

109TH CONGRESS
1ST SESSION

H. R. 125

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2005

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

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,*

1 **SECTION 1. DEFINITIONS.**

2 For the purposes of this Act, the following definitions
3 apply:

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

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

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

15 **SEC. 2. AUTHORIZATION FOR CONSTRUCTION OF SANTA**
16 **MARGARITA RIVER PROJECT.**

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

24 (b) CONDITIONS.—The Secretary may construct the
25 Project only after the Secretary determines that the fol-
26 lowing conditions have occurred:

1 (1) The District has entered into a contract
2 under section 9(d) of the Reclamation Project Act of
3 1939 to repay to the United States appropriate por-
4 tions, as determined by the Secretary, of the actual
5 costs of constructing, operating, and maintaining the
6 Project, together with interest as hereinafter pro-
7 vided.

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

17 (3) The District has agreed that it will not as-
18 sert against the United States any prior appropria-
19 tive right the District may have to water in excess
20 of the quantity deliverable to it under this Act, and
21 will share in the use of the waters impounded by the
22 Project on the basis of equal priority and in accord-
23 ance with the ratio prescribed in section 4(b). This
24 agreement and waiver and the changes in points of
25 diversion and storage under paragraph (2), shall be-

1 come effective and binding only when the Project
2 has been completed and put into operation.

3 (4) The Secretary has determined that the
4 Project has economic, environmental, and engineer-
5 ing feasibility.

6 **SEC. 3. COSTS.**

7 The Department of the Navy shall not be responsible
8 for any costs in connection with the Project, except upon
9 completion and then shall be charged in reasonable pro-
10 portion to its use of the Project under regulations agreed
11 upon by the Secretary of the Navy and Secretary of the
12 Interior.

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

14 (a) OPERATION.—The operation of the Project, sub-
15 ject to a memorandum of agreement between the Sec-
16 retary, the Navy, and the District and under regulations
17 satisfactory to the Secretary of the Navy with respect to
18 the Navy's share of the project, may be by the Secretary,
19 the District, or a third party consistent with section 6.

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

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

3 (2) 40 percent of the Project's yield is allotted
4 to the District.

5 (c) CONTRACTS FOR DELIVERY OF EXCESS
6 WATER.—

7 (1) EXCESS WATER AVAILABLE TO OTHER PER-
8 SONS.—If the Secretary of the Navy certifies to the
9 official agreed upon to administer the Project that
10 the Department of the Navy does not have imme-
11 diate need for any portion of the 60 percent of the
12 Project's yield allotted to the Secretary of the Navy
13 under subsection (b), the official may enter into tem-
14 porary contracts for the sale and delivery of the ex-
15 cess water.

16 (2) FIRST RIGHT FOR EXCESS WATER.—The
17 first right to excess water to be made available
18 under paragraph (1) shall be given the District, if
19 otherwise consistent with the laws of the State of
20 California.

21 (3) CONDITION OF CONTRACTS.—Each contract
22 entered into under paragraph (1) for the sale and
23 delivery of excess water shall include a condition
24 that the Secretary of the Navy has the right to de-
25 mand that water, without charge and without obliga-

1 tion on the part of the United States, after 30 days
2 notice.

3 (4) MODIFICATION OF RIGHTS AND OBLIGA-
4 TIONS RELATED TO WATER YIELD.—The rights and
5 obligations of the United States and the District re-
6 garding the ratio or amounts of Project yield deliv-
7 ered may be modified by an agreement between the
8 parties.

9 (d) CONSIDERATION.—

10 (1) DEPOSIT OF FUNDS.—Moneys paid to the
11 United States under a contract entered into under
12 subsection (c) shall be deposited in the special ac-
13 count established for the Department of the Navy
14 under paragraph (1) of section 2667(d) of title 10,
15 United States Code, and shall be available for the
16 purposes specified in subparagraph (C) of such
17 paragraph. Subparagraph (D) of such paragraph
18 shall not apply to moneys deposited in the special
19 account pursuant to this subsection.

20 (2) IN-KIND CONSIDERATION.—In lieu of mone-
21 etary consideration under paragraph (1), or in addi-
22 tion to such consideration, the Secretary of the Navy
23 may accept in-kind consideration in a form and
24 quantity that is acceptable to the Secretary of the

1 Navy, including the following forms of in-kind con-
2 sideration:

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
12 Department of the Navy.

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 whose construction is
18 accepted as in-kind consideration under this sub-
19 section.

