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(Original Signature of Member)

112TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To provide congressional direction for implementation of the Endangered Species Act as it relates to operation of the Central Valley Project and the California State Water Project and for water relief in the State of California.

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IN THE HOUSE OF REPRESENTATIVES

Mr. COSTA introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To provide congressional direction for implementation of the Endangered Species Act as it relates to operation of the Central Valley Project and the California State Water Project and for water relief in the State of California.

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

3       **SECTION 1. COMPLIANCE WITH ENDANGERED SPECIES**

4                       **ACT OF 1973.**

5       (a) FINDINGS.—Congress finds the following:

1           (1) The economy of the San Joaquin Valley in  
2           California is predominantly based on irrigated agri-  
3           culture served water to the westside and southern  
4           end of the San Joaquin Valley by—

5                     (A) the Central Valley Project; and

6                     (B) the California State Water Project.

7           (2) The quantity of water available for irrigated  
8           agriculture in these areas of the San Joaquin Valley  
9           served by the Central Valley Project and the Cali-  
10          fornia State Water Project has been reduced signifi-  
11          cantly as a result of restrictions placed on the oper-  
12          ations of the Central Valley Project and the Cali-  
13          fornia State Water Project under the Endangered  
14          Species Act of 1973 (16 U.S.C. 1531 et seq.).

15          (3) California's San Joaquin Valley is one of  
16          the most productive agricultural regions in the  
17          world, and produces more than 250 different crops  
18          with an estimated value of \$17,000,000,000 per  
19          year, supplying about eight percent of United States  
20          agricultural production and approximately 40 per-  
21          cent of the Nation's fruits and vegetables on less  
22          than one percent of the United States farmland.  
23          Crops grown in the San Joaquin Valley are exported  
24          to 100 countries around the world. The San Joaquin

1 Valley is an essential source of the food supplies for  
2 the United States and the world.

3 (4) Water supply shortages resulting from regu-  
4 latory restrictions on the operations of the Central  
5 Valley Project and the California State Water  
6 Project have greatly exacerbated the economic reces-  
7 sion and contributed to an economic crisis in the  
8 San Joaquin Valley.

9 (5)(A) More than 400,000 acres of highly pro-  
10 ductive farmland in the San Joaquin Valley were  
11 fallowed in 2009.

12 (B) Unemployment rates in small rural commu-  
13 nities in the San Joaquin Valley remain close to 40  
14 percent.

15 (C) Food banks throughout the San Joaquin  
16 Valley face unprecedented demand from unemployed  
17 residents, with Fresno County Food Bank expecting  
18 to serve more meals in 2011 than in 2009.

19 (6) Any water not captured and stored by the  
20 Central Valley Project and the California State  
21 Water Project is water that could have been used to  
22 sustain irrigated agriculture and the many busi-  
23 nesses and communities that rely on it throughout  
24 the Central Valley of California.

1           (7) As of March 1, 2011, snowpack and rainfall  
2       are above average for the State of California. How-  
3       ever, deliveries to water agencies that rely on exports  
4       from the Sacramento-San Joaquin Delta (California  
5       Bay-Delta) are expected to remain at reduced levels  
6       this year due to pumping restrictions imposed on op-  
7       erations of the Central Valley Project and the Cali-  
8       fornia State Water Project under the Endangered  
9       Species Act of 1973 (16 U.S.C. 1531 et seq.).

10          (8) Due to reduced surface water supplies, reli-  
11       ance on groundwater has increased, and the with-  
12       drawals from the aquifers are unsustainable and put  
13       significant infrastructure at risk of collapse, includ-  
14       ing the State Water Project's California Aqueduct,  
15       due to permanent subsidence of land over the over-  
16       drafted aquifers.

17          (9) Significant habitat for a number of native  
18       fish species in the California Bay-Delta (including  
19       tidal marsh and wetlands), and access to spawning  
20       grounds, have been significantly reduced during the  
21       last century.

22          (10) Discharge of pollutants and invasive spe-  
23       cies have dramatically impaired the ecosystem of the  
24       California Bay-Delta.

1           (11) Large-scale and sustained habitat restora-  
2           tion and fish passage improvements are essential—

3                   (A) to restore the unique ecosystem of the  
4           California Bay-Delta; and

5                   (B) to recover native species in the Cali-  
6           fornia Bay-Delta.

7           (12) As of the date of enactment of this Act,  
8           Federal and State agencies, and a number of inter-  
9           ested parties, continue to develop the Bay Delta  
10          Conservation Plan to establish a habitat conserva-  
11          tion plan—

12                   (A) to provide ecosystem restoration;

13                   (B) to contribute to native species recov-  
14          ery; and

15                   (C) to allow for projects to proceed that re-  
16          store and protect water supplies for—

17                           (i) the Central Valley Project; and

18                           (ii) the California State Water  
19          Project.

