

[H.R.2898, Western Water and American Food Security Act of 2015](#)

FLOOR SITUATION

On Thursday, July 16, 2015, the House will consider [H.R.2898](#), *the Western Water and American Food Security Act of 2015*, under a [structured rule](#). H.R. 2898 was introduced on June 25, 2015, by Rep. David Valadao (R-CA) and was referred to the Committee on Natural Resources, and in addition, to the Committee on Agriculture. The Committee on Natural Resources ordered the bill reported, as amended, by a vote of 23 to 12 on July 9, 2015.

SUMMARY

H.R. 2898 attempts to alleviate water supply and agricultural issues in western states that have, in part, resulted from both the mismanagement of critical water resources and severe drought. The bill revises the regulatory framework that governs the movement and storage of water; encourages the development and more efficient use of private and public water storage and delivery systems; reforms the Federal rulemaking processes relating to water storage and delivery; and includes other provisions to alleviate water shortages facing Western states.

Major provisions of the bill are as follows:

Emergency Drought Response—the bill provides Federal agencies operational flexibility during emergency drought situations to maximize Delta pumping levels while still satisfying the needs of protected species, as well as directs the Federal agencies to maximize the amount of water pumped south of the Delta during drought and for two subsequent normal water years. The bill also provides for an expedited permitting process for water transfers and the use of temporary barriers or operable gates to improve the quantity and quality of water available to certain water users.¹

Expanding Infrastructure and Storage—the bill creates a “one-stop-shop” permitting process to expedite construction of non-federal surface storage facilities. Specifically, it requires the U.S. Bureau of Reclamation to coordinate with appropriate Federal and state permitting agencies to ensure efficient issuance of certain permits relating to water storage and delivery. The bill also requires certain agencies to expedite and complete consideration of ongoing feasibility studies for water

¹ See [H.R. 2898, Section-by-Section analysis](#).

storage projects. Additionally, the bill allows irrigation districts, water utilities, and other similar state or local agencies that have entered into water project contracts with the Federal government to pre-pay amounts owed to the Federal government, which is currently prohibited by law.²

Water Rights Protection—the bill prevents Federal agencies from requiring certain entities to relinquish their water rights in order to use public lands. It also prohibits these agencies from requiring water users to apply for or acquire a water right in the name of the United States under state law as a condition or such a permit, and prohibits the Federal government from asserting jurisdiction over groundwater withdrawals or impacts on groundwater resources.³

Safety of Dams—the bill allows the Bureau of Reclamation to study and construct, if found feasible and in compliance with the law, certain dam improvements that would be paid for by project beneficiaries in conjunction with dam safety repairs under the Safety of Dams Act. Under current law, the agency cannot consider various types of dam improvements, including dam raises, while studying or making safety repairs.

Monitoring and Management of the Delta Smelt—the bill attempts to ensure that any changes made to operational pumping levels of water resources are based on the most accurate survey methods and best available science. The bill also requires the U.S. Fish and Wildlife Service to modify the methodologies used when calculating incidental take limits (ITL),⁴ which are used to determine the viability of certain water projects, based on their impact to the protected fish, the Delta smelt.⁵

Salmonid Management—the bill requires Federal agencies to ease water project pumping restrictions by identifying management actions other than reductions in pumping that can be utilized to better contribute to salmon recovery. The bill requires these agencies to evaluate and quantify the benefit to salmon species from reductions in pumping and to consider alternative conservation measures including barriers to fish entrainment, habitat enhancements and predation control programs.⁶

BACKGROUND

Since becoming a state in 1850, California has experienced natural drought multiple times. These drought periods and the need to provide water to a rapidly growing population led to an innovative and complex water storage and delivery system. Since Northern California contains over two-thirds of the water resources and Southern California has nearly two-thirds of the human population within the state, the Federal government, through the Bureau of Reclamation, and the State of California built the Central Valley Project (CVP) and the State Water Project (SWP), respectively, to convey water. The current California water storage and delivery system was designed to serve 22 million people; however, the State has over 38 million residents and the population is expected to double by 2050.⁷

According to the National Drought Mitigation Center, more than 94 percent of the state of California is experiencing “severe” drought, with 71 percent experiencing “extreme” drought and 47

² Id.

