

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

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OCTOBER 4, 2004.—Ordered to be printed

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Mr. POMBO, from the Committee on Resources,  
submitted the following

## R E P O R T

[To accompany H.R. 4389]

The Committee on Resources, to whom was referred the bill (H.R. 4389) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### PURPOSE OF THE BILL

The purpose of H.R. 4389 is 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 other purposes.

### BACKGROUND AND NEED FOR LEGISLATION

During the early 1900's, agriculture and ranching developed in the upper Santa Margarita River basin using water diverted from the Santa Margarita River and water extracted from wells near the river. By 1940, base flow in the river had been reduced to such an extent that water users in the lower basin filed a lawsuit against water users in the upper basin. The result of this lawsuit was the "1940 Stipulated Judgement," which partitioned water in the upper basin between uses in the upper basin and flow to the lower basin. Since then, three other major lawsuits over rights to this water have taken place. Moreover, three planned water supply projects have failed to resolve the conflicts.

The most recent of these projects, the Santa Margarita Project, was intended to use Federal money to develop a two dam and reservoir project on the river for the benefit of Fallbrook Public Utility

District (FPUD) and the U.S. Marine Corps Base at Camp Pendleton. The estimated cost of the project was \$22 million in 1954 dollars, or \$254 million in today's dollars. An effort to implement the project in the Santa Margarita in the early 1980's stalled after two years of effort and significant state and federal agency support.

The lack of adequate water supply poses a serious problem for water users in the Santa Margarita River Basin. Urbanization, especially since about 1970, has transformed this area in San Diego County from large ranches to tract homes. In the lower basin, the modest agricultural use of land and water, primarily for citrus and avocado trees, has stayed relatively constant. The creation of Camp Pendleton Marine Base, which covers most of the lower basin, added a relatively small, constant demand for water for base operations. Base officials, however, are concerned that future water demands in the lower basin could be significantly greater to support a major military mobilization or to provide adequate habitat for endangered species.

Additionally, time constraints on the outstanding land grants that control water usage in the Santa Margarita River Basin is an issue to developing the project. Reclamation holds three water rights permits totaling 185,000 acre-feet<sup>1</sup> on the Santa Margarita River. These permits were intended for surface water impoundment that, at one time, Reclamation was proposing to develop. Under California Water Rights Law, these permits must be perfected, i.e., demonstrated to be put to beneficial uses, by 2007 or the water rights may be lost.

The proposed Santa Margarita Conjunctive Use Project provides for enhanced recharge and recovery from the underground basin on Camp Pendleton to provide a water supply for both Camp Pendleton and FPUD, as resolution of the long-standing water rights disputes between the United States and Fallbrook. The project, as proposed, will develop 6,400 acre-feet for FPUD and 9,600 acre-feet to Camp Pendleton. In addition, an ongoing feasibility study being conducted by the Bureau of Reclamation is evaluating alternatives to expand the water supply.

The proposed project includes the construction of enhanced recharge facilities that contain a new collapsible diversion weir and 46 acres of new recharge ponds. The enhanced recharge potential is 14,000 acre-feet per year (AF/yr), in addition to the naturally occurring recharge. The collapsible weir will divert flows and permit flood flows to pass to flush the lower river and estuary as well as provide beach replenishment. It will also include the construction of up to five new wells, monitoring, and a collection system to provide a total of 18,000 AF/yr of extraction capability. The project water will be distributed to the existing Camp Pendleton and FPUD distribution systems through construction of two pump stations and approximately nine miles of transmission pipeline. This pipeline will also provide Camp Pendleton with a connection to the regional water delivery system, not currently available, for emergency supply purposes.

The major activities taking place in preparation for project implementation include a pre-feasibility study being conducted by Reclamation for the purposes of completing a joint feasibility study

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<sup>1</sup> One acre-foot equals 327,000 gallons of water.

and Environmental Impact Report/Environmental Impact Statement. Funding for this effort comes from several Federal sources, including Camp Pendleton, Military Construction, and a Reclamation Planning account as well as local funding contributed by FPUD.

The Santa Margarita Conjunctive Use Project will provide a safe, drought- and earthquake-proof water supply—enough for 35,000 families—for Camp Pendleton and Fallbrook. The project would improve and partially privatize the water supply to USMC Base Camp Pendleton, which will receive better quality water in quantities sufficient to meet water needs up to its ultimate planned utilization. The project sets aside and preserves valuable riparian and upland habitats of one of the last free flowing rivers in California, using 1300 acres originally purchased for a dam and reservoir.

#### COMMITTEE ACTION

Congressman Darrell Issa (R-CA) introduced H.R. 4389 on May 19, 2004. The bill was referred to the Committee on Resources and within the Committee to the Subcommittee on Water and Power. On September 15, 2004, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

#### SECTION-BY-SECTION

##### *Section 1. Definitions*

This section defines various terms used in the bill.

