

SAN LUIS UNIT DRAINAGE RESOLUTION ACT

OCTOBER 16, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1769]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1769) to affirm an agreement between the United States and Westlands Water District dated September 15, 2015, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “San Luis Unit Drainage Resolution Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Approval of agreement.
- Sec. 4. Relief from drainage obligation.
- Sec. 5. Drainage implementation.
- Sec. 6. Water delivery contracts.
- Sec. 7. Repayment obligations.
- Sec. 8. Transfer of title to certain facilities.
- Sec. 9. Compliance with applicable law.
- Sec. 10. No water supply or financial impacts on other Central Valley Project contractors.
- Sec. 11. Restoration Fund payments by Westlands Water District.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) **CENTRAL VALLEY PROJECT IMPROVEMENT ACT OF 1992 DEFINITIONS.**—As used herein, the terms “repayment contractor”, “water service contractor”, “water service contract”, “exchange contractor”, “exchange contract”, “water

rights settlement contractor”, “water rights settlement contract”, “refuge contractor”, and “refuge contract” shall have the same meanings respectively as each of those terms has in title XXXIV of the Central Valley Project Improvement Act of 1992 (106 Stat. 4706).

(2) **CONDITION OF SHORTAGE.**—The term “Condition of Shortage” means “Condition of Shortage” as that term is defined in existing San Luis Unit water service contracts.

(3) **CONTRACTING OFFICER.**—The term “Contracting Officer” means “Contracting Officer” as that term is defined in existing San Luis Unit water service contracts.

(4) **PROJECT.**—The term “Project” means the Central Valley Project, owned by the United States and managed by the Department of the Interior, Bureau of Reclamation.

(5) **PROJECT WATER.**—The term “Project Water” means all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law.

(6) **REPAYMENT CONTRACT.**—The term “repayment contract” means the repayment contract converted under section 6(a).

(7) **SAN LUIS ACT.**—The term “San Luis Act” means the Act of June 3, 1960 (Public Law 86–488), and all Acts amendatory thereof and supplementary thereto.

(8) **SAN LUIS UNIT.**—The term “San Luis Unit” means those lands identified in section 1 of the San Luis Act.

(9) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(10) **WESTLANDS AGREEMENT.**—The term “Westlands Agreement” means the “Agreement between the United States and Westlands Water District August 2015”, signed September 15, 2015.

(11) **WESTLANDS.**—The term “Westlands” means the Westlands Water District (including Broadview Water District lands annexed within Westlands Water District) located in Fresno and Kings Counties, California.

### **SEC. 3. APPROVAL OF AGREEMENT.**

Notwithstanding any other provision of law, unless otherwise specified herein, the Westlands Agreement is approved and the Secretary is hereby directed to implement the terms and conditions of the Westlands Agreement.

### **SEC. 4. RELIEF FROM DRAINAGE OBLIGATION.**

The San Luis Act is amended as follows:

(1) In the second sentence of section 1(a) after the words “related facilities,”, strike “but” and add “but such features do not include distribution systems or drains within Westlands, and”.

(2) In the sixth sentence of section 1(a), by inserting the following at the end of the sentence before the period: “, except that the provision of drainage or drainage service under section 1(a) shall not apply to lands within Westlands”.

(3) In section 5, by striking the first sentence and inserting “Notwithstanding any other provision of law, the Secretary of the Interior shall have no duty to provide drainage or drainage service to Westlands. Westlands shall be responsible for the management of drainage water within its boundaries, in accordance with Federal and California law consistent with the ‘Agreement between the United States and Westlands Water District August 2015’, signed September 15, 2015.”.

(4) In the first sentence of section 8 by striking the words “other than distribution systems and drains,”.

(5) In the third sentence of section 8, strike everything between the word “required” through and including “(b)”, inserting a period following the word “unit”, and striking the remainder of the proviso in section 8.

### **SEC. 5. DRAINAGE IMPLEMENTATION.**

Upon enactment of this Act, and as provided in the Westlands Agreement, Westlands shall assume all legal responsibility for the management of drainage water within its boundaries in accordance with Federal and California law, provided that Westlands shall not discharge drainage water outside of its boundaries.

### **SEC. 6. WATER DELIVERY CONTRACTS.**

(a) **CONTRACT CONVERSION.**—The Secretary shall convert Westlands’ existing long-term or interim renewal water service contracts entered into under section 9(e) of the Act of August 4, 1939 (53 Stat. 1196), to a repayment contract under sections 9(d) and 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195, 1194), consistent with the Westlands Agreement. Such contract shall continue so long as Westlands fulfills its obligations under the contract.

**(b) ALLOCATION DECISIONS.—**

(1) Notwithstanding subsection (a) and as provided in the Westlands Agreement, the Secretary shall make allocation decisions in the Project affecting Westlands consistent with the requirements of all current or future enacted Federal law including, but not limited, to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), Reclamation law, and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the Central Valley Project.

(2) Conversion of Westlands' contracts in subsection (a) shall not afford Westlands a greater or lesser right to an annual allocation of Project Water than it had prior to the conversion of its contract under this Act.

(3) If there is a Condition of Shortage in the amount of water available for delivery to Westlands because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations, no liability shall accrue against the United States or any of its officers, agents or employees for any damage, direct or indirect, arising therefrom.

**(c) WATER SERVICE CONTRACT FOR LEMOORE NAVAL AIR STATION.—**

(1) The Secretary shall enter into a contract under section 9(d) and 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195, 1194), with the Secretary of the Navy for the delivery of Project Water to the Lemoore Naval Air Station to meet the needs, as determined under paragraph (2), of Lemoore Naval Air Station, and all associated remaining repayment obligations owing to the United States on the date of enactment of this Act are discharged, and the Secretary shall certify that the lands within the Lemoore Naval Air Station are free from the ownership and full cost pricing limitations of Federal Reclamation law. Such contract shall continue so long as the Secretary of the Navy pays all applicable charges consistent with applicable law.

(2) The contract amount of Project Water made available to the Lemoore Naval Air Station under the contract entered into pursuant to paragraph (1) shall be determined by the Secretary through technical analysis in cooperation with the Lemoore Naval Air Station.

(3) In any year in which there may occur a Condition of Shortage in the amount of water available for delivery, the Contracting Officer shall allocate the available Project Water to Lemoore Naval Air Station in the same percentage as allocated to municipal and industrial water service contractors in the San Luis Unit of the Project.

**SEC. 7. REPAYMENT OBLIGATIONS.**

(a) **SUSPENSION OF CAPITAL OBLIGATION.**—Upon enactment of this Act, Westlands' capital repayment obligation and payments under its existing water service contracts and the April 1, 1965, repayment contract between the United States and Westlands (contract numbered 14-06-200-2020-A) as further defined in subsection (d), shall be suspended until the execution of the section 9(d) repayment contract referenced in section 6(a) of this Act, and upon execution of the section 9(d) repayment contract, Westlands shall receive a credit against future operation and maintenance costs payable to the United States in the amount of the capital costs under the existing water service contracts and the 1965 Repayment Contract paid by Westlands between the date of the Westlands Agreement and the date of enactment of this Act.