³ Id.

⁴ See Fish and Wildlife Service, [“Issuance Criteria for Incidental Take Permits.”](#)

⁵ See [H.R. 2898, Section-by-Section analysis](#).

⁶ Id.

⁷ See [House Report 114-](#) at 47.

percent “exceptional” drought—the most severe drought classification.⁸ Although winter months brought some precipitation, recent snowpack data indicate that the winter of 2015 was the driest since recordkeeping began in the 1950s. The 2014 water year ended September 30, 2014, and was the third-driest year on record in terms of precipitation. Prior to 2014, precipitation during winter and spring 2013 was the lowest on record, leaving water storage reservoirs unusually low. With California now in its fourth year of drought, water deliveries to districts receiving water from Federal and state facilities have continued to be curtailed. Some areas have seen wells go dry.⁹

The U.S. Department of Agriculture has issued disaster declarations in most California counties. The Bureau of Reclamation announced cutbacks to CVP water users for 2015. In a normal water year the CVP, on average, delivers approximately 7 million acre-feet of water annually. CVP 2015 water deliveries are severely curtailed due to drought and other factors. Although the SWP announced a slight increase in water deliveries for 2015 over 2014, deliveries remain very low. Major CVP and SWP water pumps supply water for approximately 22 million people in Central and Southern California.¹⁰

On April 1, 2015, California Governor Jerry Brown directed by executive order, for the first time in State history, the State Water Resources Control Board to implement mandatory water reductions in cities and towns across California to reduce water usage by 25 percent. This reduction is expected to yield approximately 1.5 million acre-feet of water savings by the end of 2015.¹¹

“Complicating the hydrologic situation is a complex web of federal and state regulatory requirements on CVP and SWP operations. These requirements affect how much water is delivered from the projects. Such requirements include releases of water from reservoirs and limits on pumping from the Bay-Delta to protect threatened and endangered species, as well as water quality. State water rights priorities and Bureau of Reclamation contracts also affect water allocation. Some water users have called for modifying regulations; other stakeholders, including some fishermen and environmental groups, believe such changes may risk irreversible harm to species. Due to overlapping state and federal restrictions, it is unclear how much water would be available absent such restrictions. Bureau of Reclamation estimates that restrictions stemming from the Endangered Species Act accounted for approximately 2 percent of total CVP water reductions in 2014; however, such figures are not readily available for regulatory restrictions.”¹²

The Delta Smelt—Since 2008, government regulators have flushed approximately 1.4 trillion gallons of water into the San Francisco Bay, in an effort to protect the protected fish, the Delta Smelt.¹³ In 2008, the U.S. Fish and Wildlife Service issued a rule, which claimed that delta water pumps, which deliver water to farmers in Southern California, were a major reason for the decline in the Delta Smelt population and provided certain regulations restricting pumping. In 2009, Californian farmers sued the agency on the grounds that they did not apply the “best available science” in its rulemaking process. The judge ordered the agency to redo the regulation saying, “the public cannot afford sloppy science and unidirectional prescriptions that ignore California’s water needs.”¹⁴ However, the Ninth Circuit Court of Appeals later reversed that decision. The U.S. Fish and Wildlife Service openly acknowledges on its website that “existing regulatory mechanisms have not proven adequate to halt

⁸ <http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA>

⁹ See CRS report, *“California Drought: Water Supply and Conveyance Issues.”* May 15, 2015.

¹⁰ Id.

¹¹ See press release, *“Governor Brown Directs First Ever Statewide Mandatory Water Reductions.”* April 1, 2015.

¹² Id.

¹³ <http://www.wsj.com/articles/forget-the-missing-rainfall-california-wheres-the-delta-smelt-1430085510>

¹⁴ Id.

the decline of delta smelt since the time of listing as a threatened species.”¹⁵ H.R. 2898 requires the agency to use the best available science when determining rules relating to the regulation of this fish.

