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Feinstein Introduces Revised Drought Relief Bill

Long-term provisions invest in water storage, desalination, recycling

Short-term provisions adhere to environmental laws, sunset after two years or when drought emergency ends, whichever is later

Bill does not violate Endangered Species Act, Clean Water Act, biological opinions

Washington—Senator Dianne Feinstein (D-Calif.) today introduced the [California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act](#), an updated bill to provide both long- and short-term solutions to the historic drought in California.

“The Central Valley Project and the State Water Project are the two key systems that move water from Northern California to Southern California—both were largely completed by the 1970s, when 16 million people lived in California. Today, the state is home to 40 million people, but we have essentially the same water system we had four decades ago.

“Projects to store additional water in reservoirs and create new water through recycling and desalination have fallen woefully behind. Investments in these vital projects have lagged, which means communities and businesses throughout the state have felt the water pinch.

“Finally, the biological opinions adopted several years ago to govern when and how much water can be moved through the water systems don’t reflect the most recent science. More water could safely be pumped during high-rainfall periods like winter storms, while continuing to protect fish if we were to employ regular monitoring of water turbidity and locations of fish.

“Failure to apply this updated science means that extra water from high river flows—as we’re seeing during the current El Niño—is flowing into the ocean, water that could instead be safely pumped and stored for later use.

“There’s no question that the drought has resulted in significant human suffering, from lost jobs to dried-up wells to families forced from their homes.

“That’s why we need congressional action, and we need it now. California signaled that it’s ready by enacting a \$7.5 billion water bond. It’s time Washington followed suit.

“Drafting this bill has been difficult, probably the hardest bill I’ve worked on in my 23 years in the Senate. But it’s important, and that’s why we’ve been working so hard, holding dozens and dozens of meetings and revising the bill over and over again to incorporate feedback from stakeholder groups.

“The revised bill I’m introducing today is the product of two years of work. It includes provisions from Democrats and Republicans alike. It reflects input from environmental groups, water districts, state agencies, cities, rural communities, fishermen, and the agricultural industry. There was also an extensive consultation process with federal agencies, all of which agree that the bill remains consistent with the Endangered Species Act, the Clean Water Act and the biological opinions. This has been an open process, and I believe this bill is the best we can do.

“This bill won’t be everything for everyone—candidly, that’s not possible with California water policy. But I believe the bill strikes the right balance. It invests \$1.3 billion in defined long-term projects while making targeted, temporary changes to water operations that only last for the length of the drought or two years, whichever is longer, and which do not violate environmental laws.

“Where we found opposition to the bill, it was most frequently with groups that want no legislation at all. But as a senator who represents the entire state of California, inaction is simply not an option.

“I recognize that any bill in the Republican-led House will be far more aggressive on the short-term operational provisions and downplay the long-term provisions. But such a bill would never pass the Senate. What has become clear is that each region of the state and each stakeholder group has its own vested interest, and this makes consensus extraordinarily difficult.

“The lesson is that we need a balanced bill that will help us get through the current drought and make long-term investments to modernize our water infrastructure and prepare for future droughts. And that’s what this bill does.

“I’m hopeful that Chairman Lisa Murkowski and Ranking Member Maria Cantwell will hold a markup on this bill and the Senate will take it up for debate. The West is counting on us, and it’s time we take real action.”

Consultation process

Over the last two years, hundreds of meetings and discussions took place to review every part of the bill. Feedback was incorporated into the bill from congressional Republicans and Democrats, environmental groups, water districts, cities, rural communities, fishermen, and farmers. As a product of these meetings, staff made more than 40 modifications to the bill in the past three weeks alone.

In addition to those groups, the bill was reviewed extensively by federal and state agencies to ensure it would remain within the bounds of environmental laws and biological opinions. Every suggestion or recommendation from these agencies was resolved and included in the final bill. The following is a list of agencies consulted during this process:

- Department of the Interior
- Department of Commerce
- Bureau of Reclamation
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- NOAA Fisheries
- White House Council on Environmental Quality
- California Natural Resources Agency
- California Department of Water Resources
- California Department of Fish and Wildlife
- Office of the Governor Jerry Brown

Support for bill

The following letters of support were received in advance of the bill's introduction:

- [Congressman John Garamendi](#)
- [Glenn-Colusa Irrigation District](#)
- [Monterey Peninsula Water Management District](#)
- [Monterey Regional Water Pollution Control Agency](#)
- [North Bay Water Reuse Program](#)
- [Reclamation District 108](#)
- [Ducks Unlimited](#)
- [San Joaquin Valley Water Districts](#)
- [Central Contra Costa Sanitary District](#)
- [Delta Diablo District](#)
- [Goleta Water District](#)
- [Irvine Ranch Water District](#)
- [Las Virgenes Municipal Water District](#)
- [Northern California Water Association](#)
- [Redwood City](#)
- [Victor Valley Wastewater Reclamation Authority](#)
- [West Bay Sanitary District](#)
- [Orange County Water District](#)

