

107TH CONGRESS
2^D SESSION

H. R. 5123

To address certain matters related to Colorado River water management and the Salton Sea by providing funding for habitat enhancement projects at the Salton Sea, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2002

Mr. HUNTER introduced the following bill; which was referred to the
Committee on Resources

A BILL

To address certain matters related to Colorado River water management and the Salton Sea by providing funding for habitat enhancement projects at the Salton Sea, 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. SHORT TITLE.**

4 This Act may be cited as the “Colorado River Quan-
5 tification Settlement Facilitation Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ALL AMERICAN CANAL.—The term “All
2 American Canal” means the main canal and appur-
3 tenant structures in Southern California authorized
4 by the Boulder Canyon Project Act (43 U.S.C. 617
5 et seq.) for the delivery of water to the Imperial Irri-
6 gation District and the Coachella Valley Water Dis-
7 trict.

8 (2) CALIFORNIA COLORADO RIVER WATER USE
9 PLAN.—The term “California Colorado River Water
10 Use Plan” means that document dated May 2000,
11 prepared by the Colorado River Board of the State
12 of California and interested parties to address the
13 policies, programs, projects, actions, and other ac-
14 tivities dealing with safeguarding, protecting, and
15 optimizing California’s Colorado River resources.

16 (3) COACHELLA VALLEY WATER DISTRICT OR
17 CVWD.—The term “Coachella Valley Water District”
18 or “CVWD” means the county water district by that
19 name organized under the laws of the State of Cali-
20 fornia for the purpose of providing water supplies
21 and other services within the boundaries of that dis-
22 trict in the Coachella Valley and Imperial Valley,
23 California.

1 (4) COMMISSIONER.—The term “Commis-
2 sioner” means the Commissioner of the Inter-
3 national Boundary and Water Commission.

4 (5) COVERED ACTIVITIES.—The term “Covered
5 Activities” means those activities and actions identi-
6 fied in the Habitat Conservation Plan as “activities
7 covered by the HCP” or “covered activities”.

8 (6) COVERED SPECIES.—The term “Covered
9 Species” means those species identified in the Habi-
10 tat Conservation Plan as “species covered by the
11 HCP” or “covered species”.

12 (7) HABITAT CONSERVATION PLAN.—The term
13 “Habitat Conservation Plan” means the conserva-
14 tion plan developed by the Imperial Irrigation Dis-
15 trict pursuant to subsection (b)(2) of section 10 of
16 the Endangered Species Act of 1973 (16 U.S.C.
17 1539(b)(2)) for the Quantification Settlement Agree-
18 ment water transfers and related actions.

19 (8) HABITAT CONSERVATION PLAN AREA.—The
20 term “Habitat Conservation Plan Area” means the
21 “HCP Area” as identified in the Habitat Conserva-
22 tion Plan.

23 (9) HABITAT ENHANCEMENT PROJECTS.—The
24 term “Habitat Enhancement Projects” means those
25 projects and actions benefiting species using the

1 Salton Sea area that are identified in the Habitat
2 Conservation Plan as “habitat enhancement
3 projects”.

4 (10) IBWC.—The term “IBWC” means the
5 International Boundary and Water Commission.

6 (11) IMPERIAL IRRIGATION DISTRICT OR IID.—
7 The term “Imperial Irrigation District” or “IID”
8 means the irrigation district by that name organized
9 under the laws of the State of California for the pur-
10 pose of providing water supplies, electric power, and
11 other services within the boundaries and power serv-
12 ice area of that district in the Imperial Valley and
13 Coachella Valley, California.

14 (12) METROPOLITAN WATER DISTRICT OF
15 SOUTHERN CALIFORNIA OR MWD.—The term “The
16 Metropolitan Water District of Southern California”
17 or “MWD” means the metropolitan water district by
18 that name organized under the laws of the State of
19 California for the purpose of supplying municipal,
20 industrial, and agricultural water to that area of
21 southern California within the boundaries of that
22 district.