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 the following:

1 (A) The end of the 30-day period begin-
2 ning on the date on which a report describing
3 the contract and the form and quantity of the
4 in-kind consideration is submitted by the Sec-
5 retary of the Navy to the Committee on Armed
6 Services of the Senate and the Committee on
7 Armed Services of the House of Representa-
8 tives.

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

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

15 (a) IN GENERAL.—The general repayment obligation
16 of the District shall be determined by the Secretary of the
17 Interior consistent with the Water Supply Act of 1958;
18 provided, however, that for the purposes of calculating in-
19 terest and determining the time when the District’s repay-
20 ment obligation to the United States commences, the
21 pumping and treatment of groundwater from the Project
22 shall be deemed equivalent to the first use of water from
23 a water storage project. There shall be no repayment obli-
24 gation under this section for water delivered to the Dis-
25 trict under a contract as provided in section 4(c).

1 (b) MODIFICATION OF RIGHTS AND OBLIGATION BY
2 AGREEMENT.—The rights and obligations of the United
3 States and the District regarding the repayment obliga-
4 tion of the District may be modified by an agreement be-
5 tween the parties.

6 **SEC. 6. TRANSFER OF CARE, OPERATION, AND MAINTENANCE.**
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8 The Secretary may transfer to the District, or a mu-
9 tually agreed upon third party, the care, operation, and
10 maintenance of the Project under conditions satisfactory
11 to the Secretary and the District, and with respect to the
12 portion of the Project that is located within the boundaries
13 of Camp Pendleton, satisfactory also to the Secretary of
14 the Navy. If such a transfer takes place, the District shall
15 be entitled to an equitable credit for the costs associated
16 with the Secretary's proportionate share of the operation
17 and maintenance of the Project. The amount of such costs
18 shall be applied against the indebtedness of the District
19 to the United States.

20 **SEC. 7. SCOPE OF ACT.**

21 For the purpose of this Act, the basis, measure, and
22 limit of all rights of the United States pertaining to the
23 use of water shall be the laws of the State of California.
24 That nothing in this Act shall be construed—

1 (1) as a grant or a relinquishment by the
2 United States of any rights to the use of water that
3 it acquired according to the laws of the State of
4 California, either as a result of its acquisition of the
5 lands comprising Camp Joseph H. Pendleton and
6 adjoining naval installations, and the rights to the
7 use of water as a part of that acquisition, or through
8 actual use or prescription or both since the date of
9 that acquisition, if any;

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

13 (3) to constitute a recognition of, or an admis-
14 sion that, the District has any rights to the use of
15 water in the Santa Margarita River, which rights, if
16 any, exist only by virtue of the laws of the State of
17 California; or

18 (4) to require the division under this Act of
19 water to which the United States has such rights.

20 **SEC. 8. LIMITATIONS ON OPERATION AND ADMINISTRA-**
21 **TION.**

22 Unless otherwise agreed by the Secretary of the
23 Navy, the Project—

24 (1) shall be operated in a manner which allows
25 the free passage of all of the water to the use of

1 which the United States is entitled according to the
2 laws of the State of California either as a result of
3 its acquisition of the lands comprising Camp Joseph
4 H. Pendleton and adjoining naval installations, and
5 the rights to the use of water as a part of those ac-
6 quisitions, or through actual use or prescription, or
7 both, since the date of that acquisition, if any; and

8 (2) shall not be administered or operated in any
9 way which will impair or deplete the quantities of
10 water the use of which the United States would be
11 entitled under the laws of the State of California
12 had the Project not been built.

13 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

14 There is authorized to be appropriated, out of any
15 money in the Treasury of the United States not otherwise
16 appropriated, the following—

17 (1) \$60,000,000 (the current estimated con-
18 struction cost of the Project, plus or minus such
19 amounts as may be indicated by the engineering cost
20 indices for this type of construction); and

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

23 **SEC. 10. REPORTS TO CONGRESS.**

24 Not later than 1 year after the date of the enactment
25 of this Act and periodically thereafter, the Secretary and

1 the Secretary of the Navy shall each report to the Con-
2 gress regarding if the conditions specified in section 2(b)
3 have been met and if so, the details of how they were met.

4 **SEC. 11. SUNSET.**

5 The authority of the Secretary to complete construc-
6 tion of the Project shall terminate 10 years after the date
7 of enactment of this Act.

 Passed the House of Representatives December 13,
2005.

Attest:

KAREN L. HAAS,
Clerk.