

# Subcommittee on Water, Power and Oceans

John Fleming, Chairman  
Hearing Memorandum

May 20, 2016

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff , Subcommittee on Water, Power and Oceans (x58331)

Hearing: Legislative hearing on H.R. 5217, To affirm “The Agreement Between the United States and Westlands Water District” dated September 15, 2015, “The Agreement Between the United States, San Luis Water District, Panoche Water District and Pacheco Water District”, and for other purposes.  
May 24, 2016 at 10:30 a.m. in 1334 Longworth HOB

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## **H.R. 5217 (Rep. Jim Costa, D-CA), “*San Luis Drainage Resolution Act*”**

### **Bill Summary:**

H.R. 5217 affirms a recent litigation settlement between the federal government and the Westlands Water District in an attempt to bring about final resolution to decades-long litigation over the federal government’s responsibility to provide drainage for certain lands in Central California. The bill is very similar to H.R. 4366 (Rep. Valadao, R-CA), but adds facets of an agreement between the federal government and three additional water districts. This one-panel hearing will also include consideration of two other legislative proposals.

### **Invited Witnesses (in alphabetical order):**

*Mr. John Bezdek*

Senior Advisor to the Deputy Secretary  
U.S. Department of the Interior  
Washington, D.C.

*Mr. Tom Birmingham*

General Manager  
Westlands Water District  
Fresno, California

*Mr. Jerry Brown*

General Manager  
Contra Costa Water District  
Concord, California

*Mr. Steve Ellis*  
Vice-President  
Taxpayers for Common Sense  
Washington, D.C.

Mr. Dennis Falaschi  
General Manager, Panoche Water District  
Firebaugh, California

**Background:**

*History of the San Luis Unit*

Public Law 86-488 authorized the San Luis Unit as part of the Central Valley Project on June 3, 1960.<sup>1</sup> The principal purpose of the San Luis Unit, located in California's San Joaquin Valley, is irrigation water supply for almost one million acres of farmland. The federal government and the State of California's joint-use facilities include O'Neill Dam and Forebay, B.F. Sisk San Luis Dam, San Luis Reservoir and the San Luis Canal. The federal-only features include the O'Neill Pumping Plant and Intake Canal, Coalinga Canal and the San Luis Drain (Drain).<sup>2</sup>

Since clay layers beneath the agricultural lands prevent excess irrigation water from draining deeper into the soil, construction of the Drain began in 1968 to collect and transport subsurface drainage water from the San Luis Unit to the Sacramento-San Joaquin Bay-Delta. Of the planned 188 miles of drain, only 87 miles (see Map 1) were completed due concerns over water quality of the drain water.<sup>3</sup> Specifically, the Drain ended at Kesterson Reservoir (Reservoir), where the accumulation of drainage helped contribute to dying waterfowl and deformed embryos in 1982. In 1985, the Bureau of Reclamation (Reclamation) halted drainage services, closed the Drain and began cleaning up contaminated ponds at the Reservoir.<sup>4</sup>

There are a number of irrigation districts that relied on the Drain and which entered into contracts with the federal government to pay for irrigation water and drainage. Two of those irrigation districts will testify at this hearing. One such irrigation district, the Westlands Water District (Westlands) entered into contracts in 1963 and 1965 for these purposes.<sup>5</sup> Westlands, made up of more than 1,000 square miles of farmland in western Fresno and Kings Counties in the San Joaquin Valley,<sup>6</sup> receives a majority of its irrigation water supply from the San Luis Unit.<sup>7</sup>

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<sup>1</sup> P.L. 86-488. Web: <https://www.gpo.gov/fdsys/pkg/STATUTE-74/pdf/STATUTE-74-Pg156.pdf>

<sup>2</sup> <https://www.usbr.gov/mp/mpr-news/docs/factsheets/san-luis-drainage.pdf>

<sup>3</sup> Id.

<sup>4</sup> Id.

