

On July 12, the House passed the Gaining Responsibility on Water Act (GROW) (H.R. 23) by a vote of 230-190. The bill was amended to incorporate provisions from several other water-related bills. The seven titles of H.R. 23 are intended to provide both short and long-term solutions to expand water storage, improve infrastructure, restore reliability, protect privately-held water rights, and create more abundant and reliable water resources to benefit both communities and the environment. It is also intended to build on the water storage and delivery provisions of the Water Infrastructure Improvements for the Nation (WIIN) Act passed last December and give federal agencies the necessary tools to help safeguard communities from the effects of droughts.

Title I addresses water reliability, predictability, and availability in California for the Central Valley Project (CVP) and the State Water Project (SWP). It amends the purposes and definitions of the Central Valley Project Improvement Act to facilitate water transfers, to authorize contracts for additional storage and water delivery, to ensure that water dedicated to fish and wildlife purposes is replaced and provided to water contractors at the lowest cost reasonably achievable, and clarifies the meanings of “anadromous fish” and “reasonable flows.” Under Section 108, if the CVP and SWP are operated consistent with the Bay-Delta Accord, they may operate without additional regard to Endangered Species Act compliance. The bill limits the mitigation measures and adjustments to operating criteria that may be imposed on diversions during water supply shortages. Section 113 amends the San Joaquin River Restoration Settlement Act, noting that the settlement cannot be implemented as originally authorized due to catastrophic species declines, cost estimates that have more than doubled, and scientific assessments that no amount of additional flow in the San Joaquin River will sustain Spring-run Chinook salmon. It provides an alternative settlement option that includes the development and implementation of a warm water fishery program, requiring California and the Secretary of the Interior to determine whether the changes are consistent with the settlement agreement. (See WSW #2252)

Title II sets deadlines for the completion of five feasibility studies relating to the coordinated CALFED surface storage projects in California. It prohibits Wild and Scenic River Act designations from hindering the completion of the proposed Temperance Flat Reservoir Project. It authorizes the Secretary of the Interior to enter agreements with local entities to advance water storage projects, to coordinate with state and local water agencies to conduct geophysical surveys of aquifers to consider the areas of greatest recharge potential, and to partner with state and local water agencies and academics to study ways of enhancing mountain runoff to reservoirs through headwater restoration.

Title III protects the joint operation of the CVP and SWP, and includes protections for California senior water rights holders. Title IV requires an accounting of CVP water supply used for fishery beneficial purposes to fulfill any post-1992 agreements. It limits the volume of water that may be released from Lewiston Dam based on the type of water year (dry versus wet). It requires Interior, in coordination with other federal and state agencies, to publish an annual report on instream flow releases from CVP and SWP, including details about the measured environmental benefit of the releases. Section 405 requires the federal agencies to “recognize Congressional opposition to the violation of private property rights by the California State Water Resources Control Board in their proposal to require a minimum percentage of unimpaired flows in the main tributaries of the San Joaquin River; and recognize the need to provide reliable water supplies to municipal, industrial, and agricultural users across the State.” It also prohibits the use of the \$18M, authorized in section 4010(b) of WIIN Act to carry out activities to benefit endangered species, to acquire land or water already designated for other instream uses or environmental purposes.

Title V incorporates the provisions of the Water Supply Permitting Coordination Act (H.R. 1654), was passed by the House on June 22, by a vote of 233-180. The bill would authorize the Secretary of the Interior to coordinate federal and state permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency. In general, Reclamation would serve as a point of contact for project applicants, State agencies, Indian tribes and others. It would coordinate preparation of unified environmental documentation and coordinate federal agency reviews, beginning with a preapplication meeting to explain applicable processes, data requirements, and submissions necessary to complete required federal agency reviews. Reclamation would establish a schedule and timeframe for agency action, and

consult with the cooperating agencies to set deadlines and a project schedule. Reclamation would also prepare a unified environmental review document, maintain a consolidated administrative record, ensure that all project data is submitted and maintained in generally accessible electronic format (to the extent practicable) and make such data available to cooperating agencies, the project applicant and the public, as well as appoint a project manager. Cooperating agency responsibilities are also detailed.

Title VI, Bureau of Reclamation Project Streamlining Act (H.R. 875), was introduced in the House in February. It is intended to facilitate and streamline the Bureau of Reclamation process for creating or expanding water storage, rural water supply, and water recycling projects under Reclamation law. The bill sets forth provisions governing feasibility studies for surface water storage projects initiated by the Department of the Interior under the Reclamation Act of 1902 (project studies). It requires a project study initiated after enactment of this Act to: (1) result in the completion of a final feasibility report within three years; (2) have a maximum federal cost of \$3 million; and (3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the required review, while eliminating repetitive discussions of the same environmental issues. It delineates factors for extending timelines for complex projects, and sets requirements for Interior to complete reviews for project studies, set meetings, provide information and expedite project study completion, as well as other responsibilities. It also sets requirements for National Environmental Policy Act (NEPA) compliance, sets forth responsibilities of the lead agency, and provides for a reduction of funds for an agency that fails to render such a decision by a specified deadline.

Title VI Directs Interior to: (1) survey the use by the Bureau of categorical exclusions in projects since 2005 and propose a new categorical exclusion for activities if merited, and (2) establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process. It requires Interior to develop and submit an annual Report to Congress on Future Water Project Development that: (1) identifies the project reports, proposed project studies, and proposed modifications to authorized projects and project studies that are related to the missions and authorities of the Bureau of Reclamation, that require specific congressional authorization, that have not been congressionally authorized, that have not been included in any previous annual report, and that, if authorized, could be carried out by the Bureau of Reclamation; (2) provides a description of the benefits to the protection of human life and property, improvements to domestic irrigated water and power supplies, the national economy, the environment, or the national security interests; and (3) for proposed project studies, whether the non-federal interest submitting the proposal has local support and the financial ability to cost-share.

Title VII, the Water Rights Protection Act (H.R. 2939), was reintroduced on June 21. The bill would prohibit the Departments of the Interior and Agriculture from conditioning any permit, lease, or other use agreement on the transfer of any water right to the U.S. Rep. Scott Tipton (R-CO), the sponsor, noted that federal attempts over several decades to manipulate the federal processes “to circumvent long-established state water law and hijack privately-held water rights sounded the alarm for all non-federal water users that rely on these water rights for their livelihood. The Water Rights Protection Act is commonsense legislation that provides certainty by upholding longstanding federal deference to state water law.”

WGA provided testimony on H.R. 2939, stating that, “Nowhere is the need for substantive consultation between states and the federal government more critical than in the water arena.” Consultation requires each federal agency to have a clear and accountable process to provide each state with early, meaningful, and substantive input in the development of regulatory policies with federalism implications. “That process involves communicating with the governor and any state and local representatives the governor designates.”

In a statement summarizing the GROW Act, Representative Valadao said, “Complex and inconsistent system of laws, court decisions, and regulations at the state and federal levels is resulting in the mismanagement of critical water resources throughout the West. The current regulatory framework governing movement and storage of water is based upon outdated science and illogical regulations and is resulting in the misallocation of precious water resources and a lack of adequate water storage. These shortcomings negatively impact local economies across the West, pose an increasing threat to America’s food security, and place undue burdens on our environment.” See https://valadao.house.gov/uploadedfiles/hr23_summary_document.pdf.