

Union Calendar No. 309

110TH CONGRESS
2^D SESSION

H. R. 29

[Report No. 110-503, Part I]

To authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mr. ISSA introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 19, 2007

Reported from the Committee on Natural Resources

DECEMBER 19, 2007

Referral to the Committee of the Armed Services extended for a period ending not later than January 15, 2008

JANUARY 15, 2008

Committee on Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic,

military, and other uses from the Santa Margarita River, 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. DEFINITIONS.**

4 For the purposes of this Act, the following definitions
 5 apply:

6 (1) DISTRICT.—The term “District” means the
 7 Fallbrook Public Utility District, San Diego County,
 8 California.

9 (2) PROJECT.—The term “Project” means the
 10 impoundment, recharge, treatment, and other facili-
 11 ties the construction, operation, watershed manage-
 12 ment, and maintenance of which is authorized under
 13 section 2.

14 (3) SECRETARY.—The term “Secretary” means
 15 the Secretary of the Interior, unless otherwise stat-
 16 ed.

17 **SEC. 2. AUTHORIZATION FOR CONSTRUCTION OF SANTA**
 18 **MARGARITA RIVER PROJECT.**

19 (a) AUTHORIZATION.—The Secretary, acting pursu-
 20 ant to the Federal reclamation laws (Act of June 17,
 21 1902; 32 Stat. 388), and Acts amendatory thereof or sup-
 22 plementary thereto, as far as those laws are not incon-
 23 sistent with the provisions of this Act, is authorized to

1 construct, operate, and maintain the Project substantially
2 in accordance with the final feasibility report and this Act.

3 (b) CONDITIONS.—The Secretary may construct the
4 Project only after the Secretary determines that the fol-
5 lowing conditions have occurred:

6 (1) The District and the Navy have entered
7 into contracts under sections 9(c)2 and 9(e) of the
8 Reclamation Project Act of 1939 to repay to the
9 United States equitable and appropriate portions, as
10 determined by the Secretary, of the actual costs of
11 constructing, operating, and maintaining the
12 Project.

13 (2) The officer or agency of the State of Cali-
14 fornia authorized by law to grant permits for the ap-
15 propriation of water has granted such permits to the
16 Bureau of Reclamation for the benefit of the De-
17 partment of the Navy and the District as permittees
18 for rights to the use of water for storage and diver-
19 sion as provided in this Act, including approval of all
20 requisite changes in points of diversion and storage,
21 and purposes and places of use.

22 (3) The District has agreed that it will not as-
23 sert against the United States any prior appropria-
24 tive right the District may have to water in excess
25 of the quantity deliverable to it under this Act, and

1 will share in the use of the waters impounded by the
2 Project on the basis of equal priority and in accord-
3 ance with the ratio prescribed in section 4(b). This
4 agreement and waiver and the changes in points of
5 diversion and storage under paragraph (2), shall be-
6 come effective and binding only when the Project
7 has been completed and put into operation and may
8 be varied by agreement between the District and the
9 Secretary of the Navy.

10 (4) The Secretary has determined that the
11 Project has economic, environmental, and engineer-
12 ing feasibility.

13 **SEC. 3. COSTS.**

14 Upon completion of the construction of the Project,
15 the Department of the Navy shall be responsible to repay
16 to the Secretary only that portion of the construction, op-
17 eration and maintenance costs of the Project that the Sec-
18 retary and the Secretary of the Navy determine reflects
19 the extent to which the Department of the Navy benefits
20 from the Project. Provided that the Secretary is hereby
21 authorized to enter into a contract with the Secretary of
22 the Navy for the impounding, storage, treatment, and car-
23 riage of prior rights water for domestic, municipal, fish
24 and wildlife, industrial and other beneficial purposes using
25 Project facilities.

1 **SEC. 4. OPERATION; YIELD ALLOTMENT; DELIVERY.**

2 (a) OPERATION.—The operation of the Project, sub-
3 ject to a memorandum of agreement between the Sec-
4 retary, the Navy, and the District and under regulations
5 satisfactory to the Secretary of the Navy with respect to
6 the Navy's share of the project, may be by the Secretary,
7 the District, or a third party consistent with section 6.

