Act (5 U.S.C. App.); and
3 (vi) development of Annual Reports.

4 **SEC. 104. MANAGEMENT.**

5 (a) COORDINATION.—In carrying out the Calfed Bay-
6 Delta Program, the Federal agencies shall coordinate their
7 activities with the State agencies.

8 (b) PUBLIC PARTICIPATION.—In carrying out the
9 Calfed Bay-Delta Program, the Federal agencies shall co-
10 operate with local and tribal governments and the public
11 through an advisory committee established in accordance
12 with the Federal Advisory Committee Act (5 U.S.C. App.)
13 and other appropriate means, to seek input on Program
14 elements such as planning, design, technical assistance,
15 and development of peer review science programs.

16 (c) SCIENCE.—In carrying out the Calfed Bay-Delta
17 Program, the Federal agencies shall seek to ensure, to the
18 maximum extent practicable, that—

19 (1) all major aspects of implementing the Pro-
20 gram are subjected to credible and objective sci-
21 entific review; and

22 (2) major decisions are based upon the best
23 available scientific information.

24 (d) ENVIRONMENTAL JUSTICE.—The Federal agen-
25 cies and State agencies, consistent with Executive Order

1 12898 (59 FR Fed. Reg. 7629), should continue to col-
2 laborate to—

3 (1) develop a comprehensive environmental jus-
4 tice workplan for the Calfed Bay-Delta Program;
5 and

6 (2) fulfill the commitment to addressing envi-
7 ronmental justice challenges referred to in the
8 Calfed Bay-Delta Program Environmental Justice
9 Workplan, dated December 13, 2000.

10 (e) LAND ACQUISITION.—Federal funds appropriated
11 by Congress specifically for implementation of the Calfed
12 Bay-Delta Program may be used to acquire fee title to
13 land only where consistent with the Record of Decision
14 and section 103(b)(5)(F)(ii)(I)(jj).

15 (f) AGENCIES' DISCRETION.—This title shall not af-
16 fect the discretion of any of the Federal agencies or the
17 State agencies or the authority granted to any of the Fed-
18 eral agencies or State agencies by any other Federal or
19 State law.

20 (g) NO NEW AUTHORITY.—The United States Envi-
21 ronmental Protection Agency and the United States Army
22 Corps of Engineers.—

23 (1) IN GENERAL.—Nothing in this title confers
24 any new authority, except as provided under section
25 103(b)(7)(D) to the United States Environmental

1 Protection Agency and the United States Army
2 Corps of Engineers.

3 (2) COORDINATION.—In carrying out activities
4 identified in the Record of Decision under authori-
5 ties provided under other provisions of law, the
6 United States Environmental Protection Agency and
7 the United States Army Corps of Engineers shall co-
8 ordinate such activities with Federal agencies and
9 State agencies.

10 (h) GOVERNANCE.—

11 (1) IN GENERAL.—In carrying out the Califed
12 Bay-Delta Program, the Secretary and the Federal
13 agency heads may participate as nonvoting members
14 of the California Bay-Delta Authority, as established
15 in the California Bay-Delta Authority Act (Cal.
16 Water Code 79400 et seq.), to the extent consistent
17 with Federal law, for the full duration of the period
18 the Authority continues to be authorized by State
19 law.

20 **SEC. 105. REPORTING REQUIREMENTS.**

21 (a) REPORT.—

22 (1) IN GENERAL.—Not later than February 15
23 of each year, the Secretary, in cooperation with the
24 Governor, shall submit to the appropriate author-

1 izing and appropriating Committees of the Senate
2 and the House of Representatives a report that—

3 (A) describes the status of implementation
4 of all components of the Calfed Bay-Delta Pro-
5 gram;

6 (B) sets forth any written determination
7 resulting from the review required under sub-
8 section (b); and

9 (C) includes any revised schedule prepared
10 under subsection (b).