23 (13) QUANTIFICATION SETTLEMENT AGREE-
24 MENT.—The term “Quantification Settlement Agree-
25 ment” means the agreement of that title among the

1 Quantification Settlement Agreement Parties, the
2 provisions of which are substantially as described in
3 the draft Quantification Settlement Agreement dated
4 December 12, 2000, submitted for public review by
5 the Quantification Settlement Agreement Parties.

6 (14) QUANTIFICATION SETTLEMENT AGREE-
7 MENT PARTIES.—The term “Quantification Settle-
8 ment Agreement Parties” means IID, MWD, and
9 CVWD, and the State of California.

10 (15) SALTON SEA AUTHORITY.—The term
11 “Salton Sea Authority” means the Joint Powers Au-
12 thority by that name established under the laws of
13 the State of California by a Joint Powers agreement
14 signed on June 2, 1993.

15 (16) SAN DIEGO COUNTY WATER AUTHORITY
16 OR SDCWA.—The term “San Diego County Water
17 Authority” or “SDCWA” means the county water
18 authority by that name organized under the laws of
19 the State of California for the purpose of supplying
20 municipal, industrial, and agricultural water within
21 its boundaries in San Diego County, California.

22 (17) SECRETARY.—The term “Secretary”
23 means the Secretary of the Interior or any author-
24 ized representative of such Secretary.

1 **SEC. 3. SALTON SEA HABITAT ENHANCEMENT PROJECTS**
2 **AND RESTORATION FUNDING.**

3 (a) **AUTHORIZATION OF PROJECTS.—**

4 (1) **IN GENERAL.—**The Secretary, acting in ac-
5 cordance with this Act and through the Bureau of
6 Reclamation, shall, except as otherwise provided in
7 this section, take all necessary actions to—

8 (A) in order to satisfy the requirements of
9 the Endangered Species Act of 1973 (16 U.S.C.
10 1531 et seq.) for whatever action relating to the
11 Salton Sea may be required under that Act as
12 a result of the Quantification Settlement Agree-
13 ment water transfers, provide for the construc-
14 tion of the Habitat Enhancement Projects; and

15 (B) provide for the construction of projects
16 that provide facilities at or near the Salton Sea
17 for hunting, fishing, bird watching, boating,
18 and camping.

19 (2) **CONSULTATION.—**In implementing this sub-
20 section the Secretary shall consult with local govern-
21 ment entities and public interest groups.

22 (b) **COORDINATION WITH SALTON SEA RESTORA-**
23 **TION PLAN.—**

24 (1) **TIMING OF CONSTRUCTION.—**In deter-
25 mining the timing of construction of the Habitat
26 Enhancement Projects under this section, the Sec-

1 retary shall be guided by the timing of implementa-
2 tion of the Salton Sea restoration plan to be devel-
3 oped pursuant to the Salton Sea Reclamation Act of
4 1998 (112 Stat. 3377).

5 (2) LEGISLATION IMPLEMENTING SALTON SEA
6 RESTORATION PROJECT.—(A) If legislation pro-
7 viding for implementation of a long-term Salton Sea
8 restoration project is enacted by the Congress on or
9 before December 31, 2007, the funds appropriated
10 under this section may be used by the Secretary, the
11 Salton Sea Authority, or both, for the implementa-
12 tion of the Salton Sea restoration project in such
13 manner as the Secretary, in consultation with the
14 Salton Sea Authority, determines is consistent with
15 such legislation.

16 (B) If such legislation is not enacted by the
17 Congress on or before December 31, 2007, the Sec-
18 retary, acting through the Bureau of Reclamation,
19 the Salton Sea Authority, or both, shall proceed as
20 soon after that date as is practicable to use the
21 funds appropriated under this section to construct
22 the Habitat Enhancement Projects independent of
23 any long-term restoration plan for the Salton Sea.

