

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.**

**S. 2198**

To direct the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency to take actions to provide additional water supplies and disaster assistance to the State of California and other Western States due to drought, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mrs. FEINSTEIN (for herself and  
Ms. MURKOWSKI)

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Emergency Drought Relief Act of 2014”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Emergency projects.

- Sec. 5. Emergency environmental reviews.
- Sec. 6. State revolving funds.
- Sec. 7. Effect on State laws.
- Sec. 8. Termination of authorities.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) as established in the Proclamation of a  
4 State of Emergency issued by the Governor of the  
5 State on January 17, 2014, the State is experi-  
6 encing record dry conditions;

7 (2) extremely dry conditions have persisted in  
8 the State since 2012, and the drought conditions are  
9 likely to persist into the future;

10 (3) the water supplies of the State are at  
11 record-low levels, as indicated by a statewide average  
12 snowpack of 12 percent of the normal average for  
13 winter as of February 1, 2014, and the fact that all  
14 major Central Valley Project reservoir levels are at  
15 or below 50 percent of the capacity of the reservoirs  
16 as of April 1, 2014;

17 (4) the 2013-2014 drought constitutes a serious  
18 emergency posing immediate and severe risks to  
19 human life and safety and to the environment  
20 throughout the State;

21 (5) the emergency requires—

22 (A) immediate and credible action that re-  
23 spects the complexity of the water system of the

1 State and the importance of the water system  
2 to the entire State; and

3 (B) policies that do not pit stakeholders  
4 against one another, which history has shown  
5 only leads to costly litigation that benefits no  
6 one and prevents any real solutions;

7 (6) Federal law (including regulations) directly  
8 authorizes expedited decisionmaking procedures and  
9 environmental and public review procedures to en-  
10 able timely and appropriate implementation of ac-  
11 tions to respond to such a type and severity of emer-  
12 gency; and

13 (7) the serious emergency posed by the 2013-  
14 2014 drought in the State fully satisfies the condi-  
15 tions necessary for the exercise of emergency deci-  
16 sionmaking, analytical, and public review require-  
17 ments under—

18 (A) the Endangered Species Act of 1973  
19 (16 U.S.C. 1531 et seq.);

20 (B) the National Environmental Policy Act  
21 of 1969 (42 U.S.C. 4321 et seq.);

22 (C) water control management procedures  
23 of the Corps of Engineers described in section  
24 222.5 of title 33, Code of Federal Regulations  
25 (including successor regulations); and

1 (D) the Reclamation States Emergency  
2 Drought Relief Act of 1991 (Public Law 102–  
3 250; 106 Stat. 53).

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) CENTRAL VALLEY PROJECT.—The term  
7 “Central Valley Project” has the meaning given the  
8 term in section 3403 of the Central Valley Project  
9 Improvement Act (106 Stat. 4707).

10 (2) KLAMATH PROJECT.—The term “Klamath  
11 Project” means the Bureau of Reclamation project  
12 in the States of California and Oregon, as author-  
13 ized under the Act of June 17, 1902 (32 Stat. 388,  
14 chapter 1093).

15 (3) RECLAMATION PROJECT.—The term “Rec-  
16 lamation Project” means a project constructed pur-  
17 suant to the authorities of the reclamation laws and  
18 whose facilities are wholly or partially located in the  
19 State.

20 (4) SECRETARIES.—The term “Secretaries”  
21 means—

22 (A) the Administrator of the Environ-  
23 mental Protection Agency;

24 (B) the Secretary of Agriculture;

25 (C) the Secretary of Commerce; and

1 (D) the Secretary of the Interior.

2 (5) STATE.—The term “State” means the State  
3 of California.

4 (6) STATE WATER PROJECT.—The term “State  
5 Water Project” means the water project described  
6 by California Water Code section 11550 et seq., and  
7 operated by the California Department of Water Re-  
8 sources.

9 **SEC. 4. EMERGENCY PROJECTS.**

10 (a) WATER SUPPLIES.—

11 (1) IN GENERAL.—In response to the declara-  
12 tion of a state of drought emergency by the Gov-  
13 ernor of the State, the Secretaries shall provide the  
14 maximum quantity of water supplies possible to Cen-  
15 tral Valley Project agricultural, municipal and indus-  
16 trial, and refuge service and repayment contractors,  
17 State Water Project contractors, and any other lo-  
18 cality or municipality in the State, by approving,  
19 consistent with applicable laws (including regula-  
20 tions), projects and operations to provide additional  
21 water supplies as quickly as possible based on avail-  
22 able information to address the emergency condi-  
23 tions.