11 (2) CONTENTS.—The report required under
12 paragraph (1) shall describe—

13 (A) the progress of the Calfed Bay-Delta
14 Program in meeting the implementation sched-
15 ule for the Program in a manner consistent
16 with the Record of Decision;

17 (B) the status of implementation of all
18 components of the Program;

19 (C) expenditures in the past fiscal year for
20 implementing the Program;

21 (D) accomplishments during the past fiscal
22 year in achieving the objectives of additional
23 and improved—

24 (i) water storage, including water
25 yield;

1 (ii) water quality; including the
2 progress in achieving the water supply tar-
3 gets as described in Section 2.2.4 of the
4 Record of Decision, the environmental
5 water account requirements as described in
6 Section 2.2.7, and the water quality tar-
7 gets as described in Section 2.2.9, and any
8 pending actions that may affect the ability
9 of the Calfed Bay-Delta Program to
10 achieve those targets and requirements;

11 (iii) water use efficiency;

12 (iv) ecosystem restoration;

13 (v) watershed management;

14 (vi) levee system integrity;

15 (vii) water transfers;

16 (viii) water conveyance; and

17 (ix) water supply reliability;

18 (E) program goals, current schedules, and
19 relevant financing agreements;

20 (F) progress on—

21 (i) storage projects;

22 (ii) conveyance improvements;

23 (iii) levee improvements;

24 (iv) water quality projects; and

25 (v) water use efficiency programs;

1 (G) completion of key projects and mile-
2 stones identified in the Ecosystem Restoration
3 Program; including progress on project effec-
4 tiveness, monitoring, and accomplishments;

5 (H) development and implementation of
6 local programs for watershed conservation and
7 restoration;

8 (I) progress in improving water supply reli-
9 ability and implementing the Environmental
10 Water Account;

11 (J) achievement of commitments under the
12 Endangered Species Act of 1973 (16 U.S.C.
13 1531 et seq.) and endangered species law of the
14 State;

15 (K) implementation of a comprehensive
16 science program;

17 (L) progress toward acquisition of the
18 Federal and State permits (including permits
19 under section 404(a) of the Federal Water Pol-
20 lution Control Act (33 U.S.C. 1344(a))) for im-
21 plementation of projects in all identified Pro-
22 gram areas;

23 (M) progress in achieving benefits in all
24 geographic regions covered by the Program;

25 (N) legislative action on—

- 1 (i) water transfer;
- 2 (ii) groundwater management;
- 3 (iii) water use efficiency; and
- 4 (iv) governance issues;
- 5 (O) the status of complementary actions;
- 6 (P) the status of mitigation measures;
- 7 (Q) revisions to funding commitments and
- 8 Program responsibilities; and
- 9 (R) a list of all existing authorities, includ-
- 10 ing the authorities listed in section 103(b)(4)
- 11 provided by the relevant Federal agency, under
- 12 which the Secretary or the heads of the Federal
- 13 agencies may carry out the purposes of this
- 14 title.

15 (b) ANNUAL REVIEW OF PROGRESS AND BAL-

16 ANCE.—

17 (1) IN GENERAL.—Not later than November 15

18 of each year, the Secretary, in cooperation with the

19 Governor, shall review progress in implementing the

20 Calfed Bay-Delta Program based on—

- 21 (A) consistency with the Record of Deci-
- 22 sion; and
- 23 (B) balance in achieving the goals and ob-
- 24 jectives of the Calfed Bay-Delta Program.

1 (2) REVISED SCHEDULE.—If, at the conclusion
2 of each such annual review or if a timely annual re-
3 view is not undertaken, the Secretary, or the Gov-
4 ernor, determine in writing that either the Program
5 implementation schedule has not been substantially
6 adhered to, or that balanced progress in achieving
7 the goals and objectives of the Program is not occur-
8 ring, the Secretary, in coordination with the Gov-
9 ernor and the Bay-Delta Public Advisory Committee,
10 shall prepare a revised schedule to achieve balanced
11 progress in all Calfed Bay-Delta Program elements
12 consistent with the Record of Decision.

13 (c) FEASIBILITY STUDIES.—Any feasibility studies
14 completed as a result of this title shall include identifica-
15 tion of project benefits and a cost allocation plan con-
16 sistent with the beneficiaries pay provisions of the Record
17 of Decision.