##### *Section 2. Authorization for construction of Lower Santa Margarita Conjunctive Use Project*

This authorizes the Secretary of the Interior to construct, operate, and maintain the Lower Santa Margarita Conjunctive Use Project for the District subject to conditions. The Secretary may construct the Project only after the (1) the District has entered into a repayment contract with the Federal Government, (2) the State of California has granted permits for the appropriation of water to the Bureau of Reclamation, (3) the District agrees it will not assert any prior appropriated water right in excess of the water developed by this project and that the District agrees to share in the use of the project water supply according to the project yield allotment prescribed in this Act, and (4) the Secretary has determined the project has economic and engineering feasibility. It is the intent of the legislation that all environmental and regulatory permits are in place prior to initiating project development. The Bureau of Reclamation is expected to complete its feasibility investigation and environmental impact analysis in year 2005.

##### *Section 3. Costs*

The Department of the Navy is not responsible for any cost of the Project until the project is completed. Upon completion the Department of the Navy will be responsible to repay proportionate costs of the project as agreed to by agreements between the Department of the Interior and the Department of the Navy.

*Section 4. Operation; yield allotment; delivery*

The Interior Secretary, or others as agreed to by the Secretaries of the Navy and Interior, may operate project facilities in accordance to regulations satisfactory to the Department of the Navy and with respect to the Navy's share of the project water supply. 60 per cent of the project water supply is allotted to the Navy and 40 per cent is allotted to the District, unless an agreement between the project beneficiaries states differently. The proportionate water share agreements between the Federal Government and the District may be modified by an agreement between the parties. Should the Navy not be able to take delivery of its full allotment (60 per cent share), the responsible project operator can enter into temporary water delivery contracts to other users. The District is given first right to use the Navy's unused portion, if consistent with California law. All monies collected pursuant to the temporary water contracts shall not be applied to the District's project repayment obligations.

*Section 5. Repayment obligation of the District*

This section specifies the general repayment obligation of the District, as mutually agreed to all parties, including allowances for water made available during the interim development period and with consideration of the irrigator's ability to pay. The bill includes provisions on how water will be delivered and repayment will be made from the time water is first made available up to full project operation. The repayment obligation of the District may be modified, if necessary, by an agreement between the parties at any time during the life of the project.

*Section 6. Transfer of care, operation, and maintenance*

The Interior Secretary may transfer the care, operation, and maintenance of the project to the District or to an agreed upon third party under conditions satisfactory to all parties. Costs associated with the Secretary's portion of the project's operation and maintenance to be transferred are to be credited and applied to the District's indebtedness to the United States.

*Section 7. Scope of the Act*

The right to divert and use water by the United States will be as permitted and protected by laws of the State of California. The intent of the legislation is to recognize the soon-to-be completed Santa Margarita River water right adjudication by the State of California and the "1940 Stipulated Judgement" which apportions water between the Upper and Lower Santa Margarita River users. Nothing in this legislation is intended to affect the water quality, water rights or the water rights claims of any Indian tribe, band or community located within the Santa Margarita River watershed, or of the United States acting on their behalf.

*Section 8. Limitations on operation and administration*

The operation of the project will not interfere, impair, or deplete decreed rights of the Department of the Navy to the availability and quantity of waters permitted under California law prior to the project being built and used on lands comprising Camp Pendleton and adjoining naval installations.

*Section 9. Authorizations of appropriations*

The bill authorizes an appropriation of \$60 million for the planning, design, and construction of project facilities and additional sums as necessary for project operation and maintenance purposes.

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 Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The bill authorizes an appropriation of \$60 million for the construction of the project plus additional funds for ongoing maintenance of the project. The United States will also receive revenues from the project beneficiaries from repayment contracts, but it is unclear how large these payments will be or when they will start.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, the committee believes this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

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

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES,  
*Washington, DC, October 1, 2004.*

Hon. DUNCAN HUNTER,  
*Chairman, Committee on Armed Services,*  
*Rayburn HOB, Washington, DC.*

DEAR MR. CHAIRMAN: On September 15, 2004, the Committee on Resources reported H.R. 4389, 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. The bill was referred primarily to the Committee on Resources, with an additional referral to the Armed Services Committee.

Knowing that we have only a short time remaining in this session, I ask that you allow the Armed Services Committee to be discharged from further consideration of the bill so that it may be scheduled under suspension of the rules as soon as possible. This discharge in no way affects your jurisdiction over the subject matter of the bill and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Armed Services Committee represented on the conference committee. I would be pleased to include this letter and any response in the bill report filed by the Committee Resources.

Thank you for your consideration of my request and I look forward to bringing H.R. 4389 to the Floor soon.

Sincerely,

RICHARD W. POMBO,  
*Chairman.*