24 (2) APPLICATION.—Paragraph (1) applies to  
25 projects or operations involving the Klamath Project

1 if the projects or operations would benefit Federal  
2 water contractors in the State.

3 (b) LIMITATION.—Nothing in this section allows  
4 agencies to approve projects—

5 (1) that would otherwise require congressional  
6 authorization; or

7 (2) without following procedures required by  
8 applicable law.

9 (c) ADMINISTRATION.—In carrying out subsection  
10 (a), the Secretaries shall, consistent with applicable laws  
11 (including regulations)—

12 (1) authorize and implement actions to ensure  
13 that the Delta Cross Channel Gates shall remain  
14 open to the greatest extent possible, timed to maxi-  
15 mize the peak flood tide period and provide water  
16 supply and water quality benefits for the duration of  
17 the drought emergency declaration of the State, con-  
18 sistent with operational criteria and monitoring cri-  
19 teria developed pursuant to the California State  
20 Water Resources Control Board's Order Approving a  
21 Temporary Urgency Change in License and Permit  
22 Terms in Response to Drought Conditions, effective  
23 January 31, 2014, or a successor order;

24 (2)(A) collect data associated with the operation  
25 of the Delta Cross Channel Gates described in para-

1 graph (1) and the impact of the operation on species  
2 listed as threatened or endangered under the Endan-  
3 gered Species Act of 1973 (16 U.S.C. 1531 et seq.),  
4 water quality, and water supply; and

5 (B) after assessing the data described in sub-  
6 paragraph (A), require the Director of the National  
7 Marine Fisheries Service to recommend revisions to  
8 operations of the Central Valley Project and the  
9 California State Water Project, including, if appro-  
10 priate, the reasonable and prudent alternatives con-  
11 tained in the biological opinion issued by the Na-  
12 tional Marine Fisheries Service on June 4, 2009,  
13 that are likely to produce fishery, water quality, and  
14 water supply benefits;

15 (3)(A) implement turbidity control strategies  
16 that allow for increased water deliveries while avoid-  
17 ing jeopardy to adult delta smelt (*Hypomesus*  
18 *transpacificus*) due to entrainment at Central Valley  
19 Project and State Water Project pumping plants;  
20 and

21 (B) manage reverse flow in the Old and Middle  
22 Rivers as prescribed by the biological opinions issued  
23 by the United States Fish and Wildlife Service on  
24 December 15, 2008, for Delta smelt and by the Na-  
25 tional Marine Fisheries Service on June 4, 2009, for

1 salmonids, to minimize water supply reductions for  
2 the Central Valley Project and the State Water  
3 Project;

4 (4) adopt a 1:1 inflow to export ratio for the in-  
5 creased flow of the San Joaquin River, as measured  
6 as a 3-day running average at Vernalis during the  
7 period from April 1 through May 31, resulting from  
8 voluntary transfers and exchanges of water supplies,  
9 among other purposes;

10 (5) issue all necessary permit decisions under  
11 the authority of the Secretaries within 30 days of re-  
12 ceiving a completed application by the State to place  
13 and use temporary barriers or operable gates in  
14 Delta channels to improve water quantity and qual-  
15 ity for State Water Project and Central Valley  
16 Project South of Delta water contractors and other  
17 water users, which barriers or gates should provide  
18 benefits for species protection and in-Delta water  
19 user water quality and shall be designed such that  
20 formal consultations under section 7 of the Endan-  
21 gered Species Act of 1973 (16 U.S.C. 1536) would  
22 not be necessary;

23 (6)(A) require the Director of the United States  
24 Fish and Wildlife Service and the Commissioner of  
25 the Bureau of Reclamation to complete all require-

1       ments under the National Environmental Policy Act  
2       of 1969 (42 U.S.C. 4321 et seq.) and the Endan-  
3       gered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
4       necessary to make final permit decisions on water  
5       transfer requests associated with voluntarily  
6       fallowing nonpermanent crops in the State, within  
7       30 days of receiving such a request; and