(b) **COSTS.**—Costs incurred by the United States for purposes of re-evaluating, planning, or providing drainage service to Westlands shall be non-reimbursable as set forth in paragraph (9)(C)(iv) of the Westlands Agreement.

**(c) RELIEF OF CAPITAL REPAYMENT OBLIGATIONS.—**

(1) Upon the date of execution of the section 9(d) repayment contracts referenced in section 6(a) of this Act, and as set forth in the Westlands Agreement, Westlands shall be relieved of—

(A) its capital repayment obligations under the June 5, 1963, water service contract between the United States and Westlands (contract number 14-06-200-495-A) providing for water service, or any renewals thereof, and any water service contracts assigned to Westlands, Westlands Distribution District No. 1, and Westlands Distribution District No. 2 existing as of the date of execution of the Westlands Agreement; and

(B) Westlands shall be relieved of any remaining repayment obligation under the April 1, 1965, repayment contract between the United States and Westlands (contract numbered 14-06-200-2020-A).

(2) Repayment relief granted in paragraph (1) shall not extend to Westlands' operation and maintenance obligations, whether payable to the United States or to an operating non-Federal entity, or to construction costs or other capital-

ized costs not yet allocated to or incurred by Westlands as of the date of the Westlands Agreement, respectively, including, but not limited to costs attributable to the Folsom Safety of Dams modifications, or the B.F. Sisk corrective action study, or any Safety of Dams or to the repayment of future capital costs incurred after the date of execution of the Westlands Agreement.

(3) Central Valley Project construction costs or other capitalized costs allocated to Westlands after the date of the Westlands Agreement, and properly assignable to Westlands, shall be repaid in not more than 5 years after notification of the allocation of such amount of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable Reclamation law. Any additional costs that may have been assigned to Westlands pursuant to paragraph (9)(C)(iv) of the Westlands Agreement related to the Central Valley Project final cost allocation shall be non-reimbursable.

(d) **APPLICABILITY OF CERTAIN PROVISIONS.—**

(1) **RECLAMATION REFORM ACT.**—Upon discharge of the capital repayment obligation as provided in subsection (c), the provisions of section 213(a) and (b) of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall be deemed to apply to lands in Westlands, and the ownership and full cost pricing limitations in any provision of Federal reclamation law shall not apply to lands in Westlands notwithstanding the subsequent allocation of construction costs or other capitalized costs to Westlands. These exemptions shall be carried out in accordance with the process set forth in the Westlands Agreement.

(2) **OTHER PROVISIONS.**—Nothing in this Act is intended to relieve Westlands of any other obligations under Reclamation law including Restoration Fund charges pursuant to section 3407(d) of Public Law 102–575.

**SEC. 8. TRANSFER OF TITLE TO CERTAIN FACILITIES.**

(a) **IN GENERAL.**—Upon the execution of the section 9(d) repayment contract, or as soon thereafter as practicable, the Secretary shall transfer to Westlands title to:

(1) San Luis Canal System, excluding the main canal which is integrated with the California Aqueduct. These appurtenant features include:

(A) Internal water distribution system within Westlands, including approximately 1,045 miles of buried pipeline.

(B) Pumping plants within Westlands, including: San Luis Canal Left and Right Bank pumping plants which includes but is not limited to, Pumping Plants P1 through P38 located at the head end of the gravity laterals to supply the head required for the “P” laterals; and pumping plants, tanks, reservoirs, and re-lift pumping plants to serve lands west of the San Luis Canal; and Pumping Plant 7.05 off Lateral 7.

(C) Related structures, appurtenances, pumping plants, pumps, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(2) Mendota Pool diversion facilities operated by Westlands, including:

(A) Inlet Canal from the Fresno Slough.

(B) Pumping plants 6–1, 6–2, 7–1, 7–2.

(C) Related structures, appurtenances, pumps, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(3) Pleasant Valley System, including:

(A) Intake canal and pipeline.

(B) Pleasant Valley Pumping Plant.

(C) Coalinga Canal, including related check structures, turnouts, and headworks.

(D) Pleasant Valley distribution system and pumping plants along the Coalinga Canal.

(E) Related structures, appurtenances, pumps, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(4) Drainage collection system, including:

(A) Carrier and collector pipelines, sumps, and sump pumps.

(B) San Luis Drain from Sta 6678+45 to Sta 8520+22.87 (Crossing with DMC to Laguna Ave. crossing).

(C) Related structures, appurtenances, pumps, motors, meters, valves, tanks, transformers, and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

## (5) Tranquillity Field Office, including:

(A) Buildings at 32650 West Adams Avenue, Tranquillity, CA 93668.

(B) All related fixtures and furnishings as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

## (6) Huron Field Office, including:

(A) Buildings at 32450 South Lassen Avenue, Huron, CA 93234.

(B) All related fixtures and furnishings as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(7) All real property interests held by the United States in lands underlying or otherwise associated with the facilities and equipment listed in this subsection, including all fee title, easements, and rights of way.

(b) TRANSFER OF TITLE.—Except as specifically provided in this Act, any transfer of title to the Pleasant Valley Pumping Plant, the Coalinga Canal, and any associated facilities shall not relieve any other Project Water service or repayment contractor of the requirement to pay any allocated costs associated with those conveyance or pumping facilities that are properly allocated to those contractors under existing law and Project rate setting policies.

(c) CONDITION OF TRANSFER.—Upon transfer of title to any facilities pursuant to this section, Westlands shall, as a condition to such transfer, formally agree that as of the date of transfer—

(1) to hold the United States harmless and indemnify the United States for any and all claims, cost, damages, and judgments of any kind arising out of any act, omission, or occurrence relating to the transferred facilities, except for such claims, costs, damages arising from acts of negligence committed by the United States or by its employees, agents, or contractors, prior to the date of title transfer, for which the United States is found liable under the Federal Tort Claims Act; and

(2) the United States shall have no responsibility for correcting and financing any repairs or deficiencies that may exist at the time of or following title transfer.

(d) APPLICABLE LAW.—The Secretary shall transfer title pursuant to this section consistent with all applicable Federal Reclamation policies and procedures. The Secretary and Westlands shall comply with all applicable requirements under Federal and California law before title to a facility is transferred pursuant to this section.

**SEC. 9. COMPLIANCE WITH APPLICABLE LAW.**

In implementing the measures authorized by this Act, the Secretary shall comply with all applicable Federal laws, rules, and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as necessary.

**SEC. 10. NO WATER SUPPLY OR FINANCIAL IMPACTS ON OTHER CENTRAL VALLEY PROJECT CONTRACTORS.**

Implementation of this Act and the Agreements authorized thereunder shall not—

(1) result in the involuntary reduction in the contract water allocation to any Project water service or repayment contractor, water rights settlement contractor, exchange contractor, or refuge contractor including contractors in the Friant Division of the Project;

(2) modify, amend or affect any of the rights or obligations of the parties to any Project water service or repayment contract, water rights settlement contract, exchange contract, or refuge contract, including contracts in the Friant Division of the Project;

(3) alter the repayment obligation, if any, of any Project—

(A) water service or repayment contractor;

(B) settlement, refuge, or exchange contractor; or

(C) preference power contractor receiving water or power from the Project, or shift any costs to such contractors that would otherwise have been properly assignable to Westlands, including operations and maintenance costs, construction costs, or other capitalized costs allocated to Westlands after the date of this Act;

(4) impair the ability of the United States to implement the Stipulation of Settlement approved by the district court in Natural Resources Defense Council, et al. v. Rogers, et al. (Case No. CIV S–88–1658 (LKK/GGH) E.D.Cal.), on October 23, 2006, as authorized to be implemented by title X of Public Law 111–11, including the Restoration Goal and Water Management Goal; and

(5) diminish, impair, or otherwise affect in any manner any priorities for the allocation, delivery or use of water under applicable law, including any purposes

of use and priorities established by sections 3402 and 3406 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706, 4714).

