

LEGISLATIVE DEVELOPMENTS

A FEDERAL RESPONSE TO THE DROUGHT— THREE BILLS PENDING IN CONGRESS

Three drought-related bills are currently pending in the current 114th Congress, each with wildly varying methods to address impacts of the drought. The first is Senate Bill 1894, the California Emergency Drought Relief Act of 2015, introduced by Senator Diane Feinstein (S 1894). The second is Senate Bill 1837, the Drought Recovery and Resilience Act, by Senator Barbara Boxer (S 1837). The third is a House of Representatives bill 2898, the Western Water and American Food Security Act of 2015, introduced by Representative David Valadao and co-sponsored by every Republican Representative from California and Democrat Jim Costa of the 16th District (HR 2898). While the bills leverage negotiations conducted in 2014, significant hurdles to reaching a deal remain. Key points of difference include whether the scope of federal Endangered Species Act (ESA) protections in California's Sacramento-San Joaquin Delta (Delta) should be reduced, whether funds should be used to increase water storage or encourage efficiency of existing use, and whether the San Joaquin River Restoration Agreement should be repealed.

Background

In spite of the fact that California is in the midst of the worst drought in generations, to date, Congress has taken no action in response to the growing crisis. Numerous bills were introduced in the House and Senate during 2014, and a deal was close to being included in the omnibus spending bill, the Consolidated Appropriations Act of 2014. However, that deal ultimately proved elusive, as unified support dissolved at least in part on the grounds that the process involved "secret negotiations" and was not sufficiently inclusive. (See, Michael Doyle, Boxer Vows No More 'Secret' Talks On Drought Bill, *McClatchy DC*, January 21, 2015, <http://www.mcclatchydc.com/news/politics-government/congress/article24778780.html>)

Senate Bill 1894: The California Emergency

Drought Relief Act

On July 29, Senator Dianne Feinstein introduced S 1894, the California Emergency Drought Relief Act (CEDRA), with the goal of increasing water supplies.

Specifically, the bill directs the Secretaries of Interior and Commerce to provide the most water possible through the Central Valley Project (CVP) by expediting approval of projects intended to alleviate Governor Brown's declared drought emergency. The bill favors strategies that increase water deliveries while still avoiding any jeopardy to endangered species—in other words, ESA restrictions remain unaltered. Additionally, S 1894 provides millions of dollars in federal aid annually to various fish recovery and protection projects, including those to benefit Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead, and also includes funds for real time monitoring of delta smelt habitats.

S 1894 also outlines eligibility requirements for water supply project funding. Generally, desalination and water reuse are heavily emphasized, but funding for other projects including groundwater recharge, storm water capture, and agricultural or urban water conservation and efficiency also exists. \$600 million for the construction or expansion of storage projects is also provided. Additional funds are included for conservation and water efficiency, grants for rural water projects, conservation at military installations, and even funding for the Drug Enforcement Administration to combat water theft for illegal marijuana cultivation. S 1894 is pending in the Senate Energy and Natural Resources Committee, and no vote on the bill has occurred.

Senate Bill 1837: The Drought Recovery and Resilience Act

On July 22, Senator Barbara Boxer introduced S 1837, the Drought Recovery and Resilience Act. The goal of this bill is to provide long-term drought

assistance and improve long term water supply reliability in the western states; the bill is not California specific.

S 1837 applies current appropriations funding to water reclamation and reuse projects, storm water capture, cleanup of polluted groundwater, and to combatting water theft by illegal marijuana operations. Funding is generally provided through cost-share agreements or grants.

The bill also creates a “Water Source Protection Program” with states and tribes, covering National Forests located west of the 100th Meridian. The purpose of the program is to “protect and restore the condition of National Forest watersheds.” The program attempts to improve reservoir operations, provides investments to reduce evaporative losses, and introduces a land lease program for solar and wind energy projects.

Lastly, S 1837 establishes, among other things, a \$750,000 annual prize for innovative low-energy desalination technology breakthroughs.

S 1837 was referred to the Senate Finance Committee, where it is currently pending. No votes have occurred on this bill.

House Resolution 2898: The Western Water and American Food Security Act

David Valadao introduced HR 2898, the Western Water and American Food Security Act, on June 25, 2015. Notably, the bill revises regulatory standards for managing CVP conveyances under the ESA. Specifically, the bill directs that the CVP be operated to maximize Delta export pumping rates while avoiding only “negative impact on the long term survival” of protected species. This term is defined as “to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” Thus, the ESA protection standard under this bill is lower than the current no-jeopardy standard.

The bill also alters current ESA procedures by requiring use of updated data to determine incidental take levels, water export restrictions, and other conservation measures contained in the smelt and salmonid biological opinions. The goal is to increase water exports without causing a “significant negative impact on the long-term survival of certain species listed as threatened or endangered.”

HR 2898 further establishes operational criteria

for Old & Middle River (OMR) flows in the Delta under the smelt and salmonid biological opinions. In particular, the bill prohibits the Bureau of Reclamation from limiting OMR reverse flow to -5,000 cubic feet per second unless current monitoring data indicates that such a limitation is reasonably required to avoid a “significant negative impact on the long-term survival of a listed salmonid species.”

With regard to storage, HR 2898 establishes deadlines for Interior to complete and submit to Congress water storage feasibility studies concerning specified dams and reservoirs under the Calfed Bay-Delta Authorization Act. Among other things, the bill further provides for: (1) temporary barriers or operable gates in the Delta to be designed so that formal consultations under the ESA are not necessary; (2) adoption of a 1:1 inflow to export ratio from the Delta under specified conditions; (3) approval of all water transfers through the Delta the from April 1 to November 30 if the transfers comply with California law; (4) a nonnative predator fish removal program in the Stanislaus River by Oakdale and South San Joaquin Irrigation District; (5) the repeal of the San Joaquin River Restoration Settlement Act and related settlement; (6) expansion of the CVP’s authorized service area to include the Kettleman City Community Services District; and (7) transfer of New Melones to local agencies.

HR 2898 was passed by the House of Representatives on July 16, 2015, with 245 in favor and 176 opposed.

The Obama Administration’s Position on HR 2898

The administration “strongly opposes HR 2898” on the grounds it “directs operations inconsistent with the Endangered Species Act, thereby resulting in conditions that could be detrimental to the Delta fish and other species listed under federal state endangered species laws. (See, Executive Office of the President, Office of Management and Budget, “Statement of Administration Policy, HR 2898—Western Water and American Food Security Act of 2015.” July 14, 2015; https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr2898r_20150714.pdf)

The negotiation process was also cited as a reason for the administration’s position:

HR 2898 was developed with little input from the public, the Administration, or key stakeholders affected by the drought.

In summary, the Obama administrations position is clear:

“if the President were presented with HR 2898, his senior advisors would recommend that he veto the bill.”

Conclusion and Implications

While all sides report a strong desire to take action to address the current drought, significant issues remain. Generally, the current Senate bills emphasize water efficiencies, water recycling, and watershed pro-

tection. The House bill, on the other hand, seeks to modify Central Valley Project operations to maximize water supply and water exports from the Delta and to modify the current ESA standard to a more flexible one regarding species protection. The bills also differ widely regarding general spending priorities, the continuation of the San Joaquin River Restoration program, and future surface storage.

With Congress returning from its August recess on September 8, it will undoubtedly have to act with urgency to reach a meaningful deal before the conclusion of this water year. Whether this can be done is unclear, but if anything should encourage a workable deal it is the continued, unrelenting severity of the current crisis.

(David E. Cameron, Meredith Nikkel)

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