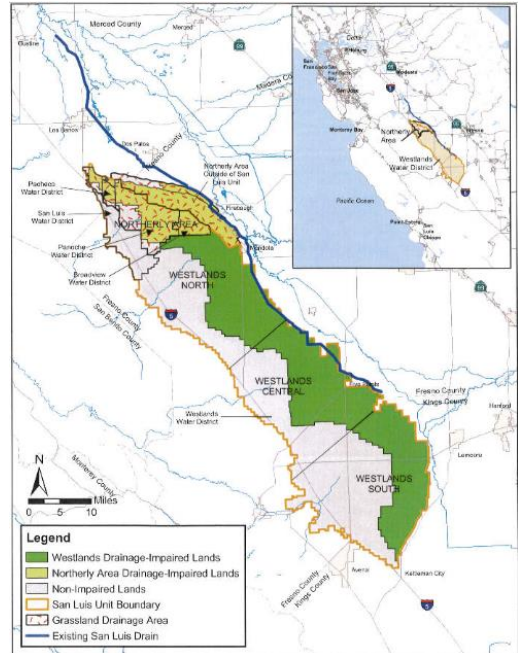
<sup>5</sup> Settlement Agreement Between the United States and Westlands Water District, August 2015; p. 2. Web: <http://wwd.ca.gov/wp-content/uploads/2015/09/dsAgreement.compressed.pdf>

<sup>6</sup> <http://wwd.ca.gov/about-westlands/>

<sup>7</sup> Id.

*Drainage Litigation and the Settlement:*

Controversy over impaired drainage services to the San Luis Unit resulted in litigation brought by landowners in the Westlands service area. In 1995, the U.S. District Court for the Eastern District of California concluded that the San Luis Act (P.L. 86-488) imposed a mandatory duty on the Interior Secretary to provide drainage service to lands served by the San Luis Unit (*Summer Peck Ranch v. Reclamation*).<sup>8</sup> In February 2000, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) upheld this ruling, but held that the Interior Department had discretion as to the means of satisfying this requirement (*Firebaugh Canal Co. v. United States*) (*Firebaugh*).<sup>9</sup> Later that year, the Ninth Circuit directed that the Secretary “shall, without delay, provide drainage to the San Luis Unit pursuant to the statutory duty imposed by section 1(a) of the San Luis Act.”<sup>10</sup> In 2007, Reclamation signed a Record of Decision selecting a drainage plan and found that the cost of providing drainage would be \$2.6 billion.<sup>11</sup> Using April 2015 cost indices, these costs are now estimated to be approximately \$3.8 billion.<sup>12</sup>



**Map 1:** Only 87 miles of original 188 mile design of the San Luis Drain was constructed. Source: 2007 Bureau of Reclamation EIS for the San Luis Feature Reevaluation

In 2011, individual landowners within Westlands filed a takings claim in the Court of Federal Claims (Claims Court) against the United States, alleging that the failure by the United States to provide drainage service caused a physical taking of their lands without just compensation in violation of the Fifth Amendment (*Etchegoinberry, et al. v. United States*) (*Etchegoinberry*).<sup>13</sup> The takings claim was generally based on lands being inundated with drainage water, which rendered such lands useless for agricultural production. The Plaintiffs brought the suit as a class action on behalf of all landowners located within Westlands “whose farmlands have not received the necessary drainage service the United States is required to provide under the San Luis Act.”<sup>14</sup> The case was stayed by the Claims Court in order to allow for settlement negotiations to proceed. In 2012, Westlands filed its own lawsuit against the

<sup>8</sup> *Summer Peck Ranch v. Reclamation, No. 1:91-cv-00048 (E.D. Cal.)*

<sup>9</sup> *Firebaugh Canal Co. v. United States, 203 F. 3d 568 (9<sup>th</sup> Cir. 2000)*

<sup>10</sup> *Firebaugh Canal Co. v. United States, Case No. F-88-cv-634-OWW (E.D. Cal.)*

<sup>11</sup> Letter from the Department of the Interior to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States dated April 21, 2016; p. 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Etchegoinberry, et al. v. United States, No.11-564L (Fed. Cl.)*

<sup>14</sup> *Id.*

United States in the Claims Court (*Westlands Water District v. United States*) (*Westlands*).<sup>15</sup> The suit charged that the government's failure to provide drainage service to the Westlands' service area constituted a breach of Westlands' 1963 water service and 1965 repayment contracts (including renewals of those contracts). In 2013, the Claims Court dismissed the motion on the grounds that none of the contracts contained an enforceable promise to provide drainage to Westlands. Westlands appealed the decision and shortly thereafter Westlands and the United States (Parties) entered into settlement negotiations. In September 2015, the Parties reached a settlement agreement (Settlement) that required congressional authorization for full implementation.

