

111TH CONGRESS
1ST SESSION

H. R. 75

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 6, 2009

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

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 In this Act:

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

1 (2) PROJECT.—The term “Project” means the
2 impoundment, recharge, treatment, and other facili-
3 ties the construction, operation, watershed manage-
4 ment, and maintenance of which is authorized under
5 section 2.

6 (3) SECRETARY.—The term “Secretary” means
7 the Secretary of the Interior.

8 **SEC. 2. AUTHORIZATION FOR CONSTRUCTION OF SANTA**
9 **MARGARITA RIVER PROJECT.**

10 (a) AUTHORIZATION.—The Secretary, acting pursu-
11 ant to Federal reclamation law (the Act of June 17, 1902
12 (32 Stat. 388, chapter 1093)), and Acts supplemental to
13 and amendatory of that Act (43 U.S.C. 371 et seq.), to
14 the extent that law is not inconsistent with this Act, may
15 construct, operate, and maintain the Project substantially
16 in accordance with the final feasibility report and environ-
17 mental reviews for the Project and this Act.

18 (b) CONDITIONS.—The Secretary may construct the
19 Project only after the Secretary determines that the fol-
20 lowing conditions have occurred:

21 (1) CONTRACT.—(A) The District and the Sec-
22 retary of the Navy have entered into contracts under
23 subsections (c)(2) and (e) of section 9 of the Rec-
24 lamation Project Act of 1939 (43 U.S.C. 485h) to
25 repay to the United States equitable and appropriate

1 portions, as determined by the Secretary, of the ac-
2 tual costs of constructing, operating, and maintain-
3 ing the Project.

4 (B) As an alternative to a repayment contract
5 with the Secretary of the Navy described in subpara-
6 graph (A), the Secretary may allow the Secretary of
7 the Navy to satisfy all or a portion of the repayment
8 obligation for construction of the Project on the pay-
9 ment of the share of the Secretary of the Navy prior
10 to the initiation of construction, subject to a final
11 cost allocation as described in section 3.

12 (2) PERMITS.—The officer or agency of the
13 State of California authorized by law to grant per-
14 mits for the appropriation of water has granted the
15 permits to the Bureau of Reclamation for the benefit
16 of the Secretary of the Navy and the District as per-
17 mittees for rights to the use of water for storage and
18 diversion as provided in this Act, including approval
19 of all requisite changes in points of diversion and
20 storage, and purposes and places of use.

21 (3) DISTRICT AGREEMENTS.—(A) The District
22 has agreed—

23 (i) to not assert against the United States
24 any prior appropriative right the District may

1 have to water in excess of the quantity deliver-
2 able to the District under this Act; and

3 (ii) to share in the use of the waters im-
4 pounded by the Project on the basis of equal
5 priority and in accordance with the ratio pre-
6 scribed in section 4(b).

7 (B) The agreement and waiver under subpara-
8 graph (A) and the changes in points of diversion and
9 storage under paragraph (2)—

10 (i) shall become effective and binding only
11 when the Project has been completed and put
12 into operation; and

13 (ii) may be varied by agreement between
14 the District and the Secretary of the Navy.

15 (4) FEASIBILITY STUDIES.—The Secretary has
16 determined that the Project has completed applica-
17 ble economic, environmental, and engineering feasi-
18 bility studies.

19 **SEC. 3. COSTS.**

20 (a) IN GENERAL.—As determined by a final cost allo-
21 cation after completion of the construction of the Project,
22 the Secretary of the Navy shall be responsible to pay up-
23 front or repay to the Secretary only that portion of the
24 construction, operation, and maintenance costs of the
25 Project that the Secretary and the Secretary of the Navy

1 determine reflects the extent to which the Department of
2 the Navy benefits from the Project.

3 (b) OTHER CONTRACTS.—Notwithstanding sub-
4 section (a), the Secretary may enter into a contract with
5 the Secretary of the Navy for the impoundment, storage,
6 treatment, and carriage of prior rights water for domestic,
7 municipal, fish and wildlife, industrial, and other bene-
8 ficial purposes using Project facilities.