20          (b) COMPLIANCE.—

21           (1) IN GENERAL.—All requirements of the En-  
22          dangered Species Act of 1973 (16 U.S.C. 1531 et  
23          seq.) relating to operations of the Central Valley  
24          Project and the California State Water Project  
25          (“Projects”) shall be deemed satisfied with regard to

1 the species and their critical habitat covered by the  
2 biological opinions for the operations of the Central  
3 Valley Project and the California State Water  
4 Project issued by the United States Fish and Wild-  
5 life Service and dated December 15, 2008, and the  
6 National Marine Fisheries Service and dated June 4,  
7 2009 (the “biological opinions”) , if—

8 (A) the alternatives described in that por-  
9 tion of the biological opinions entitled “Reason-  
10 able and Prudent Alternatives” are imple-  
11 mented; and

12 (B) the actions described in paragraph (2)  
13 are carried out.

14 (2) MANDATES.—The Secretary of the Interior  
15 and the Secretary of Commerce shall ensure the fol-  
16 lowing:

17 (A) FLOWS.—For each calendar year, dur-  
18 ing the period beginning on December 1 and  
19 ending on June 30, neither biological opinion  
20 described in paragraph (1) shall restrict reverse  
21 flow in Old and Middle Rivers to a 14-day aver-  
22 age of the mean daily reverse flow of less than  
23 -5,000 cubic feet per second.

24 (B) CONTROL OF PUMPING OPERATIONS.—  
25 For each calendar year, during the period be-

1           ginning on April 1 and ending on May 31, rates  
2           of export shall not be reduced pursuant to the  
3           biological opinion of the National Marine Fish-  
4           eries Service described in paragraph (1), except  
5           as required to implement California State  
6           Water Resources Control Board Water Rights  
7           Decision 1641 or a superseding water rights de-  
8           cision.

9           (C) FALL X2.—For each calendar year,  
10          during the period beginning September 1 and  
11          ending November 30, monthly average X2 no  
12          greater (more eastward) than 74 km (from the  
13          Golden Gate) shall be maintained only to the  
14          extent that such action does not diminish the  
15          capability of either the Central Valley Project  
16          or the California State Water Project to make  
17          water available for other authorized project pur-  
18          poses.

19          (3) MODIFICATION.—The Secretary of the Inte-  
20          rior may modify the flow and pumping operation  
21          mandates established in paragraph (2) upon rec-  
22          ommendations of the National Research Council  
23          Committee on Sustainable Water and Environmental  
24          Management in the California Bay-Delta, if such  
25          modifications—

1 (A) would provide greater benefits to the  
2 species covered by the biological opinions de-  
3 scribed in paragraph (1); and

4 (B) would not reduce the water delivery  
5 capability of the Central Valley Project or Cali-  
6 fornia State Water Project more than their de-  
7 livery capability allowed under paragraph (2).

8 (c) IMPLEMENTATION OF ACTION PLAN.—As soon as  
9 practicable after the date of enactment of this Act, the  
10 Secretary of the Interior and the Secretary of Commerce  
11 shall—

12 (1) establish a fish hatchery program or refuge  
13 to preserve and restore the delta smelt in collabora-  
14 tion with the Governor of the State of California;  
15 and

16 (2) implement a habitat program under which  
17 each Secretary shall identify, prioritize, and imple-  
18 ment key ecosystem restoration and fish passage  
19 projects in the ecosystem of, and on tributaries to,  
20 the California Bay-Delta to help ensure the viability  
21 of—

22 (A) at-risk species; and

23 (B) species listed as threatened species or  
24 endangered species on the list of threatened  
25 species or the list of endangered species pub-



1           lished under section 4(c)(1) of the Endangered  
2           Species Act of 1973 (16 U.S.C. 1533(c)(1));  
3           and

4           (3) install the Head of Old River Barrier dur-  
5           ing the April-May pulse flow, as set forth in Cali-  
6           fornia State Water Resources Control Board Water  
7           Rights Decision 1641.

8           (d) SAVINGS CLAUSE.—Nothing in this section  
9           shall—

10           (1) diminish or result in a reduction of the  
11           water supply deliveries of the California State Water  
12           Project to its contractors; nor

13           (2) shift an existing obligation of the Central  
14           Valley Project or other water project subject to the  
15           provisions of the biological opinions identified in sub-  
16           section (b)(1) to any other person, agency, entity, or  
17           other water right holder.

18           (e) SAN JOAQUIN RIVER RESTORATION SETTLE-  
19           MENT ACT.—Nothing in this Act shall limit or otherwise  
20           affect the implementation of the San Joaquin River Res-  
21           toration Settlement or the San Joaquin River Restoration  
22           Settlement Act (Public Law 111–11), including the Water  
23           Management Goal.

24           (f) NO FURTHER RESTRICTION.—No State or any po-  
25           litical subdivision thereof shall adopt or attempt to enforce

1 any requirements relating to the impact of the operation  
2 of the Projects on the species and critical habitat covered  
3 by the biological opinions that is more restrictive than the  
4 requirements of this section. Any State law that author-  
5 izes the imposition of restrictions on the operation of the  
6 Projects in a manner that is more restrictive than this  
7 section is expressly preempted.

8 (g) TERMINATION.—This section and each authority  
9 and mandate under this section shall terminate on March  
10 1, 2015.