8 (b) YIELD ALLOTMENT.—Except as otherwise agreed
9 between the parties, the Department of the Navy and the
10 District shall participate in the Project yield on the basis
11 of equal priority and in accordance with the following
12 ratio:

13 (1) 60 percent of the Project's yield is allotted
14 to the Secretary of the Navy.

15 (2) 40 percent of the Project's yield is allotted
16 to the District.

17 (c) CONTRACTS FOR DELIVERY OF EXCESS
18 WATER.—

19 (1) EXCESS WATER AVAILABLE TO OTHER PER-
20 SONS.—If the Secretary of the Navy certifies to the
21 official agreed upon to administer the Project that
22 the Department of the Navy does not have imme-
23 diate need for any portion of the 60 percent of the
24 Project's yield allotted to the Secretary of the Navy
25 under subsection (b), the official may enter into tem-

1 porary contracts for the sale and delivery of the ex-
2 cess water.

3 (2) FIRST RIGHT FOR EXCESS WATER.—The
4 first right to excess water to be made available
5 under paragraph (1) shall be given the District, if
6 otherwise consistent with the laws of the State of
7 California.

8 (3) CONDITION OF CONTRACTS.—Each contract
9 entered into under paragraph (1) for the sale and
10 delivery of excess water shall include a condition
11 that the Secretary of the Navy has the right to de-
12 mand that water, without charge and without obliga-
13 tion on the part of the United States, after 30 days
14 notice.

15 (4) MODIFICATION OF RIGHTS AND OBLIGA-
16 TIONS.—The rights and obligations of the United
17 States and the District regarding the ratio,
18 amounts, definition of Project yield, and payment
19 for excess water may be modified by an agreement
20 between the parties.

21 (d) CONSIDERATION.—

22 (1) DEPOSIT OF FUNDS.—Moneys paid to the
23 United States under a contract entered into under
24 subsection (c) shall be deposited in the special ac-
25 count established for the Department of the Navy

1 under paragraph (1) of section 2667(d) of title 10,
2 United States Code, and shall be available for the
3 purposes specified in subparagraph (C) of such
4 paragraph. Subparagraph (D) of such paragraph
5 shall not apply to moneys deposited in the special
6 account pursuant to this subsection.

7 (2) IN-KIND CONSIDERATION.—In lieu of mone-
8 tary consideration under paragraph (1), or in addi-
9 tion to such consideration, the Secretary of the Navy
10 may accept in-kind consideration in a form and
11 quantity that is acceptable to the Secretary of the
12 Navy, including the following forms of in-kind con-
13 sideration:

14 (A) Maintenance, protection, alteration, re-
15 pair, improvement, or restoration (including en-
16 vironmental restoration) of property or facilities
17 of the Department of the Navy.

18 (B) Construction of new facilities for the
19 Department of the Navy.

20 (C) Provision of facilities for use by the
21 Department of the Navy.

22 (D) Facilities operation support for the
23 Department of the Navy.

24 (E) Provision of such other services as the
25 Secretary of the Navy considers appropriate.

1 (3) RELATION TO OTHER LAWS.—Sections
2 2662 and 2802 of title 10, United States Code, shall
3 not apply to any new facilities whose construction is
4 accepted as in-kind consideration under this sub-
5 section.

6 (4) CONGRESSIONAL NOTIFICATION.—If the in-
7 kind consideration proposed to be provided under a
8 contract to be entered into under subsection (c) has
9 a value in excess of \$500,000, the contract may not
10 be entered into until the earlier of the following:

11 (A) The end of the 30-day period begin-
12 ning on the date on which a report describing
13 the contract and the form and quantity of the
14 in-kind consideration is submitted by the Sec-
15 retary of the Navy to the Committee on Armed
16 Services of the Senate and the Committee on
17 Armed Services of the House of Representa-
18 tives.

19 (B) The end of the 14-day period begin-
20 ning on the date on which a copy of the report
21 referred to in subparagraph (A) is provided in
22 an electronic medium pursuant to section 480
23 of title 10, United States Code.