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

10 (a) OPERATION.—The Secretary, the District, or a
11 third party (consistent with section 6) may operate the
12 Project, subject to a memorandum of agreement between
13 the Secretary, the Secretary of the Navy, and the District
14 and under regulations satisfactory to the Secretary of the
15 Navy with respect to the share of the Project of the De-
16 partment of the Navy.

17 (b) YIELD ALLOTMENT.—Except as otherwise agreed
18 between the parties, the Secretary of the Navy and the
19 District shall participate in the Project yield on the basis
20 of equal priority and in accordance with the following
21 ratio:

22 (1) 60 percent of the yield of the Project is al-
23 lotted to the Secretary of the Navy.

24 (2) 40 percent of the yield of the Project is al-
25 lotted to the District.

1 (c) CONTRACTS FOR DELIVERY OF EXCESS
2 WATER.—

3 (1) EXCESS WATER AVAILABLE TO OTHER PER-
4 SONS.—If the Secretary of the Navy certifies to the
5 official agreed on to administer the Project that the
6 Department of the Navy does not have immediate
7 need for any portion of the 60 percent of the yield
8 of the Project allotted to the Secretary of the Navy
9 under subsection (b), the official may enter into tem-
10 porary contracts for the sale and delivery of the ex-
11 cess water.

12 (2) FIRST RIGHT FOR EXCESS WATER.—The
13 first right to excess water made available under
14 paragraph (1) shall be given the District, if other-
15 wise consistent with the laws of the State of Cali-
16 fornia.

17 (3) CONDITION OF CONTRACTS.—Each contract
18 entered into under paragraph (1) for the sale and
19 delivery of excess water shall include a condition
20 that the Secretary of the Navy has the right to de-
21 mand the water, without charge and without obliga-
22 tion on the part of the United States, after 30 days
23 notice.

24 (4) MODIFICATION OF RIGHTS AND OBLIGA-
25 TIONS.—The rights and obligations of the United

1 States and the District regarding the ratio,
2 amounts, definition of Project yield, and payment
3 for excess water may be modified by an agreement
4 between the parties.

5 (d) CONSIDERATION.—

6 (1) DEPOSIT OF FUNDS.—

7 (A) IN GENERAL.—Amounts paid to the
8 United States under a contract entered into
9 under subsection (c) shall be—

10 (i) deposited in the special account es-
11 tablished for the Department of the Navy
12 under section 2667(e)(1) of title 10,
13 United States Code; and

14 (ii) shall be available for the purposes
15 specified in section 2667(e)(1)(C) of that
16 title.

17 (B) EXCEPTION.—Section 2667(e)(1)(D)
18 of title 10, United States Code, shall not apply
19 to amounts deposited in the special account
20 pursuant to this subsection.

21 (2) IN-KIND CONSIDERATION.—In lieu of mone-
22 tary consideration under paragraph (1), or in addi-
23 tion to monetary consideration, the Secretary of the
24 Navy may accept in-kind consideration in a form

1 and quantity that is acceptable to the Secretary of
2 the Navy, including—

3 (A) maintenance, protection, alteration, re-
4 pair, improvement, or restoration (including en-
5 vironmental restoration) of property or facilities
6 of the Department of the Navy;

7 (B) construction of new facilities for the
8 Department of the Navy;

9 (C) provision of facilities for use by the
10 Department of the Navy;

11 (D) facilities operation support for the De-
12 partment of the Navy; and

13 (E) provision of such other services as the
14 Secretary of the Navy considers appropriate.

15 (3) RELATION TO OTHER LAWS.—Sections
16 2662 and 2802 of title 10, United States Code, shall
17 not apply to any new facilities the construction of
18 which is accepted as in-kind consideration under this
19 subsection.

