

103^D CONGRESS
1ST SESSION

H. R. 2963

To authorize the Secretary of the Interior to cooperate and assist in environmental and other studies and to execute and implement a contract for the design, construction, operation, and maintenance of facilities in the South Delta, California, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. LEHMAN (for himself, Mr. POMBO, and Mr. CONDIT) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To authorize the Secretary of the Interior to cooperate and assist in environmental and other studies and to execute and implement a contract for the design, construction, operation, and maintenance of facilities in the South Delta, California, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AUTHORIZATION.**

4 Subject to section 2 and in accordance with the provi-
5 sions of this Act, the Secretary of the Interior is author-
6 ized and directed to execute and implement the “Contract
7 Among the United States Bureau of Reclamation, the

1 California Department of Water Resources, and the South
2 Delta Water Agency” dated August 28, 1990 (hereafter
3 in this Act referred to as the “contract”).

4 **SEC. 2. IMPLEMENTATION OF THE CONTRACT.**

5 (a) CONDITIONS.—The Secretary of the Interior
6 (hereafter in this Act referred to as the “Secretary”) may
7 not implement the construction of permanent barriers pur-
8 suant to the contract until after the following:

9 (1) ENVIRONMENTAL STUDIES.—A final envi-
10 ronmental impact statement and environmental im-
11 pact report is prepared pursuant to the provisions of
12 the National Environmental Policy Act of 1969 and
13 the California Environmental Quality Act and is cer-
14 tified by the appropriate lead agencies, and, if nec-
15 essary, the permanent barriers are modified or the
16 contract amended to address issues identified as
17 part of the environmental review process.

18 (2) TESTING PROGRAM.—Notwithstanding any
19 other provision of the contract, the testing program
20 called for in the contract is continued for a period
21 determined by the Secretary to be sufficient to es-
22 tablish, from analysis of the testing data, that the
23 South Delta barrier facilities are likely to have the
24 desired water level, circulation, and quality results
25 anticipated at the time the contract was negotiated.

1 (b) APPLICABLE LAWS; MONITORING PROGRAM.—
2 Construction, operation, and maintenance of the tem-
3 porary South Delta barrier facilities associated with the
4 testing program referred to in subsection (a)(2) shall be
5 in accordance with all applicable laws and regulations. The
6 Secretary shall develop an environmental monitoring pro-
7 gram with the assistance of and in coordination with the
8 California Department of Fish and Game, the California
9 Department of Water Resources, the United States Fish
10 and Wildlife Service, and the National Marine Fisheries
11 Service, which shall be in place during construction, oper-
12 ation, and maintenance of the temporary barrier facilities.

13 (c) INTERIM FLOWS.—The interim water flows pro-
14 vided for in the contract shall not limit any existing or
15 future obligation of the Secretary to provide additional
16 instream flow releases from New Melones Reservoir for
17 fish and wildlife purposes or other environmental pur-
18 poses. This subsection does not create any new or addi-
19 tional authority that is or may otherwise be provided
20 under applicable law. To the extent possible, water flows
21 provided under the contract and for fishery purposes shall
22 be released on a schedule which maximizes the efficiency
23 of use of water allocated for water quality and fishery ben-
24 efits and shall be made in coordination with the California
25 Department of Fish and Game.

1 (d) COMPATIBILITY WITH OLD RIVER BARRIER.—
2 The Secretary shall determine whether the barrier at the
3 head of the Old River in the Sacramento/San Joaquin
4 Delta, authorized in section 3406(b)(15) of the Central
5 Valley Project Improvement Act (106 Stat. 4719), can be
6 constructed and operated in a manner compatible with the
7 South Delta barriers called for in the contract and wheth-
8 er the barrier facilities in the contract are likely to have
9 the desired water level, circulation, and quality results an-
10 ticipated at the time the contract was negotiated.

11 (e) CONTRACT AMENDMENTS.—

12 (1) REQUIRED BY ENVIRONMENTAL ANALY-
13 SIS.—If necessary, the contract shall be amended to
14 incorporate the changes required by the results from
15 the environmental and other studies and testing re-
16 ferred to in this section. Any such amendment shall
17 not increase the payment obligations of the South
18 Delta Water Agency.