8               (B) require the Director of the United States  
9       Fish and Wildlife Service to allow any water transfer  
10      request associated with fallowing to maximize the  
11      quantity of water supplies available for nonhabitat  
12      uses as long as the fallowing and associated water  
13      transfer are in compliance with applicable Federal  
14      laws (including regulations);

15             (7) participate in, issue grants, or otherwise  
16      provide funding for, as soon as practicable after the  
17      date of enactment of this Act, under existing author-  
18      ity available to the Secretary of the Interior, pilot  
19      projects to increase water in reservoirs in regional  
20      river basins experiencing extreme, exceptional, or  
21      sustained drought that have a direct impact on the  
22      water supply of the State, including the Colorado  
23      River Basin, provided that any participation, grant,  
24      or funding by the Secretary with respect to the

1 Upper Division shall be with or to the respective  
2 State;

3 (8) maintain all rescheduled water supplies held  
4 in the San Luis Reservoir and Millerton Reservoir  
5 for all water users for delivery in the immediately  
6 following contract water year unless precluded by  
7 reservoir storage capacity limitations;

8 (9) to the maximum extent possible based on  
9 the availability of water and without causing land  
10 subsidence or violating water quality standards—

11 (A) meet the contract water supply needs  
12 of Central Valley Project refuges through the  
13 improvement or installation of water conserva-  
14 tion measures, water conveyance facilities, and  
15 wells to use groundwater resources, which ac-  
16 tivities may be accomplished by using funding  
17 made available under the Water Assistance Pro-  
18 gram or the WaterSMART program of the De-  
19 partment of the Interior; and

20 (B) make a quantity of Central Valley  
21 Project surface water obtained from the meas-  
22 ures implemented under subparagraph (A)  
23 available to Central Valley Project contractors;

24 (10) in coordination with the Secretary of Agri-  
25 culture, enter into an agreement with the National

1 Academy of Sciences to conduct a comprehensive  
2 study, to be completed not later than 1 year after  
3 the date of enactment of this Act, on the effective-  
4 ness and environmental impacts of saltcedar biologi-  
5 cal control efforts on increasing water supplies and  
6 improving riparian habitats of the Colorado River  
7 and its principal tributaries, in the State and else-  
8 where;

9 (11) make any WaterSMART grant funding al-  
10 located to the State available on a priority and expe-  
11 dited basis for projects in the State that—

12 (A) provide emergency drinking and mu-  
13 nicipal water supplies to localities in a quantity  
14 necessary to meet minimum public health and  
15 safety needs;

16 (B) prevent the loss of permanent crops;

17 (C) minimize economic losses resulting  
18 from drought conditions; or

19 (D) provide innovative water conservation  
20 tools and technology for agriculture and urban  
21 water use that can have immediate water sup-  
22 ply benefits;

23 (12) implement offsite upstream projects in the  
24 Delta and upstream Sacramento River and San Joa-  
25 quin basins, in coordination with the California De-

1 department of Water Resources and the California De-  
2 partment of Fish and Wildlife, that offset the effects  
3 on species listed as threatened or endangered under  
4 the Endangered Species Act of 1973 (16 U.S.C.  
5 1531 et seq.) due to actions taken under this Act;  
6 and

7 (13) use all available scientific tools to identify  
8 any changes to real-time operations of Bureau of  
9 Reclamation, State and local water projects that  
10 could result in the availability of additional water  
11 supplies.

12 (d) OTHER AGENCIES.—To the extent that a Federal  
13 agency other than agencies headed by the Secretaries has  
14 a role in approving projects described in subsections (a)  
15 and (c), this section shall apply to those Federal agencies.

16 (e) ACCELERATED PROJECT DECISION AND ELE-  
17 VATION.—

18 (1) IN GENERAL.—Upon the request of the  
19 State, the heads of Federal agencies shall use the  
20 expedited procedures under this subsection to make  
21 final decisions relating to a Federal project or oper-  
22 ation to provide additional water supplies or address  
23 emergency drought conditions pursuant to sub-  
24 sections (a) and (c).

25 (2) REQUEST FOR RESOLUTION.—

1           (A) IN GENERAL.—Upon the request of  
2           the State, the head of an agency referred to in  
3           subsection (a), or the head of another Federal  
4           agency responsible for carrying out a review of  
5           a project, as applicable, the Secretary of the In-  
6           terior shall convene a final project decision  
7           meeting with the heads of all relevant Federal  
8           agencies to decide whether to approve a project  
9           to provide emergency water supplies.