Summary of legislation

A summary of the bill follows:

Assistance for drought-stricken communities

Many rural and disadvantaged communities throughout California are at risk of running out of clean water. Approximately 2,520 wells are already dry or will soon run dry, endangering an estimated 12,600 residents. As more wells and other water supplies dry up, the federal government has an obligation to step up and help affected communities and California families.

- Allows rural and disadvantaged communities with fewer than 60,000 residents to apply for grants through the Bureau of Reclamation to help stabilize their water supplies. Funds can be used for both short-term solutions such as emergency bottled water supplies as well as long-term solutions such as water treatment facilities, wells and connecting homes to centralized water distribution systems.
- Prioritizes State Revolving Funds for communities most at risk of running out of water. By directing funds to these communities most at risk, the bill provides the State with the tools necessary to provide water for public health and safety and to increase drought resiliency.

Desalination

Major desalination projects like the \$1 billion Poseidon plant in Carlsbad (which will soon generate enough water to supply 300,000 San Diego County residents) prove that new technology is quickly making desalination a viable option for many communities. The bill lists 27 desalination projects identified by California capable of producing more than 352,000 acre-feet of water per year. The bill would enable the federal government to help support desalination projects and research, with the goal of further reducing costs and environmental impacts.

- Reauthorizes the *Desalination Act* and authorizes \$50 million over five years for feasibility and design for both sea and brackish water desalination projects.
- Reauthorizes the *Desalination Act* and authorizes an additional \$50 million over five years for desalination research projects, such as improving existing reverse osmosis and membrane technology, reducing the environmental effects of seawater desalination and developing next-generation technologies to reduce the cost of desalination.

Storage projects

Given the consensus that droughts will grow more severe and the storms that follow more devastating, storing water during wet years for use in dry years is vital. The severity of this drought has highlighted the inadequacy of California's reservoir capacity. The bill takes steps to both promote the building of new reservoirs and increase the capacity of existing reservoirs.

- Establishes deadlines for the Bureau of Reclamation to complete feasibility studies to allow Calfed storage projects to compete for Proposition 1 bond funds.
- Authorizes \$600 million for Calfed water storage projects, which may include both federal projects (Shasta) and non-federal projects (Sites, Temperance Flat, Los Vaqueros).
- Updates Army Corps dam operations to increase water supply while reducing flood risk.

Water recycling, conservation and efficiency

Major advancements have been made in the field of water recycling. Orange County Water District, for example, recently completed an expansion of its water reuse facility to provide more than 100 million gallons per day. As communities continue to conserve water, more can be done to support these projects.

- Surveys conducted by the National Association of Clean Water Agencies, the Water Reuse Association, the Association of California Water Agencies, the Western Recycled Water Coalition and the California Association of Sanitation Agencies led to the identification of 110 potential recycling projects with the ability to produce 1.06 million acre-feet of water annually.
- Authorizes \$200 million in increased funds for the Bureau of Reclamation's water recycling and reuse program (Title XVI) to help fund projects to reclaim and reuse wastewaters and naturally impaired ground and surface water. This provision would also remove the burdensome congressional requirement for the authorization of specific projects.
- Authorizes an EPA program to label water-efficient products for consumers, similar to the popular Energy Star program.
- Authorizes a Department of the Interior program to establish an open system with data on water quality, climate and weather effects, and erosion, which would be accessible to the public online.

Additional funding programs

By providing funds for the most cost-effective federal programs, Washington can help state and local agencies leverage existing dollars into larger projects.

- **Loan guarantees:** Authorizes \$200 million for the *Reclamation Infrastructure Finance and Innovation Act* (RIFIA). This loan-guarantee program will allow water districts and municipalities to leverage loans and loan guarantees for water projects, reducing loan repayment costs by as much as 25 percent. This is modeled after TIFIA, a successful federal loan-guarantee program for transportation projects.
- **WaterSMART:** Authorizes \$150 million in increased funds for the Bureau of Reclamation's WaterSMART program to help finance water reclamation and reuse projects as well as water efficiency initiatives. This provision would also create a new grant program for integrated regional water management, reclamation and recycling, with a maximum federal contribution capped at \$20 million or 25 percent of a project's cost.

