



## **Implications of the San Joaquin Valley Water Reliability Act – H.R. 1837**

H.R. 1837 (Nunes, McCarthy, Denham) would block or repeal protections for the Bay-Delta under the Central Valley Project Improvement Act, the Endangered Species Act, the San Joaquin River Restoration Settlement Act, as well as State law. The potential implications are far-reaching and potentially highly damaging to the Bay-Delta ecosystem, a wide range of water interests and the BDCP process. For example, the act seeks to:

### **State Water Law and Water Rights**

- Overturn state water rights by preventing junior water rights holders (i.e. the CVP and SWP) from being required to contribute water to the protection of the Bay-Delta ecosystem (Sec. 108 (a)(1), (a)(2) and (b)(1)). This would create the equivalent of a federal senior water right that would pre-empt state law. The end result would be that existing senior water rights holders would have to assume a far greater share of responsibility for protecting the Bay-Delta under state law because the CVP and SWP would be limited to contributions defined long ago to address far different environmental conditions under the 1994 Bay-Delta Accord. Thus, the Act would shift the burden of protecting the Bay-Delta onto water users who are considered senior under state law.
- Prohibit state agencies from using state law to require the State Water Project to protect state fish and wildlife resources in the Bay-Delta, including commercially valuable species like fall-run Chinook (Sec. 108(b)(1)).

### **BDCP/ESA**

- Prohibit BDCP from requiring stronger flow protections for the Bay-Delta than provided under the 1994 Bay-Delta Accord, an agreement signed before several Delta species were listed as threatened and endangered and before the crash of Delta fisheries in the 2000s (Sec. 108(a)(1)). This would likely prohibit the implementation of all flow scenarios currently under consideration by BDCP. Thus, the Act could make it difficult or impossible for the BDCP to receive necessary permits under CESA, Porter-Cologne, and the state Water Code.
- Prohibit BDCP from requiring more funding from the CVP and SWP for habitat restoration than is required in the Bay-Delta Accord. (Sec. 108 (a)(2)). This provision would undermine the key habitat restoration goal of BDCP and could shift the burden of financing Bay-Delta habitat restoration to mitigate for the impacts of the CVP and the SWP to the public or other water users.
- Prevent adaptive management in BDCP by permanently prohibiting agencies from acting on new scientific information and evidence developed since 1994 regarding the impacts of the CVP and SWP on the Bay-Delta.

- If the Act moves through the Resources Committee and the House without opposition from the BDCP PREs, it will raise significant questions regarding the commitment of those parties to BDCP and its stated goals.

### **Central Valley Project Improvement Act**

- Redirect funds from the CVPIA Restoration Fund to be used for water supply development (Sec. 106 (1) amending § 3407(a)(4)). Such development could have significant additional adverse impacts on the Bay-Delta ecosystem.
- Eliminate the 800,000 acre-feet of water dedicated to fisheries restoration by the CVPIA if the CVP does not increase its yield by 800,000 acre-feet by 2016 (Sec. 107(c) amending § 3408(j)(4)). Such an increase in yield could require billions in subsidies and could result in further environmental damage.
- Require “to the fullest extent possible” all of the water dedicated by the CVPIA to fisheries restoration to be recaptured and delivered to water users (Sec. 105, 1(B) amending § 3406(b)(2)). In practice, this would result in pressure for the Bureau to use CVPIA “(b)(2)” water for low priority ecosystem purposes that would allow recapture, rather than for higher priority ecosystem needs that would not.
- Eliminate incentives to conserve and use CVP water wisely by eliminating the Bureau’s ability to impose tiered pricing (Sec. 104(3)).
- Convert current 25 year CVP contracts into permanent contracts, thus eliminating the Bureau’s ability to adjust contract quantities and other terms over time, as required under current law (Sec. 301(a)(1)). This would dramatically limit the Bureau’s ability to respond to climate change, increased water use by senior water rights holders and other changed conditions.

### **San Joaquin River Restoration**

- Block restoration of the San Joaquin River, override a carefully-negotiated, bi-partisan, consensus settlement, and substitute a 50 cfs flow on the San Joaquin River -- a tiny fraction of the flows provided by the existing restoration agreement (Sec. 203 and 205 (b)(1))
- Override more than 100 years of reclamation law and deference to state authority over water resources by preempting state water law (Sec. 202).

May 17, 2011