20 (4) CONGRESSIONAL NOTIFICATION.—If the in-
21 kind consideration proposed to be provided under a
22 contract to be entered into under subsection (c) has
23 a value in excess of \$500,000, the contract may not
24 be entered into until the earlier of—

(A) the end of the 30-day period beginning on the date on which the Secretary of the Navy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the contract and the form and quantity of the in-kind consideration; or

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

SEC. 5. REPAYMENT OBLIGATION OF THE DISTRICT.

(a) DETERMINATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the general repayment obligation of the District shall be determined by the Secretary consistent with subsections (c)(2) and (e) of section 9 of the Reclamation Project Act of 1939 (43 U.S.C. 485h) to repay to the United States equitable and appropriate portions, as determined by the Secretary, of the actual costs of constructing, operating, and maintaining the Project.

(2) GROUNDWATER.—For purposes of calculating interest and determining the time when the

(b) MODIFICATION OF RIGHTS AND OBLIGATION BY AGREEMENT.—The rights and obligations of the United States and the District regarding the repayment obligation of the District may be modified by an agreement between the parties.

(a) IN GENERAL.—The Secretary may transfer to the District, or a mutually agreed upon third party, the care, operation, and maintenance of the Project under conditions that are—

(2) with respect to the portion of the Project
that is located within the boundaries of Camp Pen-

1 dleton, satisfactory to the Secretary, the District,
2 and the Secretary of the Navy.

3 (b) **EQUITABLE CREDIT.**—

4 (1) **IN GENERAL.**—In the event of a transfer
5 under subsection (a), the District shall be entitled to
6 an equitable credit for the costs associated with the
7 proportionate share of the Secretary of the operation
8 and maintenance of the Project.

9 (2) **APPLICATION.**—The amount of costs de-
10 scribed in paragraph (1) shall be applied against the
11 indebtedness of the District to the United States.

12 **SEC. 7. SCOPE OF ACT.**

13 (a) **IN GENERAL.**—Except as otherwise provided in
14 this section, for the purpose of this Act, the laws of the
15 State of California shall apply to the rights of the United
16 States pertaining to the use of water under this Act.

17 (b) **LIMITATIONS.**—Nothing in this Act—

18 (1) provides a grant or a relinquishment by the
19 United States of any rights to the use of water that
20 the United States acquired according to the laws of
21 the State of California, either as a result of the ac-
22 quisition of the land comprising Camp Joseph H.
23 Pendleton and adjoining naval installations, and the
24 rights to the use of water as a part of that acquisi-

1 tion, or through actual use or prescription or both
2 since the date of that acquisition, if any;

3 (2) creates any legal obligation to store any
4 water in the Project, to the use of which the United
5 States has those rights;

6 (3) requires the division under this Act of water
7 to which the United States has those rights; or

8 (4) constitutes a recognition of, or an admission
9 by the United States that, the District has any
10 rights to the use of water in the Santa Margarita
11 River, which rights, if any, exist only by virtue of
12 the laws of the State of California.

13 **SEC. 8. LIMITATIONS ON OPERATION AND ADMINISTRA-**
14 **TION.**

15 Unless otherwise agreed by the Secretary of the
16 Navy, the Project—

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

1 (2) shall not be administered or operated in any
2 way that will impair or deplete the quantities of
3 water the use of which the United States would be
4 entitled under the laws of the State of California
5 had the Project not been built.

6 **SEC. 9. REPORTS TO CONGRESS.**

7 Not later than 2 years after the date of the enact-
8 ment of this Act and periodically thereafter, the Secretary
9 and the Secretary of the Navy shall each submit to the
10 appropriate committees of Congress reports that describe
11 whether the conditions specified in section 2(b) have been
12 met and if so, the manner in which the conditions were
13 met.

14 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

15 There is authorized to be appropriated to carry out
16 this Act—

17 (1) \$60,000,000, as adjusted to reflect the engi-
18 neering costs indices for the construction cost of the
19 Project; and

20 (2) such sums as are necessary to operate and
21 maintain the Project.

1 **SEC. 11. SUNSET.**

2 The authority of the Secretary to complete construc-
3 tion of the Project shall terminate on the date that is 10
4 years after the date of the enactment of this Act.

