

## HR 1837

### Sacramento-San Joaquin Valley Water Reliability Act

**Congress:** 112 (2011–2013, Ended)

**Chamber:** House

**Policy Area:** Water Resources Development

**Introduced:** May 11, 2011

**Current Status:** Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 332.

**Latest Action:** Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 332. (Mar 5, 2012)

**Official Text:** <https://www.congress.gov/bill/112th-congress/house-bill/1837>

### Sponsor

**Name:** Rep. Nunes, Devin [R-CA-21]

**Party:** Republican • **State:** CA • **Chamber:** House

### Cosponsors (2 total)

| Cosponsor                      | Party / State | Role | Date Joined  |
|--------------------------------|---------------|------|--------------|
| Rep. Denham, Jeff [R-CA-19]    | R · CA        |      | May 11, 2011 |
| Rep. McCarthy, Kevin [R-CA-22] | R · CA        |      | May 11, 2011 |

### Committee Activity

| Committee                   | Chamber | Activity        | Date         |
|-----------------------------|---------|-----------------|--------------|
| Natural Resources Committee | House   | Discharged from | Feb 16, 2012 |

### Subjects & Policy Tags

#### Policy Area:

Water Resources Development

### Related Bills

| Bill         | Relationship         | Last Action   |
|--------------|----------------------|---|
| 112 S 2365   | Related bill         | Apr 25, 2012: Read twice and referred to the Committee on Energy and Natural Resources. |
| 112 HRES 566 | Procedurally related | Feb 29, 2012: Motion to reconsider laid on the table Agreed to without objection.       |

**Sacramento-San Joaquin Valley Water Reliability Act - Title I: Central Valley Project Water Reliability** - (Sec. 101) Amends the Central Valley Project Improvement Act (CVPIA) to: (1) include among the Act's purposes to ensure that water dedicated to fish and wildlife purposes is replaced and provided to Central Valley Project (CVP) water contractors by December 31, 2016, at the lowest cost reasonably achievable and to facilitate and expedite water transfers in accordance with that Act; (2) redefine "anadromous fish" for purposes of such Act to include those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and that ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean and to exclude striped bass and American shad; and (3) define "reasonable flows" as water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.

(Sec. 103) Eliminates existing limitations on the authority of the Secretary of the Interior to enter into any new contracts for water supply from the CVP.

Directs the Secretary to renew any existing long-term repayment or water service contract, upon request of the contractor, that provides for the delivery of water from the CVP for a period of 40 years (the current contractual term is 25 years). Requires new or renewed contract to include a provision that requires the Secretary to charge only for water actually delivered.

(Sec. 104) Directs the Secretary to take all necessary actions to facilitate and expedite CVP water transfers in accordance with such Act or any other provision of federal reclamation law and the National Environmental Policy Act of 1969 (NEPA).

Requires: (1) the contracting district from which the water is coming, the agency, or the Secretary to determine if a written transfer proposal is complete within 45 days after the date of submission of such proposal; and (2) if such proposal is determined to be incomplete, the district, agency, or Secretary to state with specificity what must be added or revised.

Prohibits the Secretary from imposing mitigation or other requirements on a proposed transfer of water.

Declares that: (1) the authority to make transfers or exchanges of, or banking or recharge arrangements using, CVP water that could have been conducted before October 30, 1992, is valid and such transfers, exchanges, or arrangements shall not be subject to, limited, or conditioned by this title; and (2) this title shall not supersede or revoke the authority to transfer, exchange, bank, or recharge CVP water that existed prior to such date.

Requires: (1) measurement (currently, metering) of water use; and (2) the contracting district or agency, excluding districts serving multiple agencies with separate governing boards, to ensure that all contractor-owned water delivery systems within its boundaries measure surface water at the district or agency's facilities up to the point the surface water is commingled with other water supplies.

Repeals provisions regarding water pricing reform. Requires all revenues received by the Secretary that exceed the cost-of-service to be covered to the CVP Restoration Fund.

(Sec. 105) Grants the Secretary discretion to modify CVP operations to provide reasonable water flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish. Provides that instream flow needs for CVP controlled streams and rivers shall be determined by the Secretary based on recommendations of the National Marine

Fisheries Service (as well as recommendations of the United States Fish and Wildlife Service), after consultation with the United States Geological Survey (USGS) (currently, consultation is required with the California Department of Fish and Game).