**SEC. 11. RESTORATION FUND PAYMENTS BY WESTLANDS WATER DISTRICT.**

For any year in which the allocation of water for south-of-Delta Project long-term water irrigation service contractors or irrigation repayment contractors is greater than 75 percent, the Secretary shall calculate for Westlands a per acre foot Restoration Fund payment based on a projection that Westlands would take delivery of the full allocation made to south-of-Delta Project long-term water service contractors or repayment contractors.

**PURPOSE OF THE BILL**

The purpose of H.R. 1769 is to affirm an agreement between the United States and Westlands Water District dated September 15, 2015.

**BACKGROUND AND NEED FOR LEGISLATION**

H.R. 1769 affirms a settlement between the federal government and other parties in an attempt to bring about final resolution to decades-long litigation over the federal government's responsibility to provide drainage for certain lands in central California.

Public Law 86-488 authorized the San Luis Unit as part of the Central Valley Project (CVP) on June 3, 1960. The principal purpose of the San Luis Unit, located in California's San Joaquin Valley, is irrigation water supply for almost one million acres of farmland. The federal government and the State of California joint-use facilities include O'Neill Dam and Forebay, B.F. Sisk San Luis Dam, San Luis Reservoir and the San Luis Canal. The federal-only features include the O'Neill Pumping Plant and Intake Canal, Coalinga Canal and the San Luis Drain.

Since clay layers beneath the agricultural lands prevent excess irrigation water from draining deeper into the soil, construction of the San Luis Drain began in 1968 to collect and transport subsurface drainage water from the San Luis Unit to the Sacramento-San Joaquin Bay-Delta. Of the planned 188 miles of drain, only approximately 80 miles were completed due to concerns over water quality of the drain water. The unfinished San Luis Drain ended at Kesterson Reservoir, where the accumulation of drainage helped contribute to dying waterfowl and deformed embryos in 1982. In 1985, the Bureau of Reclamation halted drainage services, closed the Drain and began cleaning up contaminated ponds at the Reservoir.

A number of irrigation districts relied on the San Luis Drain and entered into contracts with the federal government to pay for irrigation water and drainage. One such irrigation district, the Westlands Water District, entered into contracts in 1963 and 1965 for these purposes. Westlands is made up of more than 1,000 square miles of farmland in western Fresno and Kings Counties in the San Joaquin Valley, and receives a majority of its irrigation water supply from the San Luis Unit.

Impaired drainage services to the San Luis Unit resulted in litigation brought by landowners in the Westlands service area. In 1995, the U.S. District Court for the Eastern District of California concluded that the San Luis Act (Public Law 86-488) imposed a mandatory duty on the Secretary of the Interior to provide drainage service to lands served by the San Luis Unit (*Summer Peck*

*Ranch et al v. Reclamation Bureau et al, No. 1:91-cv-00048, E. D. CA).*

In February 2000, the U.S. Court of Appeals for the Ninth Circuit upheld this ruling, but held that the Department of the Interior (DOI) had discretion as to the means of satisfying this requirement (*Firebaugh Canal Co. et al v. United States of America, 203 F. 3d 568 (9th Cir. 2000)*). Later that year, the Ninth Circuit directed that the Secretary “shall, without delay, provide drainage to the San Luis Unit pursuant to the statutory duty imposed by section 1(a) of the San Luis Act.”<sup>1</sup> In 2007, the Bureau of Reclamation signed a Record of Decision selecting a drainage plan and found that the cost of providing drainage would be \$2.7 billion. Using April 2015 cost indices, these costs are now estimated to be approximately \$3.8 billion.

In the 2011, individual landowners within Westlands filed a takings claim in the Court of Federal Claims against the United States, alleging that the failure by the United States to provide drainage service caused a physical taking of their lands without just compensation in violation of the Fifth Amendment (*Etchegoinberry, et al. v. United States, No. 11-564L (Fed. Cl.)*). The takings claim was generally based on the inundation of lands with drainage water, which rendered such lands useless for agricultural production. The plaintiffs brought the suit as a class action on behalf of all landowners within Westlands “whose farmlands have not received the necessary drainage service the United States is required to provide under the San Luis Act.” In 2013, a United States District Court denied the United States’ motion to dismiss the case. In an April 21, 2016, letter to Congressman David Valadao (R-CA) from then Deputy Secretary of the Interior Mike Connor, according to the United States, the decision contains “language sharply critical of the United States’ delay in providing drainage to Westlands.” The case was stayed by the Court of Federal Claims to allow for settlement negotiations to proceed.

In 2012, the Westlands Water District filed its own lawsuit against the United States in the Court of Federal Claims (*Westlands Water District v. United States, No. 12-12C (Fed. Cl.)*). The suit charged that the federal government’s failure to provide drainage service to the Westlands service area constituted a breach of its 1963 water service and 1965 repayment contracts (including renewals of those contracts). In 2013, the Claims Court dismissed the motion on the grounds that none of the contracts contained an enforceable promise to provide drainage to Westlands. Westlands appealed this ruling.

Shortly after this ruling and subsequent appeal, Westlands and the United States entered into settlement negotiations. In September 2015, the parties reached a settlement agreement that required Congressional authorization for full implementation.

On April 21, 2016, DOI transmitted a letter to Congressman David Valadao (R-CA) outlining the benefits of the settlement agreement for both Westlands and the federal government. According to the letter, the agreement relieves DOI of all drainage obligations imposed by the San Luis Act, including the 2007 Bureau of Reclamation Record of Decision, which found that the cost of pro-

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<sup>1</sup> Firebaugh Canal Co. et al v. United States, Case No. F-88-cv-634-OWWW (E.D. Cal.)

viding drainage to the San Luis Unit would be \$2.7 billion (\$3.8 billion in 2015 dollars). Westlands would seek dismissal of the appeal of the 2012 case, *Westlands Water District v. United States*, and would join the United States in petitioning for vacating the 2000 Order Modifying Partial Judgment in *Firebaugh Canal Co. et al v. United States*. Westlands agrees to waive any and all claims, past, present and future relating to the provision of drainage service or lack thereof within the its service area, including claims from individual landowners, and further agrees to indemnify the federal government for claims relating to the provision of drainage service or lack thereof within its service area. Westlands will retire at least 100,000 acres of lands within its boundaries (utilizing those lands only for certain purposes outlined in the Settlement agreement), while also agreeing to cap its CVP water deliveries at 75 percent of its contract quantity. Any water savings above the 75 percent cap would become available to the United States for other CVP authorized purposes. Westlands also agrees to wheel all CVP water made available to the Lemoore Naval Air Station under a future water service contract.