18 **SEC. 106. CROSSCUT BUDGET.**

19 (a) IN GENERAL.—The President’s budget shall in-
20 clude such requests as the President considers necessary
21 and appropriate for the level of funding for each of the
22 Federal agencies to carry out its responsibilities under the
23 Calfed Bay-Delta Program.

24 (b) REQUESTS BY FEDERAL AGENCIES.—The funds
25 shall be requested for the Federal agency with authority

1 and programmatic responsibility for the obligation of the
2 funds, in accordance with paragraphs (2) through (5) of
3 section 103(b).

4 (c) REPORT.—Not later than 30 days after the sub-
5 mission of the budget of the President to Congress, the
6 Director of the Office of Management and Budget, in co-
7 ordination with the Governor, shall submit to the appro-
8 priate authorizing and appropriating committees of the
9 Senate and the House of Representatives a financial re-
10 port certified by the Secretary containing—

11 (1) an interagency budget crosscut report
12 that—

13 (A) displays the budget proposed, including
14 any interagency or intra-agency transfer, for
15 each of the Federal agencies to carry out the
16 Calfed Bay-Delta Program for the upcoming
17 fiscal year, separately showing funding re-
18 quested under both pre-existing authorities and
19 under the new authorities granted by this title;
20 and

21 (B) identifies all expenditures since 1998
22 by the Federal and State governments to
23 achieve the objectives of the Calfed Bay-Delta
24 Program;

1 (2) a detailed accounting of all funds received
2 and obligated by all Federal agencies and State
3 agencies responsible for implementing the Calfed
4 Bay-Delta Program during the previous fiscal year;

5 (3) a budget for the proposed projects (includ-
6 ing a description of the project, authorization level,
7 and project status) to be carried out in the upcom-
8 ing fiscal year with the Federal portion of funds for
9 activities under section 103(b); and

10 (4) a listing of all projects to be undertaken in
11 the upcoming fiscal year with the Federal portion of
12 funds for activities under section 103(b).

13 **SEC. 107. FEDERAL SHARE OF COSTS.**

14 (a) **IN GENERAL .**—The Federal share of the cost
15 of implementing the Calfed Bay-Delta Program for fiscal
16 years 2005 through 2008 in the aggregate, as set forth
17 in the Record of Decision, shall not exceed 33.3 percent.

18 (b) **CALFED BAY-DELTA PROGRAM BENE-**
19 **FICIARIES.**—The Secretary shall ensure that all bene-
20 ficiaries, including the environment, shall pay for benefits
21 received from all projects or activities carried out under
22 the Calfed Bay-Delta Program. This requirement shall not
23 be limited to storage and conveyance projects and shall
24 be implemented so as to encourage integrated resource
25 planning.

1 **SEC. 108. COMPLIANCE WITH STATE AND FEDERAL LAW.**

2 Nothing in this title—

3 (1) invalidates or preempts State water law or
4 an interstate compact governing water;

5 (2) alters the rights of any State to any appro-
6 priated share of the waters of any body of surface
7 or ground water;

8 (3) preempts or modifies any State or Federal
9 law or interstate compact governing water quality or
10 disposal;

11 (4) confers on any non-Federal entity the abil-
12 ity to exercise any Federal right to the waters of any
13 stream or to any ground water resource; and

14 (5) alters or modified any provision of existing
15 Federal law, except as specifically provided in this
16 title.

17 **SEC. 109. AUTHORIZATION OF APPROPRIATION.**

18 There are authorized to be appropriated to the Sec-
19 retary and the heads of the Federal agencies to pay the
20 Federal share of the cost of carrying out the new and ex-
21 panded authorities described in paragraphs (6) and (7)
22 of section 103(b), \$389,000,000 for the period of fiscal
23 years 2005 through 2008, to remain available until ex-
24 pended.

Calendar No. 640

108TH CONGRESS
2^D SESSION

H. R. 2828

AN ACT

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

JULY 16, 2004

Read twice and placed on the calendar