1 **SEC. 5. REPAYMENT OBLIGATION OF THE DISTRICT.**

2 (a) IN GENERAL.—The general repayment obligation
3 of the District shall be determined by the Secretary of the
4 Interior consistent with sections 9(c)2 and 9(e) of the Rec-
5 lamation Project Act of 1939 to repay to the United
6 States equitable and appropriate portions, as determined
7 by the Secretary, of the actual costs of constructing, oper-
8 ating, and maintaining the Project; provided, however,
9 that for the purposes of calculating interest and deter-
10 mining the time when the District’s repayment obligation
11 to the United States commences, the pumping and treat-
12 ment of groundwater from the Project shall be deemed
13 equivalent to the first use of water from a water storage
14 project. There shall be no repayment obligation under this
15 section for water delivered to the District under a contract
16 as provided in section 4(c).

17 (b) MODIFICATION OF RIGHTS AND OBLIGATION BY
18 AGREEMENT.—The rights and obligations of the United
19 States and the District regarding the repayment obliga-
20 tion of the District may be modified by an agreement be-
21 tween the parties.

22 **SEC. 6. TRANSFER OF CARE, OPERATION, AND MAINTENANCE.**
23

24 The Secretary may transfer to the District, or a mu-
25 tually agreed upon third party, the care, operation, and
26 maintenance of the Project under conditions satisfactory

1 to the Secretary and the District, and with respect to the
2 portion of the Project that is located within the boundaries
3 of Camp Pendleton, satisfactory also to the Secretary of
4 the Navy. If such a transfer takes place, the District shall
5 be entitled to an equitable credit for the costs associated
6 with the Secretary's proportionate share of the operation
7 and maintenance of the Project. The amount of such costs
8 shall be applied against the indebtedness of the District
9 to the United States.

10 **SEC. 7. SCOPE OF ACT.**

11 For the purpose of this Act, the basis, measure, and
12 limit of all rights of the United States pertaining to the
13 use of water shall be the laws of the State of California.
14 Provided that nothing in this Act shall be construed—

15 (1) as a grant or a relinquishment by the
16 United States of any rights to the use of water that
17 it acquired according to the laws of the State of
18 California, either as a result of its acquisition of the
19 lands comprising Camp Joseph H. Pendleton and
20 adjoining naval installations, and the rights to the
21 use of water as a part of that acquisition, or through
22 actual use or prescription or both since the date of
23 that acquisition, if any;

1 (2) to create any legal obligation to store any
2 water in the Project, to the use of which the United
3 States has such rights;

4 (3) to require the division under this Act of
5 water to which the United States has such rights; or

6 (4) to constitute a recognition of, or an admis-
7 sion by the United States that, the District has any
8 rights to the use of water in the Santa Margarita
9 River, which rights, if any, exist only by virtue of
10 the laws of the State of California.

11 **SEC. 8. LIMITATIONS ON OPERATION AND ADMINISTRA-**
12 **TION.**

13 Unless otherwise agreed by the Secretary of the
14 Navy, the Project—

15 (1) shall be operated in a manner which allows
16 the free passage of all of the water to the use of
17 which the United States is entitled according to the
18 laws of the State of California either as a result of
19 its acquisition of the lands comprising Camp Joseph
20 H. Pendleton and adjoining naval installations, and
21 the rights to the use of water as a part of those ac-
22 quisitions, or through actual use or prescription, or
23 both, since the date of that acquisition, if any; and

24 (2) shall not be administered or operated in any
25 way which will impair or deplete the quantities of

1 water the use of which the United States would be
2 entitled under the laws of the State of California
3 had the Project not been built.

4 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

5 There is authorized to be appropriated, out of any
6 money in the Treasury of the United States not otherwise
7 appropriated, the following—

8 (1) \$60,000,000 (the current estimated con-
9 struction cost of the Project, plus or minus such
10 amounts as may be indicated by the engineering cost
11 indices for this type of construction); and

12 (2) such sums as may be required to operate
13 and maintain the said project.

14 **SEC. 10. REPORTS TO CONGRESS.**

15 Not later than 1 year after the date of the enactment
16 of this Act and periodically thereafter, the Secretary and
17 the Secretary of the Navy shall each report to the Con-
18 gress regarding if the conditions specified in section 2(b)
19 have been met and if so, the details of how they were met.

20 **SEC. 11. SUNSET.**

21 The authority of the Secretary to complete construc-
22 tion of the Project shall terminate 10 years after the date
23 of enactment of this Act.

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