According to the Letter, the benefits to Westlands includes relief of its current, unpaid capitalized construction costs for the CVP, which is currently estimated to be \$295 million. Westlands will still be responsible for operation and maintenance and for future CVP construction charges associated with new construction for the Project. The Secretary of the Interior will convert Westlands' current water service contract, pursuant to section 9(e) of the Reclamation Project Act of 1939, to a repayment contract pursuant to section 9(d) of the same Act. The contract conversion will treat Westlands as a "paid out" project; as a result, the Westlands Water District would receive a contract with no expiration term, consistent with other paid-out reclamation projects. However, the contract will contain terms and conditions that are nearly identical to those in the current 9(e) contract. In addition, Westlands will be relieved of acreage limitations and full cost pricing provisions under the Reclamation Reform Act (96 Stat. 1269). Westlands will also take title to certain facilities including the portion of the San Luis Drain that lies within its service area.

The DOI letter indicated that several aspects regarding its obligation to provide drainage were evaluated when determining the overall net benefit to the United States, including avoided drainage construction costs, repayment to the United States of reimbursable costs, relief from Reclamation Reform Act fees, and unpaid CVP capital obligations. The Department's analysis concluded that enactment of settlement legislation would save the United States at least \$968.9 million in regard to Westlands, plus the potential liabilities associated with the *Etchegoinberry et al v. United States* claim which the United states estimates could be as high as \$2 billion.

The settlement agreement between the United States and Westlands, as extended, sets a January 2018, deadline for Congress to enact settlement legislation before litigation will continue to move forward. H.R. 1769 provides the Congressional authorization necessary for full implementation of the settlement, putting an end to decades-long controversy.

## SECTION-BY-SECTION ANALYSIS

*Section 1* sets forth the table of contents and states that the Act may be cited as the “San Luis Unit Drainage Resolution Act”.

*Section 2* defines key terms that are used throughout the Act.

*Section 3* directs the Secretary of the Interior to implement the terms and conditions of the September 15, 2015, Agreement between the United States and the Westlands Water District to settle litigation concerning the United States’ duty to provide drainage service.

*Section 4* amends the San Luis Act (Public Law 86–488) to eliminate requirements for the Secretary to provide drainage services to the San Luis Unit of the CVP within Westlands.

*Section 5* asserts that Westlands shall assume all legal responsibility for the management of drainage within its boundaries, and shall not discharge drain water outside of its boundaries.

*Section 6* directs the Secretary to convert the Westlands’ Reclamation Project Act of 1939 section 9(e) water service contract to a section 9(d) and (c)(1) repayment contract. This section also requires the Secretary to enter into a water service contract with the Lemoore Naval Air Station to provide a guaranteed quantity of CVP water to meet the irrigation needs of the Naval Air Station associated with air operations.

*Section 7* suspends Westlands’ capital repayment obligation and payments under its water service contracts and the April 11, 1965, repayment contract with the United States until the repayment contract is executed. Once the repayment contract is executed, Westlands will receive a credit against future operation and maintenance costs payable to the United States and will be relieved of its capital repayment obligations. Westlands will still be responsible for operation and maintenance obligations, and for future construction or other capitalized costs not yet allocated to Westlands as of the date of the Settlement.

*Section 8* directs DOI to transfer to Westlands the title to several facilities specified in the Settlement, including a portion of the San Luis Drain that lies within Westlands’ service area, upon execution of the repayment contract.

*Section 9* requires the Secretary to comply with all applicable Federal laws, rule, and regulations, including the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973 when implementing this Settlement agreement, as necessary.

*Section 10* states that implementation of the Settlement will have no negative impacts on other CVP contractors.

*Section 11* directs the Secretary, for any year in which the allocation for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, to calculate for Westlands a per acre foot Restoration Fund payment based on a projection that Westlands would take delivery of the allocation in order to avoid shifting CVP Restoration Fund payments from Westlands to CVP preference power contractors.

## COMMITTEE ACTION

H.R. 1769 was introduced on March 28, 2017, by Congressman David G. Valadao (R–CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Sub-

committee on Water, Power and Oceans. On April 26, 2017, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water, Power and Oceans was discharged by unanimous consent. Congressman Doug Lamborn (R-CO) offered an amendment designated #1; it was agreed to by voice vote. Congressman Jared Huffman (D-CA) offered an amendment designated 038; it was not agreed to by a bipartisan roll call vote of 16 ayes and 24 noes, as follows:

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 04-27-17

Recorded Vote #: 1

Meeting on / Amendment on: FC Mark Up on 13 bills: **Huffman\_038** Amendment to H.R. 1769 (Rep. David Valadao), "San Luis Unit Drainage Resolution Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
<b>Mr. Young, AK, Chairman Emeritus</b>		X		<b>Mr. Westerman, AR</b>		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Panetta, CA</i>	X		
<b>Mr. Gohmert, TX, Vice Chairman</b>		X		<b>Mr. Graves, LA</b>		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. McEachin, VA</i>	X		
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Hice, GA</b>		X	
<i>Mr. Costa, CA</i>		X		<i>Mr. Brown, MD</i>	X		
<b>Mr. Wittman, VA</b>		X		<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>	X		
<b>Mr. McClintock, CA</b>		X		<b>Mr. LaHood, IL</b>		X	
<i>Ms. Tsongas, MA</i>	X			<b>Mr. Webster, FL</b>		X	
<b>Mr. Pearce, NM</b>		X		<b>Mr. Rouzer, NC</b>		X	
<i>Mr. Huffman, CA</i>	X			<b>Mr. Bergman, MI</b>		X	
<b>Mr. Thompson, PA</b>		X		<b>Ms. Cheney, WY</b>		X	
<i>Mr. Lowenthal, CA</i>	X			<b>Mr. Johnson, LA</b>			
<b>Mr. Gosar, AZ</b>		X		<b>Ms. González-Colón, PR</b>			
<i>Mr. Beyer, VA</i>	X						
<b>Mr. Labrador, ID</b>		X					
<i>Mrs. Torres, CA</i>	X						
<b>Mr. Tipton, CO</b>		X					
<i>Mr. Gallego, AZ</i>	X						
<b>Mr. LaMalfa, CA</b>		X					
<i>Ms. Hanabusa, HI</i>	X						
<b>Mr. Denham, CA</b>		X					
<i>Ms. Barragán, CA</i>	X			<b>TOTAL:</b>	16	24	

Congressman Huffman offered and withdrew an amendment designated 039. Congressman Huffman offered an amendment designated 040; it was not agreed to by a bipartisan roll call vote of 16 ayes and 24 noes, as follows:

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 04-27-17

Recorded Vote #: 2

Meeting on / Amendment on: FC Mark Up on 13 bills: **Huffman\_040** Amendment to H.R. 1769 (Rep. David Valadao), "San Luis Unit Drainage Resolution Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
<b>Mr. Young, AK, Chairman Emeritus</b>		X		<b>Mr. Westerman, AR</b>		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Panetta, CA</i>	X		
<b>Mr. Gohmert, TX, Vice Chairman</b>		X		<b>Mr. Graves, LA</b>		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. McEachin, VA</i>	X		
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Hice, GA</b>		X	
<i>Mr. Costa, CA</i>		X		<i>Mr. Brown, MD</i>	X		
<b>Mr. Wittman, VA</b>		X		<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>	X		
<b>Mr. McClintock, CA</b>		X		<b>Mr. LaHood, IL</b>		X	
<i>Ms. Tsongas, MA</i>	X			<b>Mr. Webster, FL</b>		X	
<b>Mr. Pearce, NM</b>		X		<b>Mr. Rouzer, NC</b>		X	
<i>Mr. Huffman, CA</i>	X			<b>Mr. Bergman, MI</b>		X	
<b>Mr. Thompson, PA</b>		X		<b>Ms. Cheney, WY</b>		X	
<i>Mr. Lowenthal, CA</i>	X			<b>Mr. Johnson, LA</b>			
<b>Mr. Gosar, AZ</b>		X		<b>Ms. González-Colón, PR</b>			
<i>Mr. Beyer, VA</i>	X						
<b>Mr. Labrador, ID</b>		X					
<i>Mrs. Torres, CA</i>	X						
<b>Mr. Tipton, CO</b>		X					
<i>Mr. Gallego, AZ</i>	X						
<b>Mr. LaMalfa, CA</b>		X					
<i>Ms. Hanabusa, HI</i>	X						
<b>Mr. Denham, CA</b>		X					
<i>Ms. Barragán, CA</i>	X			<b>TOTAL:</b>	16	24	

Congressman Huffman offered an amendment designated 041; it was not agreed to by voice vote. Congressman Jim Costa (D-CA) offered and withdrew an amendment designated 003. Congressman Raúl M. Grijalva (D-AZ) offered an amendment designated 029; it was not agreed to by a bipartisan roll call vote of 16 ayes and 24 noes, as follows:

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 04-27-17

Recorded Vote #: 3

Meeting on / Amendment on: FC Mark Up on 13 bills: **Grijalva\_029** Amendment to H.R. 1769 (Rep. David Valadao), "San Luis Unit Drainage Resolution Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
<b>Mr. Young, AK, Chairman Emeritus</b>		X		<b>Mr. Westerman, AR</b>		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Panetta, CA</i>	X		
<b>Mr. Gohmert, TX, Vice Chairman</b>		X		<b>Mr. Graves, LA</b>		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. McEachin, VA</i>	X		
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Hice, GA</b>		X	
<i>Mr. Costa, CA</i>		X		<i>Mr. Brown, MD</i>	X		
<b>Mr. Wittman, VA</b>		X		<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>	X		
<b>Mr. McClintock, CA</b>		X		<b>Mr. LaHood, IL</b>		X	
<i>Ms. Tsongas, MA</i>	X			<b>Mr. Webster, FL</b>		X	
<b>Mr. Pearce, NM</b>		X		<b>Mr. Rouzer, NC</b>		X	
<i>Mr. Huffman, CA</i>	X			<b>Mr. Bergman, MI</b>		X	
<b>Mr. Thompson, PA</b>		X		<b>Ms. Cheney, WY</b>		X	
<i>Mr. Lowenthal, CA</i>	X			<b>Mr. Johnson, LA</b>			
<b>Mr. Gosar, AZ</b>		X		<b>Ms. González-Colón, PR</b>			
<i>Mr. Beyer, VA</i>	X						
<b>Mr. Labrador, ID</b>		X					
<i>Mrs. Torres, CA</i>	X						
<b>Mr. Tipton, CO</b>		X					
<i>Mr. Gallego, AZ</i>	X						
<b>Mr. LaMalfa, CA</b>		X					
<i>Ms. Hanabusa, HI</i>	X						
<b>Mr. Denham, CA</b>		X					
<i>Ms. Barragán, CA</i>	X			<b>TOTAL:</b>	16	24	

No additional amendments were offered, and on April 27, 2017, the bill, as amended, was ordered favorably reported by a bipartisan roll call of 23 ayes and 16 noes, as follows:

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 04-27-17

Recorded Vote #: 4

Meeting on / Amendment on: FC Mark Up on 13 bills: **On Favorably Reporting** H.R. 1769 (Rep. David Valadao),  
"San Luis Unit Drainage Resolution Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>	X			<b>Mr. Cook, CA</b>	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Panetta, CA</i>		X	
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>	X		
<i>Mr. Costa, CA</i>	X			<i>Mr. Brown, MD</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>	X		
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>		X	
<b>Mr. McClintock, CA</b>	X			<b>Mr. LaHood, IL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Webster, FL</b>	X		
<b>Mr. Pearce, NM</b>	X			<b>Mr. Rouzer, NC</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Bergman, MI</b>	X		
<b>Mr. Thompson, PA</b>	X			<b>Ms. Cheney, WY</b>	X		
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Gosar, AZ</b>	X			<b>Ms. González-Colón, PR</b>			
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>	X						
<i>Mrs. Torres, CA</i>		X					
<b>Mr. Tipton, CO</b>	X						
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. Denham, CA</b>	X						
<i>Ms. Barragán, CA</i>		X		<b>TOTAL:</b>	23	16	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 7, 2017.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1769, the San Luis Unit Drainage Resolution Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 1769—San Luis Unit Drainage Resolution Act*

Summary: H.R. 1769 would ratify a settlement agreement negotiated in 2015 between the United States and the Westlands Water District (district) in California and would amend current law in accordance with provisions of that agreement. Specifically, the bill would:

- Eliminate the statutory requirement for the United States to provide drainage services for farmland irrigated within the district's boundaries;
- Direct the Bureau of Reclamation (BOR) to enter into a water contract with the district consistent with the terms of the settlement agreement;
- Cancel the district's obligation to repay the federal government for its share of constructing the Central Valley Project (CVP) and the costs allocated to the district to plan and design drainage infrastructure; and
- Require BOR to apply a credit against the district's CVP operating costs equal to payments the district made for its capital obligations between the date of the settlement agreement (September 2015) and enactment of the legislation.

CBO estimates that enacting the legislation would reduce offsetting receipts (which has the effect of increasing direct spending) by \$309 million over the 2017–2027 period. Because enacting H.R.

1769 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO also estimates that implementing the legislation would reduce the need for discretionary appropriations to construct the drainage facilities in the district. CBO expects that those facilities will take more than a decade to complete under current law. According to estimates from BOR, completing the part of the project that will provide drainage for the district will cost about \$2.5 billion. By relieving the federal government of those obligations, CBO estimates that implementing H.R. 1769 would reduce spending subject to appropriation for the project by about \$1.5 billion over the next ten years (and by \$1 billion in later years). Under current law, the district water users are required to repay those costs in the decades following the project's completion (that is, after 2027).

Under the 2015 settlement agreement that would be ratified by H.R. 1769, the district would cooperate with the federal government to resolve pending litigation stemming from the government's failure to provide drainage services to the district. The outcome, timing, and amount of judgments or settlements, if any, that would resolve the litigation under current law are highly speculative. Consequently, this cost estimate does not reflect any potential savings to the federal government from avoiding such litigation. However, on the basis of information from the Department of Justice (DOJ), BOR, and other stakeholders, CBO estimates that the cost of such judgments or settlements to resolve ongoing litigation under current law could range from \$0 to \$2 billion.