Provides that all CVP water used for purposes specified in the CVPIA shall be credited to the quantity of CVP yield dedicated and managed under that Act by determining how the dedication and management of such water would affect the delivery capability of the CVP during the 1928 to 1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in agreements pertaining to CVP under applicable law existing on October 30, 1992, have been met. Requires CVP water to be reused to fulfill the secretary's remaining contractual obligations to provide CVP water for agricultural or municipal and industrial purposes.

States that: (1) if, by March 15th of any year, the quantity of CVP water forecasted to be made available to water service or repayment contractors in the Delta Division of CVP is below 75% of the total quantity made available under such contracts, the quantity of CVP yield dedicated and managed for that year shall be reduced by 25%; and (2) by pursuing activities described in this section, the Secretary shall be deemed to have met the mitigation, protection, restoration, and enhancement purposes of this title.

(Sec. 106) Repeals a requirement that not less than 67% of all funds made available to the Restoration Fund under CVPIA be authorized to be appropriated to carry out habitat restoration, improvement, and acquisition provisions of that Act.

Prohibits the Secretary from requiring a donation or other payment to the CVP Restoration Fund: (1) or environmental restoration or mitigation fees not otherwise provided by law, as a condition to providing for storage or conveyance of non-CVP water or for the delivery of water pursuant to the Reclamation Reform Act of 1982; or (2) for any water that is delivered with the sole intent of groundwater recharge.

Requires annual payments to the Restoration Fund to be allocated so as not to exceed \$4 per megawatt-hour for CVP power sold to power contractors (October 2013 price levels) after October 1, 2013.

Requires the Secretary to: (1) reduce certain sums and payment ceilings for the Fund upon the completion of certain fish, wildlife, and habitat mitigation and restoration actions no later than December 31, 2020; and (2) submit a plan for Fund expenditures, including a cost effectiveness analysis of each expenditure. Establishes a Restoration Fund Advisory Board to make recommendations to the Secretary regarding priorities and spending levels on projects and programs under CVPIA.

(Sec. 107) Directs the Secretary to: (1) use the authority granted in the CVPIA in connection with requests to exchange, impound, store, carry, or deliver nonproject water using CVP facilities for any beneficial purpose; and (2) develop rates not to exceed the amount required to recover the reasonable costs incurred by the Secretary in connection with a beneficial purpose. Requires such rates to be charged to a party using CVP facilities for such purpose and to exclude any donation or other payment to the Restoration Fund.

Requires the filing and adequacy of the Secretary's annual reports to Congress to be personally certified to specified committees by the Regional Director of the Mid-Pacific Region of the Bureau of Reclamation.

Directs the Secretary, in order to minimize adverse effects upon existing CVP water contractors resulting from water dedicated to fish and wildlife and to assist the state of California in meeting its future water needs, to submit to Congress on a priority basis and not later than September 30, 2013, a least-cost plan to increase, as soon as possible but not later

than September 30, 2016 (except for the construction of new facilities, which shall not be limited by that deadline), the CVP water by the amount dedicated and managed for fish and wildlife purposes and otherwise required to meet CVP purposes, including satisfying contractual obligations. Requires the plan to include: (1) recommendations on appropriate cost-sharing arrangements and authorizing legislation or other measures needed to implement the intent, purposes, and provisions of this section; and (2) a description of how the Secretary intends to use specified options.

Directs the Secretary to implement the plan commencing on October 1, 2013, and to coordinate with the state of California in implementing measures for the long-term resolution of problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Provides that if, by September 30, 2016, the plan fails to increase the annual delivery capability of CVP by 800,000 acre-feet, implementation of any non-mandatory action dedicating the 800,000 acre-feet for fish, wildlife, and habitat purposes shall be suspended until the plan achieves an increase in the annual delivery capability of CVP by 800,000 acre-feet.

Authorizes the Commissioner of the Bureau of Reclamation to partner or enter into an agreement with local joint powers authorities formed pursuant to state law by irrigation districts and other local water districts and local governments within the applicable hydrologic region to advance water storage projects identified in the Water Supply, Reliability, and Environmental Improvement Act.

(Sec. 108) Requires the CVP and the California State Water Project (SWP) to be operated pursuant to the water quality standards and operational constraints described in the "Principles for Agreement of the Bay-Delta Standards Between the State of California and the Federal Government" dated December 15, 1994 (Bay-Delta Accord of 1994), without regard to the Endangered Species Act of 1973 (ESA) or any other law pertaining to the operation of the CVP and the SWP.