H.R. 4366, which will also be considered at this hearing, authorizes the Settlement between the federal government and Westlands. H.R. 5217 authorizes the same Settlement plus similar settlements between the San Luis, Panoche and Pacheco Water District (collectively known as the Northerly Districts). The federal/Westlands agreement sets a January 2017 deadline for Congress to enact settlement legislation.<sup>16</sup>

On April 21, 2016 the Interior Department transmitted a [letter](#) to Congressman David Valadao (R-CA) outlining the benefits of the Settlement for both Westlands and the federal government.<sup>17</sup> See Picture 1 below for a summary of the federal government's estimates of costs and benefits to the American taxpayer.

*Benefits to the United States (according to the letter):*

- Relieves the Interior Department of all drainage obligations imposed by the San Luis Act. This includes the 2007 Record of Decision, which found that the cost of providing drainage to the San Luis Unit would be \$2.6 billion (\$3.8 billion in April 2015 dollars). Westlands will assume the legal obligation to provide drainage for its service territory.<sup>18</sup>
- Westlands agrees to seek dismissal of the *Westlands* litigation and would join the United States in petitioning for vacating the 2000 Order Modifying Partial Judgment in the *Firebaugh* case.<sup>19</sup>
- Westlands agrees to indemnify the United States against any and all claims, past, present and future relating to the provision of drainage service or lack thereof within the Westlands service area, including claims from individual landowners.<sup>20</sup>

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<sup>15</sup> *Westlands Water District v. United States*, No. 12-12C (Fed. Cl.)

<sup>16</sup> <http://www.latimes.com/science/la-me-westlands-20150922-story.html>

<sup>17</sup> Letter from the Department of the Interior to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States dated April 21, 2016; p. 2.

<sup>18</sup> Letter from the Department of the Interior to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States dated April 21, 2016; p. 3.

<sup>19</sup> *Id.*

- Westlands agrees to permanently retire at least 100,000 acres of lands within its boundaries utilizing those lands only for certain purposes outlined in the Settlement agreement, while also agreeing to cap its Central Valley Project (CVP) water deliveries at 75 percent of its contract quantity. Any water savings above the 75 percent cap would become available to the United States for other CVP authorized purposes. Westlands agrees to wheel all CVP water made available to the Lemoore Naval Air Station under a future water service contract.<sup>21</sup>

*Benefits to Westlands (according to the letter):*

- Westlands will be relieved of its current, unpaid capitalized construction costs for the CVP, which is currently estimated to be \$295 million. Westlands will still be responsible for operation and maintenance and for future CVP construction charges associated with new construction for the project.<sup>22</sup>
- The Secretary will convert Westlands' current 9(e) water service contract to a 9(d) repayment contract. As a "paid out" project, Westlands receives a contract with no expiration term, consistent with other paid out Reclamation projects. However, the contract will contain terms and conditions that are nearly identical to those in the current 9(e) contract. In addition, Westlands will be relieved of acreage limitations and full cost pricing provisions under the Reclamation Reform Act (96 Stat. 1269).<sup>23</sup>
- Westlands will take title to certain facilities including the portion of the San Luis Drain that lies within Westlands' service area.<sup>24</sup>

The Interior Department's letter indicated that several aspects regarding its obligation to provide drainage were evaluated when determining the overall net benefit to the United States, including avoided drainage construction costs, repayment to the United States of reimbursable costs, relief from Reclamation Reform act fees, and unpaid CVP capital obligations. The Department's analysis concluded that enactment of settlement legislation would save the United States **at least \$968.9 million** in regards to Westlands. This does not include potential liabilities associated with the *Etchegoinberry* claim which could be as high as \$2 billion.<sup>25</sup>

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<sup>20</sup> Id.

<sup>21</sup> Id., pp. 3-4.