24 (c) FACILITATION OF PROJECTS.—The Secretary
25 shall—

1 (1) make available such public lands as are
2 needed for the development of any of the Habitat
3 Enhancement Projects carried out at the Salton Sea;
4 and

5 (2) consult with IID and CVWD in order to ac-
6 commodate the operations of IID and CVWD in the
7 development of any of the Habitat Enhancement
8 Projects constructed on or adjacent to the Salton
9 Sea within their respective boundaries.

10 (d) WIND EROSION PREVENTION PROJECTS.—

11 (1) IN GENERAL.—The Secretary shall carry
12 out projects under this section that are necessary to
13 prevent threats to health or safety caused by wind
14 erosion of portions of the Salton Sea bed that be-
15 come exposed as a direct result of the receding of
16 the Salton Sea because of increased conservation
17 measures that reduce runoff into the Sea from the
18 New River and the Alamo River.

19 (2) MARSH CREATION AND GROUND COVER RE-
20 VEGETATION.—Projects under this subsection shall
21 include the creation of marshes and planting of
22 ground cover vegetation, including the creation of
23 marshes, planted fields, and other types of habitat
24 for waterfowl and other bird species.

1 (3) CONSULTATION.—In carrying out projects
2 under this subsection the Secretary shall consult
3 local government entities and public interest groups.

4 (4) USE FOR RECREATIONAL ACTIVITIES.—The
5 Secretary, in consultation with the California De-
6 partment of Fish and Game, shall keep open for
7 public access lands on which projects are carried out
8 under this subsection, including for hunting, fishing,
9 birdwatching, and other recreational activities.

10 (e) AUTHORIZATION OF APPROPRIATIONS.—

11 (1) IN GENERAL.—For the purpose of con-
12 structing Habitat Enhancement Projects under this
13 section, there are authorized to be appropriated to
14 the Secretary \$60,000,000.

15 (2) NONREIMBURSABLE EXPENDITURES.—Ex-
16 penditure of amounts appropriated under this sec-
17 tion shall be considered a nonreimbursable Federal
18 expenditure.

19 (3) ADJUSTMENT FOR INFLATION.—Amounts
20 authorized for appropriation by this subsection shall
21 be adjusted for inflation each fiscal year after the
22 date of enactment of this Act.

23 **SEC. 4. COMPLIANCE WITH ENDANGERED SPECIES ACT OF**
24 **1973.**

25 (a) FINDINGS.—The Congress finds the following:

1 (1) The Salton Sea Reclamation Act of 1998
2 (Public Law 105–372) recognized that—

3 (A) the Federal Government will bear the
4 responsibility for rehabilitation of the Salton
5 Sea; and

6 (B) such rehabilitation should be based on
7 the assumption that water conservation meas-
8 ures and transfers out of the Salton Sea Basin
9 could result in a reduction of inflows to the Sea
10 of up to 800,000 acre feet per year.

11 (2) Although the Federal Government will bear
12 that responsibility, IID, SDCWA, MWD, and
13 CVWD should contribute a combined total of
14 \$50,000,000 to mitigate the effects of the water
15 transfers on the Salton Sea.

16 (b) REQUIREMENTS DEEMED SATISFIED BY PAY-
17 MENT.—

18 (1) such districts and authority—

19 (A) are deemed to have fulfilled all respon-
20 sibilities of the districts under the Endangered
21 Species Act of 1973 (16 U.S.C. 1531 et. seq.)
22 arising from water transfers required by the
23 Quantification Settlement Agreement; and

24 (B) shall not be liable under any Federal
25 law for any penalty, or the payment of any ad-

1 ditional amount, with respect to such water
2 transfers; and

3 (2) the Secretary and the State of California
4 shall carry out all further responsibilities under law
5 with respect to those water transfers.

6 (c) SATISFACTION OF RESPONSIBILITIES BY SEC-
7 RETARY AND STATE.—

8 (1) IN GENERAL.—The responsibilities of the
9 Secretary and the State under subsection (b)(2)
10 shall be considered to be satisfied if the Secretary,
11 in consultation with the head of the California De-
12 partment of Fish and Game, implements a rehabili-
13 tation plan for the Salton Sea pursuant to the feasi-
14 bility studies required to be completed under section
15 101(b) of the Salton Sea Reclamation Act of 1998
16 (Public Law 105–09372; 112 Stat. 3377).

