

110TH CONGRESS
2D SESSION

H. R. 29

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2008

Received; read twice and referred to the Committee on Energy and Natural
Resources

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

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 appropri-
19 ative 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 and may
3 be varied by agreement between the District and the
4 Secretary of the Navy.

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

8 **SEC. 3. COSTS.**

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

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

22 (a) OPERATION.—The operation of the Project, sub-
23 ject to a memorandum of agreement between the Sec-
24 retary, the Navy, and the District and under regulations
25 satisfactory to the Secretary of the Navy with respect to

1 the Navy's share of the project, may be by the Secretary,
2 the District, or a third party consistent with section 6.

3 (b) YIELD ALLOTMENT.—Except as otherwise agreed
4 between the parties, the Department of the Navy and the
5 District shall participate in the Project yield on the basis
6 of equal priority and in accordance with the following
7 ratio:

8 (1) 60 percent of the Project's yield is allotted
9 to the Secretary of the Navy.

10 (2) 40 percent of the Project's yield is allotted
11 to the District.

12 (c) CONTRACTS FOR DELIVERY OF EXCESS
13 WATER.—

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

23 (2) FIRST RIGHT FOR EXCESS WATER.—The
24 first right to excess water to be made available
25 under paragraph (1) shall be given the District, if

1 otherwise consistent with the laws of the State of
2 California.

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

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

16 (d) CONSIDERATION.—

17 (1) DEPOSIT OF FUNDS.—Moneys paid to the
18 United States under a contract entered into under
19 subsection (c) shall be deposited in the special ac-
20 count established for the Department of the Navy
21 under paragraph (1) of section 2667(d) of title 10,
22 United States Code, and shall be available for the
23 purposes specified in subparagraph (C) of such
24 paragraph. Subparagraph (D) of such paragraph

1 shall not apply to moneys deposited in the special
2 account pursuant to this subsection.

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

10 (A) Maintenance, protection, alteration, re-
11 pair, improvement, or restoration (including en-
12 vironmental restoration) of property or facilities
13 of the Department of the Navy.

14 (B) Construction of new facilities for the
15 Department of the Navy.

16 (C) Provision of facilities for use by the
17 Department of the Navy.

18 (D) Facilities operation support for the
19 Department of the Navy.

20 (E) Provision of such other services as the
21 Secretary of the Navy considers appropriate.

22 (3) RELATION TO OTHER LAWS.—Sections
23 2662 and 2802 of title 10, United States Code, shall
24 not apply to any new facilities whose construction is

1 accepted as in-kind consideration under this sub-
2 section.

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

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

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

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

22 (a) IN GENERAL.—The general repayment obligation
23 of the District shall be determined by the Secretary of the
24 Interior consistent with sections 9(c)2 and 9(e) of the Rec-
25 lamation Project Act of 1939 to repay to the United

1 States equitable and appropriate portions, as determined
2 by the Secretary, of the actual costs of constructing, oper-
3 ating, and maintaining the Project; provided, however,
4 that for the purposes of calculating interest and deter-
5 mining the time when the District's repayment obligation
6 to the United States commences, the pumping and treat-
7 ment of groundwater from the Project shall be deemed
8 equivalent to the first use of water from a water storage
9 project. There shall be no repayment obligation under this
10 section for water delivered to the District under a contract
11 as provided in section 4(c).

12 (b) MODIFICATION OF RIGHTS AND OBLIGATION BY
13 AGREEMENT.—The rights and obligations of the United
14 States and the District regarding the repayment obliga-
15 tion of the District may be modified by an agreement be-
16 tween the parties.

17 **SEC. 6. TRANSFER OF CARE, OPERATION, AND MAINTENANCE.**
18

19 The Secretary may transfer to the District, or a mu-
20 tually agreed upon third party, the care, operation, and
21 maintenance of the Project under conditions satisfactory
22 to the Secretary and the District, and with respect to the
23 portion of the Project that is located within the boundaries
24 of Camp Pendleton, satisfactory also to the Secretary of
25 the Navy. If such a transfer takes place, the District shall

1 be entitled to an equitable credit for the costs associated
2 with the Secretary's proportionate share of the operation
3 and maintenance of the Project. The amount of such costs
4 shall be applied against the indebtedness of the District
5 to the United States.

6 **SEC. 7. SCOPE OF ACT.**

7 For the purpose of this Act, the basis, measure, and
8 limit of all rights of the United States pertaining to the
9 use of water shall be the laws of the State of California.
10 Provided that nothing in this Act shall be construed—

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

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

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

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated, out of any
3 money in the Treasury of the United States not otherwise
4 appropriated, the following:

5 (1) \$60,000,000 (the current estimated con-
6 struction cost of the Project, plus or minus such
7 amounts as may be indicated by the engineering cost
8 indices for this type of construction).

9 (2) Such sums as may be required to operate
10 and maintain the said project.

11 **SEC. 10. REPORTS TO CONGRESS.**

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

17 **SEC. 11. SUNSET.**

18 The authority of the Secretary to complete construc-
19 tion of the Project shall terminate 10 years after the date
20 of enactment of this Act.

Passed the House of Representatives February 12,
2008.

Attest: LORRAINE C. MILLER,
Clerk.