

## H.R.2764

### Colorado River Quantification Settlement Facilitation Act (Introduced in the House)

#### **SEC. 4. SALTON SEA HABITAT ENHANCEMENT PROJECTS AND RESTORATION FUNDING.**

##### **(a) AUTHORIZATION OF PROJECTS-**

(1) **IN GENERAL-** In order to satisfy the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for whatever action relating to the Salton Sea may be required under that Act as a result of the Quantification Settlement Agreement water transfers, the Secretary, acting in accordance with this Act and through the Bureau of Reclamation, shall, except as otherwise provided in this section, take all necessary actions to provide for the construction of the Habitat Enhancement Projects, including for projects that provide facilities for hunting, fishing, bird watching, boating, and camping.

(2) **CONSULTATION-** In implementing this subsection the Secretary shall consult with Ducks Unlimited, Pheasants Forever, Desert Wildlife Unlimited, the Bass Anglers Sportsman Society, and the California Waterfowl Association.

##### **(b) COORDINATION WITH SALTON SEA RESTORATION PLAN-**

(1) **TIMING OF CONSTRUCTION-** In determining the timing of construction of the Habitat Enhancement Projects under this section, the Secretary shall be guided by the timing of implementation of the Salton Sea restoration plan to be developed pursuant to the Salton Sea Reclamation Act of 1998 (112 Stat. 3377).

(2) **LEGISLATION IMPLEMENTING SALTON SEA RESTORATION PROJECT-** (A) If legislation providing for implementation of a long-term Salton Sea restoration project is enacted by the Congress on or before December 31, 2007, the funds appropriated under this section may be used by the Secretary, the Salton Sea Authority, or both, for the implementation of the Salton Sea restoration project in such manner as the Secretary, in consultation with the Salton Sea Authority, determines is consistent with such legislation.

(B) If such legislation is not enacted by the Congress on or before December 31, 2007, the Secretary, acting through the Bureau of Reclamation, the Salton Sea Authority, or both, shall proceed as soon after that date as is practicable to use the funds appropriated

under this section to construct the Habitat Enhancement Projects independent of any long-term restoration plan for the Salton Sea .

(c) **FACILITATION OF PROJECTS-** The Secretary, acting through the Bureau of Reclamation and the United States Fish and Wildlife Service, shall--

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

(2) consult with IID and CVWD in order to accommodate the operations of IID and CVWD in the development of any of the Habitat Enhancement Projects constructed on or adjacent to the Salton Sea within their respective boundaries.

(d) **AUTHORIZATION OF APPROPRIATIONS-**

(1) **IN GENERAL-** For the purpose of constructing Habitat Enhancement Projects under this section, there are authorized to be appropriated to the Secretary \$60,000,000.

(2) **NONREIMBURSABLE EXPENDITURES-** Expenditure of amounts appropriated under this section shall be considered a nonreimbursable Federal expenditure.

(3) **ADJUSTMENT FOR INFLATION-** Amounts authorized for appropriation by this subsection shall be adjusted for inflation each fiscal year after the date of enactment of this Act.

## **SEC. 5. COMPLIANCE WITH ENDANGERED SPECIES ACT OF 1973.**

(a) **ACCEPTANCE AND APPROVAL OF DOCUMENT-** The Secretary shall accept and approve under section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) the Habitat Conservation Plan, and shall issue related incidental take permits and all other approvals required under the Endangered Species Act of 1973 so as to provide for compliance with the Endangered Species Act of 1973 for Covered Activities within the Habitat Conservation Plan Area.

(b) **DEADLINE; COMPLIANCE WITH ENDANGERED SPECIES ACT OF 1973-** The Secretary shall complete approval of the Habitat Conservation Plan and issuance of the incidental take permits and other necessary approvals under subsection (a) within the 60-day period beginning on the date of the enactment of this Act. Thereafter, all provisions of the Endangered Species Act of 1973 applicable to the Covered Activities within the Habitat Conservation Plan Area during the term of the Quantification Settlement Agreement shall be deemed satisfied, and the Secretary shall not impose any additional requirements on the Quantification Settlement Agreement Parties to address the effects of the Covered Activities on Covered Species in the event of changed or unforeseen circumstances or in the event of the listing of a Covered Species as a threatened species or endangered species under section 4(c) of that Act.