Prohibits any federal department or the state of California from imposing on any water right obtained under state law, including a pre-1914 appropriative right, any condition that restricts the exercise of that water right in order to protect any species that is affected by CVP or SWP operations. Requires implementation of the Bay-Delta Accord to be in strict compliance with the water rights priority system and statutory protections for areas of origin.

Prohibits any cost associated with implementation from being imposed on any CVP contractor or other person or entity unless incurred on a voluntary basis. Preempts California law regarding any restriction on the quantity or size of non-native fish taken or harvested that preys upon one or more native fish species that occupy the Sacramento and San Joaquin Rivers and their tributaries or the Sacramento-San Joaquin Rivers Delta.

(Sec. 109) Prohibits the Secretaries of the Interior and Commerce from distinguishing between natural-spawned and hatchery-spawned, or otherwise artificially propagated strains of a species, in making any determination under ESA that relates to any anadromous fish species that are present in the Sacramento and San Joaquin Rivers or their tributaries and that ascend those rivers and their tributaries to reproduce after maturing in the San Francisco bay or the Pacific Ocean.

(Sec. 110) Adds the Kettleman City Community Services District as an authorized service area of the CVP. Directs the Secretary to enter into a long-term contract for the delivery of up to 900 acre-feet of CVP water for municipal and industrial use. Authorizes the Secretary to temporarily reduce deliveries of the quantity of CVP water up to 25% of the total contractual amount whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of CVP water. Makes any additional infrastructure or related costs the responsibility of the non-federal entity.

(Sec. 111) Declares that: (1) filing a Notice of Determination or a Notice of Exemption for any project, including the issuance of a permit under state law, related to any project of the CVP or the delivery of water from it in accordance with

the California Environmental Quality Act shall be deemed to meet the requirements of NEPA for that project or permit; and (2) the Bureau of Reclamation shall not be required to cease or modify any major federal action, or other activity related to any CVP project or water delivery from it, pending completion of judicial review of any determination under NEPA.

**Title II: San Joaquin River Restoration** - (Sec. 201) Directs the Secretary of the Interior to cease any action to implement the Stipulation of Settlement (the Settlement) dated September 13, 2006, in the litigation entitled Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., U.S. District Court, Eastern District of California.

(Sec. 202) Modifies the purpose of the San Joaquin River Restoration Settlement Act to be restoration of the San Joaquin River (currently, to authorize implementation of the Settlement).

(Sec. 204) Amends the San Joaquin River Restoration Settlement Act to eliminate references to the Settlement and to direct the Secretary, beginning on March 1, 2013, to modify Friant Dam operations to release restoration flows (defined as additional water released or bypassed from Friant Dam to ensure that the target flow entering Mendota Pool does not fall below 50 cubic feet per second) in every year except a critical water year (defined as when the total unimpaired runoff at Friant Dam is less than 400,000 acre-feet) in a manner that improves the fishery in the San Joaquin River between Friant Dam and Gravelly Ford.

Directs the Secretary to develop and implement, in cooperation with the state of California, a reasonable plan to fully recirculate, recapture, reuse, exchange, or transfer all such restoration flows. Requires such plan to address any impact on ground water resources within the service area of the Friant Division, Hidden Unit, and Buchanan Unit of the CVP. Permits mitigation to include ground water banking and recharge projects.

Directs the Secretary, prior to October 1, 2013, to: (1) identify the impacts associated with the release of such restoration flows; (2) identify measures necessary to mitigate impacts on adjacent and downstream water users, landowners, and agencies as a result of such restoration flows; and (3) implement all such mitigation measures identified before such restoration flows are commenced.

Directs the Secretary, within 60 days after the enactment of this Act, to promulgate a rule establishing a claims process to address current and future claims, including ground water seepage, flooding, or levee instability damages caused as a result of such restoration flows.

Declares that no CVP or other water other than San Joaquin River water impounded or bypassed from Friant Dam shall be used to implement this title's requirements unless such use is on a voluntary basis.

Provides that all actions taken under this title shall be subordinate to the Secretary's use of CVP facilities to make CVP water available to its contractors, other than water released from the Friant Dam pursuant to this title.

Preempts any state law, regulation, or requirement that imposes more restrictive requirements or regulations on the activities authorized under this title.

Directs the Secretary to phase-in each project to implement this title in the following order: (1) identify project purpose and need, (2) identify mitigation measures, (3) conduct environmental review, and (4) complete implementation of the project and required mitigation measures.

(Sec. 205) Deletes language that directs implementation of the Settlement and that authorizes the use of eminent domain to implement the Settlement.