Protecting endangered and threatened fish and wildlife

Authorizes \$55 million for a number of short-term, low-cost proposals to protect and assist in the protection and recovery of fish populations, including Delta salmon and smelt.

- **Trapping and barging:** Authorizes \$4 million to trap and barge fish to reduce mortality rates on migration through the Delta.
- **Predator species:** Addresses key stressors on fish populations including limiting invasive species like striped bass and removing predator habitat, to be paid for by participating water districts.
- **Spawning habitat:** Authorizes \$21 million to assist in protection and recovery of fish, including the addition of improved spawning habitat.
- **Water system management:** Authorizes \$20 million for federal agencies to manage the water system more precisely using updated science and tools, including smelt distribution studies.
- **Actions to benefit refuges:** Authorizes \$2 million annually for five years for improved conveyance of water to refuges to help restore and protect critical wetland habitat for wildlife, one of the goals of the Central Valley Project Improvement Act.

Provisions for emergency operations during the drought

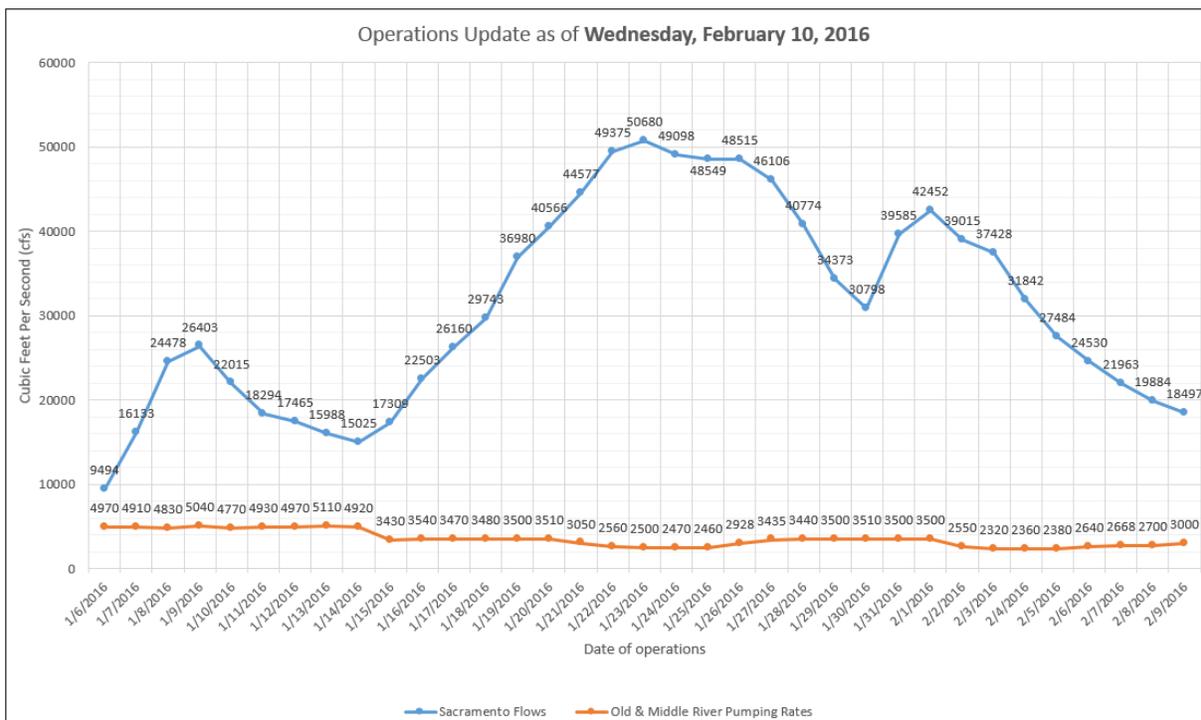
The bill includes short-term operational provisions to take advantage of El Niño storms and provide urgently-needed water supplies during the drought. These provisions are limited to the duration of the governor's drought declaration or two years, whichever is longer.

The operational language was carefully drafted over 18 months of close consultation with the federal agencies that implement the Endangered Species Act. The agencies agree that the bill's provisions remain consistent with the ESA and related biological opinions.

Some critics say no operational reforms are necessary because water agencies are already pumping as much water as possible. A review of flow levels since the beginning of the year shows that is not the case.

Flows in the Sacramento River reached as high as 50,000 cubic feet per second in January 2016. Yet when flows were at their peak, pumping levels actually *decreased* to -2,500 cubic feet per second in the Old and Middle rivers, the low end of what is allowed.