(c) **LIMITATION ON REVIEW-** Notwithstanding any other law, no person may commence any judicial action or other administrative or judicial proceeding to contest, review, set aside, void, or annul the Secretary's approval of the water transfers and related actions that are

necessary for the implementation of the Quantification Settlement Agreement; or any related Federal agency action, unless such person--

(1) submitted written comments to the Secretary or a designee of the Secretary in the public comment period for any proposed approval or action for which a noticed public comment period was provided pursuant to applicable law or regulations, alleging with particularity the grounds for objections to such a proposed approval or action; and

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

(B) in the case of an environmental impact statement under the National Environmental Policy Act of 1969, filed an action in a United States District Court within 90 days after the issuance of a record of decision regarding that statement; or

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

## **SEC. 6. OFF-STREAM WATER MANAGEMENT RESERVOIRS AND ASSOCIATED FACILITIES NEAR THE ALL AMERICAN CANAL.**

### **(a) CONSTRUCTION REQUIREMENT-**

(1) **IN GENERAL-** The Secretary, acting through the Bureau of Reclamation and the Bureau of Land Management, shall exercise existing authority to operate and maintain the Colorado River front work and levee system under section 4 of the Act of January 21, 1927 (chapter 47; 44 Stat. 1010), and other Acts relating to that authority, to take all necessary actions to provide for the construction of off-stream water management reservoirs and associated facilities near the All American Canal.

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

(3) **CONSTRUCTION BY IID-** The Secretary shall authorize IID to carry out construction of the reservoirs and associated facilities under this subsection if IID enters into an agreement with the Secretary that addresses, among other matters considered appropriate by the Secretary, the following:

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

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

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

(4) **CONSTRUCTION ON NON-FEDERAL LANDS-** The off-stream water management reservoirs shall be constructed under this section on lands owned by IID. For purposes of this paragraph, the Secretary, acting through the Bureau of Land Management, shall coordinate with IID to exchange Federal lands with lands owned by IID pursuant to existing land exchange authority in section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) and any other applicable Federal law.

(5) **OPERATING AGREEMENT-** Prior to the completion of construction under this subsection, the Secretary shall enter into an operating agreement with IID to arrange for appropriate operation of the off-stream water management reservoirs so as to provide for such matters as regulating river flows, furthering water conservation and hydropower generation, preventing the loss of Lake Mead storage, and facilitating any arrangements with Mexico developed pursuant to subsection (b).

(b) **COOPERATION WITH MEXICO-** The Secretary shall consult with the Commissioner to determine whether the off-stream water management reservoirs and associated facilities constructed under this section may be of assistance, on the basis of comity, to Mexico in addressing its Colorado River water supply management needs. In carrying out this subsection, the Secretary and the Commissioner shall consult with IID, CVWD, MWD, and SDCWA.

(c) **INITIATION OF CONSTRUCTION; PROGRESS REPORT-**

(1) **IN GENERAL-** The Secretary shall provide for the initiation of construction of the water management reservoirs and associated facilities under this section by June 30, 2003.

(2) **REPORT-** Not later than December 31, 2003, the Secretary shall submit a report on the progress of construction of the reservoirs and associated facilities, and the resolution with Mexico of any related water management issues, to the Committee of Resources of the House of Representatives and the Committee of Energy and Natural Resources of the Senate.

(3) **PRECONSTRUCTION ACTIVITIES AUTHORIZED-** This subsection is not intended to prohibit the Secretary from proceeding with all necessary preconstruction activities, including site selection, engineering and design, and necessary environmental compliance.

(d) **AUTHORIZATION OF APPROPRIATION-** For constructing off-stream water management reservoirs and associated facilities under this section, there are authorized to be appropriated to the Secretary \$53,000,000. Expenditure of amounts appropriated under this section shall be considered a nonreimbursable Federal expenditure.

## **SEC. 7. TERMINATION OF AUTHORITIES AND PERMITS.**

This Act, including any incidental take permits and other approvals issued under the Endangered Species Act of 1973 pursuant to section 5, shall terminate and be of no force or effect after December 31, 2002, unless the Quantification Settlement Agreement is in effect on

or before December 31, 2002, and remains in effect.

## **SEC. 8. RESERVATION OF RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLORADO RIVER.**

This Act shall not be construed to supersede or otherwise affect any treaty, law, decree, contract, or agreement governing use of water from the Colorado River. All activities undertaken pursuant to this Act shall be carried out in a manner consistent with the rights and obligations of persons under those treaties, laws, decrees, contracts, and agreements.

## **SEC. 9. RELATION TO RECLAMATION LAW.**

For the purposes of section 203(a) of the Reclamation Reform Act of 1982 (96 Stat. 1264), any contract or agreement entered into pursuant to this Act shall not be treated as a contract entered into or amended subsequent to the date of enactment of that Act.

## **SEC. 10. PROTECTION FROM LIABILITY.**

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

(1) cooperation with the Secretary in regard to any actions, programs, or projects implemented pursuant to this Act; or

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

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