(Sec. 207) Declares that implementation of this title satisfies federal obligations under the California Fish and Game Code.

(Sec. 208) Provides that nothing shall confer a private right of action or claim for relief to enforce provisions under section 204 of this Act, except for contractors within Friant Division, Hidden Unit, or Buchanan Unit.

(Sec. 211) Repeals provisions relating to settlement of litigation regarding restoration of the San Joaquin River reintroduction of the California Central Valley Spring Run Chinook salmon into such River.

(Sec. 213) Deletes certain additional funding for improvements and facilities in the Friant Division, CVP, California.

**Title III: Repayment Contracts and Acceleration of Repayment of Construction Costs** - (Sec. 301) Directs the Secretary of the Interior, upon request of the contractor, to convert all existing long-term CVP contracts to contracts that require a contractor to pay the remaining balance of construction at a Treasury rate discount. Provides that: (1) in return, pricing and acreage limitations of federal reclamation law shall no longer apply to the contractors; and (2) any capital costs incurred after the date of conversion will be repaid either within five years, if the amount is less than \$5 million, or as provided by applicable reclamation law, if the amount is \$5 million or greater.

Provides that this title shall not alter the repayment obligation of any other long-term water service or repayment contractor receiving water from CVP or shift any costs that would otherwise have been properly assignable to any contractors.

**Title IV: Bay-Delta Watershed Water Rights Preservation and Protection** - (Sec. 401) Directs the Secretary of the Interior (notwithstanding the provisions of this Act, federal reclamation law, or ESA), in the operation of CVP, to: (1) strictly adhere to state water rights law governing water rights priorities by honoring water rights senior to those belonging to CVP, regardless of the source of priority; and (2) strictly adhere to and honor water rights and other priorities that are obtained or exist under the California Water Code.

Requires any action taken by the Secretary or the Secretary of Commerce to protect any species listed under ESA that affects the diversion of water or involves the release of water from any CVP water storage facility to be applied in a manner that is consistent with water right priorities established by state law.

(Sec. 402) Directs the Secretary and the Secretary of Commerce, in implementing ESA in the Bay-Delta and on the Sacramento River, to apply any limitations on the operation of CVP or to formulate any reasonable prudent alternative associated with CVP's operation in a manner that strictly adheres to and applies water rights priorities for project water and base supply provided for in the Sacramento River Settlement Contracts.

(Sec. 403) Directs the Secretary, subject to the absolute priority of Sacramento River Settlement Contractors, to allocate water provided for irrigation purposes to existing CVP agricultural water service contractors within the Sacramento River Watershed in the following order: (1) not less than 100% of their contract quantities in a wet, above normal, or below normal year; (2) not less than 75% in a dry water year; and (3) not less than 50% in a critically dry water year.

(Sec. 404) Directs the Secretary to ensure that there are no redirected adverse water supply or fiscal impacts to those within the Sacramento River or San Joaquin River watershed or to the SWP arising from the Secretary's operation of CVP to meet legal obligations imposed by or through any state or federal agency.

**Title V: Miscellaneous** - Declares that: (1) coordinated operations between CVP and SWP, previously requested and consented to by the state of California and the federal government, require assertion of federal supremacy to protect

existing water rights throughout the system; (2) these circumstances are unique to California; and (3) nothing in this Act shall serve as precedent in any other state.