10           (B) MEETING.—The Secretary of the Inte-  
11           rior shall convene a meeting requested under  
12           subparagraph (A) not later than 7 days after  
13           receiving the meeting request.

14           (3) NOTIFICATION.—Upon receipt of a request  
15           for a meeting under this subsection, the Secretary of  
16           the Interior shall notify the heads of all relevant  
17           Federal agencies of the request, including the  
18           project to be reviewed and the date for the meeting.

19           (4) DECISION.—Not later than 10 days after  
20           the date on which a meeting is requested under  
21           paragraph (2), the head of the relevant Federal  
22           agency shall issue a final decision on the project.

23           (5) MEETING CONVENED BY SECRETARY.—The  
24           Secretary of the Interior may convene a final project  
25           decision meeting under this subsection at any time,

1 at the discretion of the Secretary, regardless of  
2 whether a meeting is requested under paragraph (2).

3 **SEC. 5. EMERGENCY ENVIRONMENTAL REVIEWS.**

4 To minimize the time spent carrying out environ-  
5 mental reviews and to deliver water quickly that is needed  
6 to address emergency drought conditions in the State, the  
7 head of each applicable Federal agency shall, in carrying  
8 out this Act, consult with the Council on Environmental  
9 Quality in accordance with section 1506.11 of title 40,  
10 Code of Federal Regulations (including successor regula-  
11 tions) to develop alternative arrangements to comply with  
12 the National Environmental Policy Act of 1969 (42 U.S.C.  
13 4321 et seq.) during the emergency.

14 **SEC. 6. STATE REVOLVING FUNDS.**

15 (a) IN GENERAL.—The Administrator of the Envi-  
16 ronmental Protection Agency, in allocating amounts for  
17 each of the fiscal years during which the emergency  
18 drought declaration of the State is in force to State water  
19 pollution control revolving funds established under title VI  
20 of the Federal Water Pollution Control Act (33 U.S.C.  
21 1381 et seq.) and the State drinking water treatment re-  
22 volving loan funds established under section 1452 of the  
23 Safe Drinking Water Act (42 U.S.C. 300j–12), shall, for  
24 those projects that are eligible to receive assistance under  
25 section 603 of the Federal Water Pollution Control Act

1 (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drink-  
2 ing Water Act (42 U.S.C. 300j–12(a)(2)), respectively,  
3 that the State determines will provide additional water  
4 supplies most expeditiously to areas that are at risk of  
5 having an inadequate supply of water for public health and  
6 safety purposes or to improve resiliency to drought—

7 (1) require the State to review and prioritize  
8 funding for such projects;

9 (2) issue a determination of waivers within 30  
10 days of the conclusion of the informal public com-  
11 ment period pursuant to section 436(c) of title IV of  
12 division G of Public Law 113–76; and

13 (3) authorize, at the request of the State, 40-  
14 year financing for assistance under section  
15 603(d)(2) of the Federal Water Pollution Control  
16 Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of  
17 the Safe Drinking Water Act (42 U.S.C. 300j–  
18 12(f)(2)).

19 (b) EFFECT OF SECTION.—Nothing in this section  
20 authorizes the Administrator of the Environmental Pro-  
21 tection Agency to modify any funding allocation, funding  
22 criteria, or other requirement relating to State water pol-  
23 lution control revolving funds established under title VI  
24 of the Federal Water Pollution Control Act (33 U.S.C.  
25 1381 et seq.) and the State drinking water treatment re-

1 volving loan funds established under section 1452 of the  
2 Safe Drinking Water Act (42 U.S.C. 300j-12) for any  
3 other State.

4 **SEC. 7. EFFECT ON STATE LAWS.**

5 Nothing in this Act preempts any State law in effect  
6 on the date of enactment of this Act, including area of  
7 origin and other water rights protections.

8 **SEC. 8. TERMINATION OF AUTHORITIES.**

9 The authorities under section 4(a), paragraphs (1)  
10 through (6) of section 4(c), paragraphs (8) and (9) of sec-  
11 tion 4(c), paragraphs (11) through (13) of section 4(c),  
12 section 5, and section 6 permanently expire on the date  
13 on which the Governor of the State suspends the state of  
14 drought emergency declaration.