19 (2) SAN JOAQUIN RIVER WATER QUANTITY AND
20 QUALITY.—In negotiating the contract amendment
21 in accordance with Article 4.b. of the contract, the
22 Secretary shall consider—

23 (A) the activities and recommendations of
24 other programs for the improvement of flows
25 and reduction of salinity and toxic trace ele-

1 ment discharges and concentrations in the San
2 Joaquin River Basin for fish and wildlife and
3 other purposes and for the attainment of all ap-
4 plicable water quality standards, including
5 nondegradation requirements; and

6 (B) recommendations contained in the
7 final report of the San Joaquin Valley Drainage
8 Program dated September 1990.

9 (3) MINIMIZED ALTERATION OF ACTIVITIES
10 AND RECOMMENDATIONS.—The Secretary shall at-
11 tempt to minimize any necessary alteration required
12 by the contract amendment of the activities and rec-
13 ommendations referred to in paragraph (2).

14 **SEC. 3. COSTS.**

15 (a) ALLOCATION.—

16 (1) IN GENERAL.—Except as provided by sub-
17 section (b), the costs of implementing the contract
18 authorized by section 1 shall be allocated among the
19 United States, the California Department of Water
20 Resources, and the South Delta Water Agency in ac-
21 cordance with the provisions of Article 6 of the con-
22 tract.

23 (2) LIMITATION ON EXPENDITURES BY UNITED
24 STATES.—In no event shall expenditures made by
25 the United States for construction exceed 50 percent

1 of the actual construction costs incurred pursuant to
2 Article 6 of the contract.

3 (3) EFFECT OF AVAILABILITY OF CERTAIN
4 FUNDS.—In the event that funds become available
5 from the California State General Fund, from relat-
6 ed water development mitigation agreements, or as
7 the result of legislation enacted providing for (A) re-
8 imbursement of the incremental costs of the facilities
9 attributable to changes in design or construction for
10 the benefit of fisheries or navigation, or (B) the
11 mitigation of impacts caused by other upstream
12 water users or waste dischargers, such funds shall
13 be applied to the overall cost of implementing the
14 contract, thereby evenly reducing the shares paid by
15 the United States and the California Department of
16 Water Resources.

17 (4) OPERATION AND MONITORING COSTS.—The
18 costs incurred by the United States for operation
19 and maintenance, including monitoring, shall not ex-
20 ceed 50 percent of the actual operation and mainte-
21 nance costs.

22 (5) ALLOCATION OF UNITED STATES COSTS.—
23 The costs incurred by the United States for con-
24 struction and for operation and maintenance shall be
25 allocated by the Secretary among the reimbursable

1 and nonreimbursable purposes of the Central Valley
2 Project for purposes of repayment in accordance
3 with the Federal reclamation laws (Act of June 17,
4 1902 (32 Stat. 388), and Acts supplementary there-
5 to and amendatory thereof).

6 (6) PAYMENTS BY SOUTH DELTA WATER AGEN-
7 CY.—Any payment to the United States made by the
8 South Delta Water Agency pursuant to Article 6.f.
9 of the contract shall be used for the further imple-
10 mentation of the contract.

11 (b) COSTS ASSOCIATED WITH BARRIER AT HEAD OF
12 OLD RIVER.—Notwithstanding subsection (a), the costs
13 associated with the barrier at the head of Old River shall
14 be consistent with section 3406(b)(15) of the Central
15 Valley Project Improvement Act (106 Stat. 4719).

16 (c) TREATMENT OF COSTS INCURRED.—The costs
17 incurred with respect to items covered by the contract,
18 both before and after the date of execution of the contract,
19 including interest, shall be included in the total for the
20 purposes of determining the share of the United States
21 of construction, operation, and maintenance costs.

22 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) ENVIRONMENTAL, TESTING, AND CONSTRUC-
24 TION.—There is authorized to be appropriated—

1 (1) \$30,000,000 for the share of the costs of
2 the United States pursuant to Article 6 of the con-
3 tract, including environmental, testing, construction,
4 and repayment of the share of the United States of
5 past costs incurred by the State of California in de-
6 veloping the program set forth in the contract; and

7 (2) such sums as may be necessary for oper-
8 ation and maintenance.

9 (b) CONTRACT AMENDMENT.—There is authorized to
10 be appropriated such funds as are necessary to negotiate
11 an amendment to the contract in accordance with Article
12 4.b. of the contract. Nothing in this Act provides author-
13 ization for implementation of any amendment negotiated
14 pursuant to Article 4.b. of the contract that is not other-
15 wise authorized.

16 (c) AVAILABILITY.—Appropriations pursuant to this
17 Act are authorized to remain available until expended
18 without any fiscal year limitation but appropriations for
19 construction of permanent barriers may not be expended
20 until the conditions set forth in section 2(a) are completed.

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