Further information about the potential costs of the pending litigation against the federal government is included below under the heading "Additional Information."

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1769 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary effects of H.R. 1769 are shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For this estimate, CBO assumes that H.R. 1769 will be enacted near the end of 2017 and that the provisions of the settlement agreement will be implemented as required by the legislation.

TABLE 1—ESTIMATED BUDGETARY EFFECTS OF H.R. 1769

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017– 2022	2017– 2027
<b>INCREASES IN DIRECT SPENDING</b>													
Capital Obligation Canceled:													
Estimated Budget Authority .....	26	26	26	26	26	26	26	26	26	26	26	157	288
Estimated Outlays .....	26	26	26	26	26	26	26	26	26	26	26	157	288
Planning Costs Canceled:													
Estimated Budget Authority .....	3	1	1	1	1	1	1	1	1	1	1	6	9
Estimated Outlays .....	3	1	1	1	1	1	1	1	1	1	1	6	9
Credit for CVP Operating Costs:													
Estimated Budget Authority .....	9	4	0	0	0	0	0	0	0	0	0	13	13
Estimated Outlays .....	9	4	0	0	0	0	0	0	0	0	0	13	13
Total Costs:													
Estimated Budget Authority .....	38	31	27	27	27	27	27	27	27	27	27	176	309
Estimated Outlays .....	38	31	27	27	27	27	27	27	27	27	27	176	309
<b>DECREASES IN SPENDING SUBJECT TO APPROPRIATION</b>													
Estimated Budget Authority .....	0	-100	-100	-150	-150	-200	-200	-250	-250	-300	-300	-700	-2,000
Estimated Outlays .....	0	-30	-50	-80	-100	-140	-160	-190	-210	-240	-260	-400	-1,460

Notes: CVP = Central Valley Project. Components may not sum to totals because of rounding. Enacting the bill also would increase direct spending by about \$96 million after 2027 from additional costs related to canceling the district's capital obligations and repayment of planning costs.

*Increases in direct spending*

**Capital Obligation Canceled.** H.R. 1769 would direct BOR to cancel the district's remaining obligation to repay the federal government for a share of the costs to construct the CVP. That cancelation would be contingent upon BOR and the district negotiating a new contract to repay the costs of supplying irrigation water to the district consistent with the terms specified in the settlement agreement.<sup>1</sup> BOR also would transfer to the district title to seven facilities located within the district's service area. The district has already assumed the responsibility for operating and maintaining those facilities.

Based on an analysis of information from BOR about the district's remaining obligation to the government for repaying the cost of constructing the CVP, CBO estimates that canceling annual payments from the district to the federal government for those obligations would increase direct spending (by reducing offsetting receipts) by \$288 million over the 2017–2027 period and about \$78 million after 2027.

**Planning Costs Canceled.** Under current law, the costs to plan and design facilities to drain irrigation water are an obligation of the beneficiaries of the federal irrigation project. The district's share of those costs total \$24 million and will be repaid in annual installments of \$600,000 over a 40-year period. Under the bill, that obligation also would be canceled. Additionally the bill would cancel the district's obligation to pay BOR \$3 million for a portion of costs to operate and maintain a subsurface drainage project that protects wildlife refuges and wetlands in the region.

In total, CBO estimates that enacting those provisions would reduce offsetting receipts by \$9 million over the 2017–2027 period and about \$17 million after 2027.

**Credit for CVP Operating Costs.** The settlement agreement between the district and the federal government was signed in September 2015. Since then the district has paid the federal government \$13 million toward its share of CVP's construction costs. H.R. 1769 would require BOR to credit those amounts against the district's share of the project's future operating costs. On the basis of information from BOR about the district's annual payments for operating the CVP, CBO estimates that enacting this provision would reduce offsetting receipts by \$9 million in 2017 and \$4 million in 2018.

*Decreases in spending subject to appropriation*

Under current law, BOR is required to provide services to drain waste water from irrigated farmland in the San Luis Unit (SLU). In 2000, the Ninth Circuit Court of Appeals ordered BOR to provide that service promptly; the ruling stems from litigation (*Firebaugh Canal Co. v. United States*) brought against the federal government for failure to provide drainage pursuant to the San

<sup>1</sup>The proposed repayment contract would replace existing water service contracts between BOR and the district. Typically, agreements between the federal government and water contractors to deliver water for irrigation, municipal, and industrial purposes from federally built projects are governed by either water service contracts or repayment contracts. Water service contracts are used when a construction project is still in progress and the final costs—including the contractors' share of those costs—are not yet known. They are also used when a contractor does not want a permanent contract. Repayment contracts are available to contractors when final construction costs and the contractor's share of those costs are known.

Luis Act (Public Law 86–488). The court temporarily postponed that requirement until January 2018 to allow time to negotiate the settlement and pass related legislation.

In 2012 the district also sued the United States claiming that the federal government’s failure to provide drainage services constituted a breach of contract (*Westlands Water District v. United States*). In January 2013 the Court of Federal Claims determined that water contracts between the government and the district did not include an enforceable promise to provide drainage to the district and the United States’ request to dismiss the district’s claim was granted. The district appealed the decision to the Federal Circuit, which also stayed that case until January 2018.

Under current law, after the stays expire in January 2018, the drainage system could be constructed over the following 10 to 15 years, assuming the Congress appropriated the necessary amounts and the district agreed to repay those costs. Under the bill, CBO estimates that by eliminating that requirement, the federal government would no longer have to spend \$1.5 billion in appropriated funds over the 2018–2027 period (and the district would no longer be obligated to repay those costs in later years).

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

TABLE 2—CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1769, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON APRIL 27, 2017

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact .....	38	31	27	27	27	27	27	27	27	27	27	176	309

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 1769 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 1769 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit the Westlands Water District in California’s Central Valley. Any costs incurred by the district associated with implementing the terms of settlement agreement would result from voluntary commitments.

Additional information:

*Background*

The SLU of the Westlands Irrigation District consists of about 500,000 acres of irrigated farm land within the CVP. In 1960, the San Luis Act, which established the SLU, required that water delivered to the unit for irrigation purposes also include services to drain waste water and prevent salt from accumulating in the soil. Despite the 2000 court decision, to date BOR has not provided consistent or comprehensive drainage services and some local land-

owners contend that the lack of drainage has caused salt to accumulate in the soil, limiting its usefulness for farming.

Some landowners have sued the federal government alleging that damage to the soil from failing to provide drainage has caused them financial harm. Under current law, the Court of Federal Claims may find the federal government owes the landowners compensation for the loss in their property value. However, the statutory requirement for the United States to construct drainage facilities would persist absent the pending settlement agreement and enactment of H.R. 1769.

Enacting H.R. 1769 and implementing the settlement agreement in accordance with the legislation aims to resolve the existing litigation related to drainage in the SLU.

#### *Litigation*

In 2011 landowners within the district filed a claim against the United States (*Etchegoinberry v. United States*) alleging that the government's failure to provide drainage services damaged nearly 200,000 acres of farm land resulting in a partial physical taking of their property without just compensation. DOJ and other stakeholders have estimated that the federal government's liability for the pending case could range from nothing to as much as \$2 billion to resolve the claim.