One reason for reduced pumping levels was concern about a "turbidity bridge" forming. This occurs when cloudy waters (which attract smelt) stretch from the central to the south Delta where pumps are located, increasing the threat to smelt. The cloudy water subsided, but agencies continued to restrict pumping without sufficient evidence of smelt near the pumps. **The water system must be operated based on real-time monitoring information, not intuition, the goal of the bill that was introduced today.**



The bill would increase real-time monitoring of turbidity and the location of threatened and endangered fish. The bill would also require agencies to take into account this improved data in explaining decisions to reduce pumping. These provisions will help make the water-delivery system more efficient during the drought, and do so **without any mandated pumping levels**.

The bill includes eight provisions to allow more water to be captured and stored during the drought. These provisions would last for the duration of the governor’s drought declaration or two years, whichever is longer.

1. Improved data to operate pumps at higher levels when no fish are present and reduce pumping levels when fish are nearby.
 - Requiring **daily boat monitoring to survey for smelt near the pumps** when turbidity levels are high, so that pumping reductions are made based on the facts.
 - Authorizing studies to identify smelts’ location in the Delta on a real-time basis.
 - Authorizing a Delta Smelt Distribution Study to **identify how many smelt are in different parts of the Delta** in drier and wetter years. This is critical to know what limitations the agencies can impose on pumping.

2. Allow agencies to keep the additional water they are able to pump during winter storms.
 - The bill authorizes agencies to increase pumping during winter storms, using their best judgment to determine when and by how much.
 - Once the storms end, the agencies would no longer be required to

“payback” water already pumped unless there was an environmental reason, such as harm to fish.

- This so-called “payback” has led to the loss of tens of thousands of acre-feet. Payback currently requires agencies to reduce subsequent water pumping by an equal amount of water as was captured during the storms, which means the loss of tens of thousands acre-feet of water that could instead be stored or transferred for use throughout the state.

3. Agencies must explain reductions in pumping under the Delta Smelt Biological Opinion.

- The bill does not impose any mandated pumping levels, instead leaving those pumping levels up to the discretion of the water agencies. But **the bill does require officials to justify the levels at which they pump under the smelt biological opinion.**
- By requiring written justification for the level of pumping, the bill attempts to maximize the amount of water pumped by directing officials to consider whether real-time monitoring justifies lowering pumping levels. The agencies must explain their decisions based on improved data, not just rely on their intuition.
- To be clear, the revised text does not include any pumping mandate. A provision was removed that would have mandated pumping at -5000 cubic feet per second in the Old and Middle Rivers, unless pumping at these levels would cause additional adverse effects on the Delta smelt.

4. Agencies must maximize water supplies consistent with applicable laws and biological opinions.

- Federal agencies should be capable of doing more than one thing at once: they should try to both protect species and provide reliable water supplies.
- The bill makes very clear that the agencies cannot harm the fish in violation of the biological opinions—but **within this environmental protection mandate the agencies should try to increase water supplies.**
- This requirement complements the additional requirement that agencies must explain any harm to fish that results from a reduction in water supplies.

5. Open Delta Cross-Channel Gates more often.

- The bill requires the Secretary of the Interior and the Secretary of Commerce to take actions to ensure the Delta Cross Channel Gates remain open to the greatest extent possible, consistent with state and federal law.
- Keeping the gates open for longer helps both Delta farmers and communities and South of Delta communities. Keeping the gates open means that water from the Sacramento River is used to control salinity instead of releasing water from the Central Valley Project (like Folsom or San Luis) that would otherwise be pumped south.

- When the gates are closed, water no longer flows directly from the Sacramento River into the interior Delta.
- The gate's closures means that the agencies must either reduce pumping or use stored water to "flush" salty water back out through the Delta.

Given that California never has enough water, water transfers are a mechanism to use the voluntary, market process to move water to those who truly need it. The bill includes three provisions to increase water transfers.

6. Extending the time period for water transfers by five months. The bill extends by five months the time period when transfers may take place. The current transfer window of July through September is extended to April through November. This would allow water transfers to be available during the spring planting season. All transfers must remain consistent with the biological opinions and their adaptive management provisions.
7. The 1:1 transfer ratio. The strong El Niño means more water is likely to be available for voluntary transfers from willing sellers with extra water to buyers downstream who need water. This provision helps facilitate those transfers in April and May by allowing a 1:1 transfer ratio. In past years, agencies have reduced the likelihood of transfers by requiring water users to send more water downstream than can be pumped out (up to a 4:1 ratio). By allowing for a 1:1 ratio—while adhering to environmental law and biological opinions—more water transfers can be accomplished, providing water to users who truly need it.
8. Expediting review of transfers and the construction of barriers. Environmental reviews of water transfers and the installation of temporary barriers must be completed within 60 days, unless an environmental impact statement is required.

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