17 (2) USE OF PAYMENT.—The Secretary may,
18 subject to the availability of appropriations, use
19 amounts received by the United States as a payment
20 made under subsection (b) to implement a rehabili-
21 tation plan pursuant to paragraph (1) of this sub-
22 section.

23 (d) LIMITATION ON REVIEW.—Notwithstanding any
24 other law, no person may commence any judicial action
25 or other administrative or judicial proceeding to contest,

1 review, set aside, void, or annul the Secretary's approval
2 of the water transfers and related actions that are nec-
3 essary for the implementation of the Quantification Settle-
4 ment Agreement, or any related Federal agency action,
5 unless such person—

6 (1) submitted written comments to the Sec-
7 retary or a designee of the Secretary in the public
8 comment period for any proposed approval or action
9 for which a noticed public comment period was pro-
10 vided pursuant to applicable law or regulations, al-
11 leging with particularity the grounds for objections
12 to such a proposed approval or action; and

13 (2)(A) in the case of an approval or permit
14 under the Endangered Species Act of 1973, filed an
15 action in a United States District Court within 90
16 days after the issuance of such approval of permit;

17 (B) in the case of an environmental impact
18 statement under the National Environmental Policy
19 Act of 1969, filed an action in a United States Dis-
20 trict Court within 90 days after the issuance of a
21 record of decision regarding that statement; or

22 (C) in the case of any other approval or action
23 subject to this subsection, filed an action in a United
24 States District Court within 90 days after such ac-
25 tion is taken.

1 **SEC. 5. OFF-STREAM WATER MANAGEMENT RESERVOIRS**
2 **AND ASSOCIATED FACILITIES NEAR THE ALL**
3 **AMERICAN CANAL.**

4 (a) CONSTRUCTION REQUIREMENT.—

5 (1) IN GENERAL.—The Secretary, acting
6 through the Bureau of Reclamation and the Bureau
7 of Land Management, shall exercise existing author-
8 ity to operate and maintain the Colorado River front
9 work and levee system under section 4 of the Act of
10 January 21, 1927 (chapter 47; 44 Stat. 1010), and
11 other Acts relating to that authority, to take all nec-
12 essary actions to provide for the construction of off-
13 stream water management reservoirs and associated
14 facilities near the All American Canal.

15 (2) COORDINATION WITH ALL AMERICAN CANAL
16 WORK.—The Secretary shall coordinate construction
17 of the reservoirs and associated facilities with the
18 construction of a lined All American Canal pursuant
19 to title II of the Act of November 17, 1988 (Public
20 Law 100–675; 102 Stat. 4005).

21 (3) CONSTRUCTION BY IID.—The Secretary
22 shall authorize IID to carry out construction of the
23 reservoirs and associated facilities under this sub-
24 section if IID enters into an agreement with the
25 Secretary that addresses, among other matters con-
26 sidered appropriate by the Secretary, the following:

1 (A) The procedures and requirements for
2 approval and acceptance by the Secretary of
3 such works, including approval of the quality of
4 construction.

5 (B) Any measures the Secretary considers
6 necessary to protect public health and safety.

7 (C) Any mitigation measures the Secretary
8 considers necessary for the protection of fish
9 and wildlife resources.

10 (4) CONSTRUCTION ON NON-FEDERAL
11 LANDS.—The off-stream water management res-
12 ervoirs shall be constructed under this section on
13 lands owned by IID. For purposes of this paragraph,
14 the Secretary, acting through the Bureau of Land
15 Management, shall coordinate with IID to exchange
16 Federal lands with lands owned by IID pursuant to
17 existing land exchange authority in section 206 of
18 the Federal Land Policy and Management Act of
19 1976 (43 U.S.C. 1716) and any other applicable
20 Federal law.