To date, the *Etchegoinberry* court has not issued a decision on the merits, and there is no direct precedent for the claim. Additionally, there is a history of litigation delays, a significant likelihood of appeals, and these parties have been litigating related issues for nearly two decades. For these reasons, it is unclear whether the plaintiffs would ultimately prevail in the takings case, the amount of the damages assessed, if any, and when that litigation would finally be resolved.

A previous settlement reflects one possible outcome. In 2002 the federal government settled a similar takings lawsuit involving landowners in the district for about \$4,200 per acre. Extrapolating from that settlement and assuming additional amounts for appreciation in the market value of farmland, the potential exposure for the pending takings case would total about \$1 billion, roughly in the middle of the range of possible outcomes.

If the federal government incurs compensation costs related to the pending 2011 lawsuit—through a settlement or court order—payments would come from the Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States) and would increase direct spending. However, because of uncertainty about the outcome, timing, and magnitude of a potential judgment or settlement payment, CBO has no basis for assessing the outcome of this litigation.

Estimate prepared by: Federal costs: Aurora Swanson; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa A. Gullo, Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to affirm an agreement between the United States and Westlands Water District dated September 15, 2015.

## EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

## COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**PUBLIC LAW 86-488**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the principal purpose of furnishing water for the irrigation of approximately five hundred thousand acres of land in Merced, Fresno, and Kings Counties, California, hereinafter referred to as the Federal San Luis unit service area, and as incidents thereto of furnishing water for municipal and domestic use and providing recreation and fish and wildlife benefits, the Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to construct, operate, and maintain the San Luis unit as an integral part of the Central Valley project. The principal engineering features of said unit shall be a dam and reservoir at or near the San Luis site, a forebay and afterbay, the San Luis Canal, the Pleasant Valley Canal, and necessary pumping plants, distribution systems, drains, channels, levees, flood works, and related facilities, [but] but such features do not include distribution systems or drains within Westlands, and no facilities shall be constructed for electric transmission or distribution service which the Secretary determines, on the basis of an offer of a firm fifty-year contract from a local public or private*

agency, call through such contract be obtained at less cost to the Federal Government than by construction and operation of Government facilities. The works (hereinafter referred to as joint-use facilities) for joint use with the State of California (hereinafter referred to as the State) shall be the dam and reservoir at or near the San Luis site, forebay and afterbay, pumping plants, and the San Luis Canal. The joint-use facilities consisting of the dam and reservoir shall be constructed, and other joint-use facilities may be constructed, so as to permit future expansion; or the joint-use facilities shall be constructed initially to the capacities necessary to serve both the Federal San Luis unit service area and the State's service area, as hereinafter provided. In constructing, operating, and maintaining the San Luis unit, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto). Construction of the San Luis unit shall not be commenced until the Secretary has (1) secured, or has satisfactory assurance of his ability to secure, all rights to the use of water which are necessary to carry out the purposes of the unit and the terms and conditions of this Act, and (2) received satisfactory assurance from the State of California that it will make provision for a master drainage outlet and disposal channel for the San Joaquin Valley, as generally outlined in the California water plan, Bulletin Numbered 3, of the California Department of Water Resources, which will adequately serve, by connection therewith, the drainage system for the San Luis unit or has made provision for constructing the San Luis interceptor drain to the delta designed to meet the drainage requirements of the San Luis unit as generally outlined in the report of the Department of the Interior, entitled "San Luis Unit, Central Valley Project," dated December 17, 1956, *except that the provision of drainage or drainage service under section 1(a) shall not apply to lands within Westlands.*

(b) No water provided by the Federal San Luis unit shall be delivered in the Federal San Luis service area to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity as estimated by the Secretary of Agriculture for the marketing year in which the bulk of the crop would normally be marketed and which will be in excess of the normal supply as defined in section 301(b) (10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary calls for an increase in production of such commodity in the interest of national security.

\* \* \* \* \*

SEC. 5. [In constructing, operating, and maintaining a drainage system for the San Luis unit, the Secretary is authorized to permit the use thereof by other parties under contracts the terms of which are as nearly similar as is practicable to those required by the Federal reclamation laws in the case of irrigation repayment or service contracts and is further authorized to enter into agreements and participate in construction and operation of drainage facilities designed to serve the general area of which the lands to be served by the San Luis unit are a part, to the extent the works authorized in section 1 of this Act contribute to drainage requirements of said area.] *Notwithstanding any other provision of law, the Secretary of*

*the Interior shall have no duty to provide drainage or drainage service to Westlands. Westlands shall be responsible for the management of drainage water within its boundaries, in accordance with Federal and California law consistent with the "Agreement between the United States and Westlands Water District August 2015", signed September 15, 2015.* The Secretary is also authorized to permit the use of the irrigation facilities of the San Luis unit, including its facilities for supplying pumping energy, under contracts entered into pursuant to section 1 of the Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523).

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SEC. 8. There is hereby authorized to be appropriated for construction of the works of the San Luis unit, including joint-use facilities, authorized by this Act, [other than distribution systems and drains,] the sum of \$290,430,000, plus such additional amount, if any, as may be required by reason of changes in costs of construction of the types involved in the San Luis unit as shown by engineering indexes. Said base sum of \$290,430,000 shall, however, be diminished to the extent that the State makes funds or lands or interests in land available to the Secretary pursuant to sections 2 or 3 of this Act which decrease the costs which would be incurred if the works authorized in section 1 of of this Act (including provision for their subsequent expansion) were constructed solely as a Federal project. There are also authorized to be appropriated, in addition thereto, such amounts as are required [(a) for construction of such distribution systems and drains as are not constructed by local interests, but not to exceed in total cost the sum of \$192,650,000, and (b)] for operation and maintenance of the unit. [ : Provided, That no funds shall be appropriated for construction of distribution systems and drains prior to ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) after a contract has been submitted to the Congress calling for complete repayment of the distribution systems and drains within a period of forty years from the date such works are placed in service. All moneys received by the Secretary from the State under this Act shall be covered into the same accounts as moneys appropriated hereunder and shall be available, without further appropriation, to carry out the purposes of this Act.]

## DISSENTING VIEWS

H.R. 1769 would approve a legal settlement between the federal government and the Westlands Water District (Westlands). Unfortunately, the agreement is missing significant budgetary, public health, and environmental safeguards, including several previously deemed essential by the Obama Administration. As such, we oppose H.R. 1769 and the Westlands Settlement Agreement it would approve.

The San Luis Act of 1960 authorized construction projects to provide irrigation water for the San Luis Unit, which is comprised of the Westlands Water District and three smaller water districts. The 600,000-acre Westlands Water District is the largest irrigation district in the United States and covers approximately three-quarters of the San Luis Unit's service area. Westlands contracts with the U.S. Bureau of Reclamation to deliver water primarily to agricultural water users that produce an average of \$1 billion in crop sales each year.<sup>1</sup> H.R. 1769 would relieve the federal government of an obligation under the San Luis Act to build agricultural drainage for Westlands in exchange for taxpayer-financed benefits.