According to Natural Resources Committee Chairman Rob Bishop, “Californians and Westerners are victims of baneful man-made environmental laws which are intensifying their suffering from the drought. They need our help. H.R. 2898, the Western Water and American Food Security Act, comes to their aid by fixing the broken regulatory system and bringing water infrastructure into the 21st century. H.R. 2898 rightfully puts people and their livelihoods above extremist ideology and outdated, cumbersome water regulations and laws.”¹⁶

According to the Committee, although the text is not identical, Title I, and Titles II and III of this bill, reflect parts of a framework negotiated with the Senate during the 113th Congress. Title IV is based on language inserted by Rep. David Valadao (R-CA) into H.R. 2028, Energy and Water Development and Related Agencies Appropriations Act, 2016.¹⁷ Other titles in this bill are similar to bills from the 113th Congress. They are as follows:¹⁸

- Title V is similar to [H.R. 5781](#)—Rep. David Valadao (R-CA), which passed the House on December 9, 2014, by a vote of [230 to 182](#).
- Title VII is identical to [H.R. 3980](#)—Rep. Tom McClintock (R-CA), which was ordered reported by the Committee on Natural Resources on September 18, 2014, by a vote of 22 to 16.
- Title VIII is similar to [H.R. 5412](#)—Rep. Doc Hastings (R-WA), which was ordered reported by the Committee on Natural Resources on September 8, 2014, by a vote of 23 to 18.
- Title IX is similar to [H.R. 3981](#)—Rep. Doc Hastings (R-WA), which was ordered reported by the Committee on Natural Resources on September 19, 2014, by a vote of 25 to 16.
- Title X is identical to [H.R. 2749](#)—Rep. David Valadao (R-CA), which was introduced on June 12, 2015.
- Title XI is similar [H.R. 3189](#)—Rep. Scott Tipton (R-CO), which passed the House on March 13, 2014, by a vote of [238 to 174](#).

AMENDMENTS

1. [Rep. Tom McClintock \(R-CA\)](#)—The manager’s amendment makes one technical change and one clarifying change to the bill.
2. [Rep. Jerry McNerney \(D-CA\)](#)—The amendment adds water hyacinth to the list of invasive species to be considered for the pilot project established under the legislation.
3. [Rep. John Garamendi \(D-CA\)](#)—The amendment directs the Secretaries to collaborate with the California Department of Water Resources to install a fish screen at the Delta Cross Channel Gates.
4. [Rep. Doug LaMalfa \(R-CA\)](#)—The amendment updates feasibility study completion requirements to align with a recently-signed memorandum of understanding between the project joint powers authority and the Bureau of Reclamation.

¹⁵ http://www.fws.gov/sfbaydelta/species/delta_smelt.cfm

¹⁶ See the Committee on Natural Services press release, [“Committee Passes Legislation to Alleviate Drought Impacts in California and the West.”](#) July 9, 2015.

¹⁷ See [House Report 114-](#) at 48.

¹⁸ See [H.R. 2898, Section-by-Section analysis](#).

5. [Rep. Ken Calvert \(R-CA\)](#)—The amendment creates a more balanced approach between user group interests on the Restoration Fund Advisory Board by adding a seat for a member representing a wildlife entity that primarily focuses on waterfowl.
6. [Rep. Jim Costa \(D-CA\)](#)—The amendment requires the Secretary of the Interior to publish an annual report detailing the instream flows released for the Central Valley Project and measured outcomes as a result of those flows.
7. [Rep. Doug LaMalfa \(R-CA\)](#)—The amendment improves due process by providing contractors of a Federal water project in California and Oregon Endangered Species Act (ESA) applicant status, ensuring that contractors are properly informed of and may provide input to ESA consultations that may impact operations of the project.
8. [Rep. Raul Grijalva \(D-AZ\)](#)—The amendment funds water reclamation programs and water reuse projects so that the Bureau of Reclamation may investigate more opportunities to reclaim and reuse wastewater and naturally impaired ground and surface water in the 17 Western states and Hawaii.

COST

The Congressional Budget Office (CBO) [estimates](#) that enacting the bill would decrease budget deficits over the 2016 to 2025 period by \$794 million. Because the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

STAFF CONTACT

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