## Actions Timeline

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- **Mar 5, 2012:** Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 332.
- **Mar 2, 2012:** Read the first time. Placed on Senate Legislative Calendar under Read the First Time.
- **Mar 1, 2012:** Received in the Senate.
- **Feb 29, 2012:** Rule H. Res. 566 passed House.
- **Feb 29, 2012:** Considered under the provisions of rule H. Res. 566. (consideration: CR H1041-1079)
- **Feb 29, 2012:** Rule provides for consideration of H.R. 1837 with 1 hour of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. Measure will be considered read. Specified amendments are in order. All points of order against consideration of the bill are waived. In lieu of the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 112-15.
- **Feb 29, 2012:** House resolved itself into the Committee of the Whole House on the state of the Union pursuant to H. Res. 566 and Rule XVIII.
- **Feb 29, 2012:** The Speaker designated the Honorable Kevin Yoder to act as Chairman of the Committee.
- **Feb 29, 2012:** GENERAL DEBATE - The Committee of the Whole proceeded with one hour of general debate on H.R. 1837.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the McClintock amendment No. 1.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the Thompson (CA) amendment No. 2.
- **Feb 29, 2012:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Thompson (CA) amendment, the Chair put the question on adoption of the amendment and by voice vote announced that the noes had prevailed. Mr. Thompson (CA) demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until later in the legislative day.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the McNerney amendment No. 3.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the McNerney amendment No. 4.
- **Feb 29, 2012:** POSTPONED PROCEEDINGS - At the conclusion of debate on the McNerney amendment, the Chair put the question on adoption of the amendment and by voice vote announced that the noes had prevailed. Mr. McNerney demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until later in the legislative day.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the Garamendi amendment No. 5.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the Napolitano amendment No. 6.
- **Feb 29, 2012:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Napolitano amendment, the Chair put the question on adoption of the amendment and by voice vote announced that the noes had prevailed. Mrs. Napolitano demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until later in the legislative day.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the Garamendi amendment No. 7.
- **Feb 29, 2012:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Garamendi amendment, the Chair put the question on adoption of the amendment and by voice vote announced that the noes had prevailed. Mr. Garamendi demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until later in the legislative day.
- **Feb 29, 2012:** DEBATE - Pursuant to the provisions of H. Res. 566, the Committee of the Whole proceeded with 10 minutes of debate on the Markey amendment No. 8.
- **Feb 29, 2012:** POSTPONED PROCEEDINGS - At the conclusion of debate on the Markey amendment, the Chair put the question on adoption of the amendment and by voice vote announced that the noes had prevailed. Mr. Markey demanded a recorded vote and the Chair postponed further proceedings on the question of adoption of the amendment until later in the legislative day.
- **Feb 29, 2012:** The Chair announced that it understood that amendment No. 9 offered by Mr. Garamendi, made in order

by the provisions of H.Res. 566, would not be offered.

- **Feb 29, 2012: UNFINISHED BUSINESS** - The Chair announced that the unfinished business was the question of adoption of amendments which had been debated earlier and on which further proceedings had been postponed.
- **Feb 29, 2012:** The House rose from the Committee of the Whole House on the state of the Union to report H.R. 1837.
- **Feb 29, 2012:** The previous question was ordered pursuant to the rule. (consideration: CR H1076)
- **Feb 29, 2012:** The House adopted the amendment in the nature of a substitute as agreed to by the Committee of the Whole House on the state of the Union. (text of amendment in the nature of a substitute: CR H1055-1061)
- **Feb 29, 2012:** Mr. Garamendi moved to recommit with instructions to Natural Resources. (consideration: CR H1077-1078; text: CR H1077)
- **Feb 29, 2012:** Floor summary: DEBATE - The House proceeded with 10 minutes of debate on the Garamendi motion to recommit. The instructions contained in the motion seek to require the bill to be reported back to the House with an amendment to add a section titled Protecting the Constitution and States' Rights.
- **Feb 29, 2012:** The previous question on the motion to recommit with instructions was ordered without objection. (consideration: CR H1078)
- **Feb 29, 2012:** On motion to recommit with instructions Failed by recorded vote: 178 - 248 (Roll no. 90).
- **Feb 29, 2012:** Passed/agreed to in House: On passage Passed by recorded vote: 246 - 175, 1 Present (Roll no. 91).
- **Feb 29, 2012:** Motion to reconsider laid on the table Agreed to without objection.
- **Feb 29, 2012:** On passage Passed by recorded vote: 246 - 175, 1 Present (Roll no. 91).
- **Feb 28, 2012:** Rules Committee Resolution H. Res. 566 Reported to House. Rule provides for consideration of H.R. 1837 with 1 hour of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. Measure will be considered read. Specified amendments are in order. All points of order against consideration of the bill are waived. In lieu of the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 112-15.
- **Feb 27, 2012:** Reported (Amended) by the Committee on Natural Resources. H. Rept. 112-403.
- **Feb 27, 2012:** Placed on the Union Calendar, Calendar No. 280.
- **Feb 16, 2012:** Subcommittee on Water and Power Discharged.
- **Feb 16, 2012:** Committee Consideration and Mark-up Session Held.
- **Feb 16, 2012:** Ordered to be Reported (Amended) by the Yeas and Nays: 27 - 17.
- **Jun 13, 2011:** Subcommittee Hearings Held.
- **Jun 2, 2011:** Subcommittee Hearings Held.
- **May 24, 2011:** Referred to the Subcommittee on Water and Power.
- **May 11, 2011:** Introduced in House
- **May 11, 2011:** Referred to the House Committee on Natural Resources.