Recognizing that much of the land in the San Luis Unit has saline and poorly drained soil, the San Luis Act required the state of California or the federal government to agree to build a drainage system. The U.S. Bureau of Reclamation eventually agreed to build a drain after the legislation passed and in 1968 began construction of a 200-mile drain to transport drainage wastewater from the San Luis Unit and discharge it into the Sacramento-San Joaquin River Delta (Delta). After significant public concerns were raised about dumping drainage wastewater into the Delta—California's most important drinking water source the federal government halted construction of the drain at a place called the Kesterson Reservoir.

In the 1980s, field studies by the U.S. Fish and Wildlife Service revealed that drainage wastewater from Westlands and the San Luis Unit contained a highly toxic element called selenium, which is common to the soils of the San Luis Unit, and is deadly in high concentrations to humans and wildlife. The drainage wastewater killed thousands of waterfowl and caused severe wildlife deformities at the Kesterson Reservoir. As a result, the U.S. Bureau of Reclamation closed the San Luis Drain, litigation against the federal government ensued, and court rulings subsequently found that unless the San Luis Act of 1960 is amended, the Department of Interior is still obligated to finance drainage for Westlands and San Luis Unit water contractors.

H.R. 1769 rightfully amends the San Luis Act of 1960 to remove the federal government's drainage obligation for Westlands (though not for the rest of the San Luis Unit); however, the legislation also

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<sup>1</sup>Westlands Water District Homepage, available at: <http://wwd.ca.gov/about-westlands/>.

includes several harmful provisions and lacks other necessary provisions previously identified by the Obama Administration as necessary for any balanced drainage settlement.

For example, the Obama Administration previously stated that any settlement should require the Westlands Water District to prepare a comprehensive drainage management plan “with measurable environmental objectives, including water quality and specific, enforceable performance measures.”<sup>2</sup> The current settlement agreement approved by H.R. 1769 includes neither.

The Obama Administration also called for the Westlands Water District to “permanently retire a minimum of 200,000 acres of the most drainage impaired lands”<sup>3</sup> to reduce the amount of drainage wastewater being generated. The current settlement agreement calls for the permanent retirement of just 100,000 acres, much of which has already been retired according to the Department of Interior.<sup>4</sup> In addition, the George W. Bush Administration previously recommended the retirement of 194,000 acres of land within Westlands and found 308,000 acres of land retirement to be the National Economic Development Alternative.<sup>5</sup>

The Obama Administration previously called for reducing the water contract quantity for Westlands “to an annual amount of 806,000 acre-feet of Project Water for irrigation.”<sup>6</sup> The current settlement agreement would not reduce Westlands’ 1.193 million acre-feet contract amount. The Environmental Protection Agency (EPA) has stated that Westlands’ current contract quantities are “unrealistic given the current and anticipated restraints on deliveries of an oversubscribed Delta system.”<sup>7</sup> The Hoopa Valley Tribe and other water users have rightly raised concerns about the settlement agreement’s potential to lock in unsustainable water diversions to meet Westlands’ water demands.

The Obama Administration previously called for requiring the Westlands Water District’s total water contract quantity to “remain subject to renewal in the future.”<sup>8</sup> The current settlement agreement does not include provisions that the contract quantity be subject to renewal in the future.

H.R. 1769 also forgives approximately \$375 million owed by Westlands, a water district that boasts of billion dollar crop sales every year, gives Westlands a permanent water contract, hands over federal facilities worth millions, and exempts large agribusiness in the Westlands service area from legal restrictions meant to limit taxpayer subsidies for large industrial farms.

While proponents of H.R. 1769 have claimed that the taxpayer costs of the bill would be outweighed by the cost savings from set-

<sup>2</sup>Letter from Michael L. Connor, Commissioner of the Bureau of Reclamation, to Senator Dianne Feinstein, September 1, 2010.

<sup>3</sup>Ibid.

<sup>4</sup>Briefing held by Department of the Interior officials for House and Senate staff on September 21, 2015.

<sup>5</sup>United States Bureau of Reclamation (2007). San Luis Drainage Feature Re-evaluation Record of Decision. Available at [http://www.usbr.gov/mp/mp150/envdocs/San\\_Luis\\_Drainage\\_Feature\\_Re-evaluation\\_ROD.pdf](http://www.usbr.gov/mp/mp150/envdocs/San_Luis_Drainage_Feature_Re-evaluation_ROD.pdf).

<sup>6</sup>Letter from Michael L. Connor, Commissioner of the Bureau of Reclamation, to Senator Dianne Feinstein, September 1, 2010.

<sup>7</sup>United States Environmental Protection Agency Associate Director Karen Schwinn. April 16, 2008 Letter to United States Bureau of Reclamation.

<sup>8</sup>Letter from Michael L. Connor, Commissioner of the Bureau of Reclamation, to Senator Dianne Feinstein, September 1, 2010.

ting litigation, the Congressional Budget Office (CBO) found in a preliminary estimate last year that enacting legislation to approve the Westlands settlement would result in “a loss of offsetting receipts [to the federal government] totaling roughly \$300 million over the 10-year budget window from debt relief and other concessions to the Westlands Water District.” CBO said further that while there could be savings from enacting settlement legislation, there is “significant uncertainty about the likelihood, timing, and amount of any savings” and “CBO expects any potential savings would not fully offset the more certain costs.”<sup>9</sup>

Drainage wastewater from Westlands and the San Luis Unit can cause serious damage and H.R. 1769 has no specific enforcement and performance standards to ensure that Westlands pays for a drainage system that protects California’s environment and drinking water. The need for robust enforcement and performance standards is especially evident in light of charges last year against the Westlands Water District by the Securities and Exchange Commission for “misleading investors about its financial condition.”<sup>10</sup>

Several amendments were offered during Committee markup to improve H.R. 1769. One amendment offered by Ranking Member Grijalva would have required federal agencies to certify that the Westlands Settlement Agreement is a net-benefit for American taxpayers before the settlement is enacted. Chairman Bishop has established a similar requirement for committee consideration of water settlements for Indian tribes. Committee Republicans rejected the amendment.

An amendment offered by Water, Power, and Oceans Subcommittee Ranking Member Huffman would have prohibited self-dealing by barring former employees and registered lobbyists for the Westlands Water District from enforcing and carrying out the settlement agreement should they join the Trump Administration. Last month, President Trump nominated a former Westlands lobbyist to be the Deputy Secretary of Interior. Committee Republicans rejected Representative Huffman’s amendment.

Other amendments offered by Representative Huffman would have required the United States to be indemnified against all drainage-related litigation before settlement enactment and would have required the development of a comprehensive drainage management plan to protect human health, the environment, and water quality. Committee Republicans rejected these amendments as well.

Without significant changes, H.R. 1769 constitutes a bad deal for taxpayers, the environment, and public health and should be rejected by Congress.

RAÚL M. GRIJALVA,  
*Ranking Member, House  
Committee on Natural Resources.*

<sup>9</sup>November 9, 2016 email correspondence from Congressional Budget Office to House Natural Resources Committee staff.

<sup>10</sup>March 9, 2016 United States Securities and Exchange Commission Press Release, available at: <https://www.sec.gov/news/pressrelease/2016-43.html>.

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