21 (5) OPERATING AGREEMENT.—Prior to the
22 completion of construction under this subsection, the
23 Secretary shall enter into an operating agreement
24 with IID to arrange for appropriate operation of the
25 off-stream water management reservoirs so as to

1 provide for such matters as regulating river flows,
2 furthering water conservation and hydropower gen-
3 eration, preventing the loss of Lake Mead storage,
4 and facilitating any arrangements with Mexico devel-
5 oped pursuant to subsection (b).

6 (b) COOPERATION WITH MEXICO.—The Secretary
7 shall consult with the Commissioner to determine whether
8 the off-stream water management reservoirs and associ-
9 ated facilities constructed under this section may be of as-
10 sistance, on the basis of comity, to Mexico in addressing
11 its Colorado River water supply management needs. In
12 carrying out this subsection, the Secretary and the Com-
13 missioner shall consult with IID, CVWD, MWD, and
14 SDCWA.

15 (c) INITIATION OF CONSTRUCTION; PROGRESS RE-
16 PORT.—

17 (1) IN GENERAL.—The Secretary shall provide
18 for the initiation of construction of the water man-
19 agement reservoirs and associated facilities under
20 this section by June 30, 2003.

21 (2) REPORT.—Not later than December 31,
22 2003, the Secretary shall submit a report on the
23 progress of construction of the reservoirs and associ-
24 ated facilities, and the resolution with Mexico of any
25 related water management issues, to the Committee

1 of Resources of the House of Representatives and
2 the Committee of Energy and Natural Resources of
3 the Senate.

4 (3) PRECONSTRUCTION ACTIVITIES AUTHOR-
5 IZED.—This subsection is not intended to prohibit
6 the Secretary from proceeding with all necessary
7 preconstruction activities, including site selection,
8 engineering and design, and necessary environmental
9 compliance.

10 (d) AUTHORIZATION OF APPROPRIATION.—For con-
11 structing off-stream water management reservoirs and as-
12 sociated facilities under this section, there are authorized
13 to be appropriated to the Secretary \$53,000,000. Expendi-
14 ture of amounts appropriated under this section shall be
15 considered a nonreimbursable Federal expenditure.

16 **SEC. 6. TERMINATION OF AUTHORITIES AND PERMITS.**

17 This Act, including any incidental take permits and
18 other approvals issued under the Endangered Species Act
19 of 1973 pursuant to section 4, shall terminate and be of
20 no force or effect after December 31, 2002, unless the
21 Quantification Settlement Agreement is in effect on or be-
22 fore December 31, 2002, and remains in effect.

1 **SEC. 7. RESERVATION OF RIGHTS AND OBLIGATIONS WITH**
2 **RESPECT TO THE COLORADO RIVER.**

3 This Act shall not be construed to supersede or other-
4 wise affect any treaty, law, decree, contract, or agreement
5 governing use of water from the Colorado River. All activi-
6 ties undertaken pursuant to this Act shall be carried out
7 in a manner consistent with the rights and obligations of
8 persons under those treaties, laws, decrees, contracts, and
9 agreements.

10 **SEC. 8. RELATION TO RECLAMATION LAW.**

11 For the purposes of section 203(a) of the Reclama-
12 tion Reform Act of 1982 (96 Stat. 1264), any contract
13 or agreement entered into pursuant to this Act shall not
14 be treated as a contract entered into or amended subse-
15 quent to the date of enactment of that Act.

16 **SEC. 9. PROTECTION FROM LIABILITY.**

17 IID, CVWD, MWD, SDCWA, and the Salton Sea
18 Authority and its member agencies shall not be liable for
19 damages of any kind arising from the effects to the Salton
20 Sea or its bordering area resulting from—

21 (1) cooperation with the Secretary in regard to
22 any actions, programs, or projects implemented pur-
23 suant to this Act; or

24 (2) any actions that directly or indirectly reduce
25 the volume of water that flows into the Salton Sea.

○