<sup>22</sup> Id., p. 4.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id., pp. 4-5

**U.S. Bureau of Reclamation's Assessment of  
Costs and Benefits to Federal Government of Westlands' Drainage Settlement  
(Presented in Present (2015) Net Worth)**

Benefits to Federal Government	Costs to Federal Government
<b>\$1.3 billion saved<sup>1</sup></b> <i>\$2.5 billion (estimated cost of drainage for Westlands) minus \$1.2 billion (present value of Westlands construction repayment)</i>	<b>\$295 million in 2015 dollars<sup>3</sup></b> <i>(Westlands repayment of CVP capitalized construction obligations of \$375 million, discounted to value in 2015)</i>
<b>\$0 to \$2 billion saved<sup>2</sup></b> <i>(Takings claims)</i>	<b>\$13.6 million San Luis Drain Feature Re-Evaluation (SLDFRE)<sup>4</sup></b> <i>(Westlands repayment of SLDFRE capitalized construction costs of \$23.6 million, discounted to value in 2015)</i>
	<b>\$2.6 million Grasslands Bypass<sup>5</sup></b> <i>(Westlands O&amp;M obligation for Grasslands Bypass)</i>
	<b>Total of \$19.9 million over next 15 years<sup>6</sup></b> <i>(Reclamation Reform Act Relief)</i>
<b>Total Savings: \$1.3 to \$3.3 billion</b>	<b>Total Costs: \$331.1 million</b>

**Picture 1:** Cost/Benefit Analysis from the Bureau of Reclamation *Source:* Letter from the Department of the Interior to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States dated April 21, 2016. Page 7.

While the federal government, Westlands and the Northerly Districts support the Settlement and H.R. 5317, there has been criticism. For example, a Natural Resources Defense Council attorney, Ms. Kate Poole, stated that "(t)here are no performance standards... So there's no indication that they (Westlands) have to do something more than what's currently happening [with drainage] or that they have to do it by a certain time."<sup>26</sup> However, Deputy Interior Secretary Mike Connor, indicated that "(w)e have a settlement that is a very significant financial benefit to the United States and the U.S. taxpayer."<sup>27</sup> In addition, Mr. Tom Birmingham, General Manager of Westlands, responded with: "Under this settlement Westlands will be required to manage drain water within its boundaries and if we fail to do that, our water supply can be cut off. And that is an obligation that is going to cost hundreds of millions of dollars."<sup>28</sup>

<sup>26</sup> <http://www.latimes.com/science/la-me-westlands-20150922-story.html>

<sup>27</sup> Id

<sup>28</sup> Id

## **Major Provisions of H.R. 5217:**

*Section 3* directs the Secretary to implement the terms and conditions of the September 15, 2015 Agreement between the United States and the Westlands Water District to settle litigation concerning the United States duty to provide drainage service, and the Agreement between the United States and the Northerly Districts.

*Section 4* amends the first section of the San Luis Act (P.L. 86-488) to eliminate requirements for the Secretary to provide drainage services to the San Luis Unit of the CVP.

*Section 5* asserts that Westlands and the Northerly Districts shall assume all legal responsibility for the management of drainage within its boundaries, and shall not discharge drain water outside of its boundaries.

*Section 6* directs the Secretary to convert each San Luis Unit Contractor's existing 9(e) water service contract to a 9(d) repayment contract consistent with the Westlands and Northerly Districts Agreements. This section also requires the Secretary to enter into a water service contract with the Lemoore Naval Air Station to provide a guaranteed quantity of CVP water to meet the irrigation needs of the Naval Air Station associated with air operations.

*Section 7* suspends Westlands and the Northerly Districts' capital repayment obligation and payments under its water service contracts and the April 11, 1965, repayment contract with the United States until the repayment contract is executed. Once the repayment contract is executed, Westlands and the Northerly Districts will receive a credit against future operation and maintenance costs payable to the United States and will be relieved of its capital repayment obligations. Westlands and the Northerly Districts will still be responsible for operation and maintenance obligations, and for future construction or other capitalized costs not yet allocated to the water districts as of the date of the Settlement. The Secretary is authorized to provide up to \$70 million in non-reimbursable financial assistance to the Northerly Districts, pursuant to the Agreement between them and the federal government.

*Section 8* directs Interior to transfer to Westlands and the Northerly Districts the title to facilities specified in the Settlement, including a portion of the San Luis Drain that lies within Westlands' service area upon execution of the repayment contract.

*Section 9* requires the Secretary to comply with all applicable Federal laws, rule, and regulations, including the National Environmental Policy Act and the Endangered Species Act when implementing this Act.

*Section 10* states that implementation of the Settlement will have no negative impacts on other CVP contractors.

*Section 11* directs the Secretary, for any year in which the allocation for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, to calculate for Westlands a per acre foot Restoration Fund payment based on a projection that Westlands would take delivery of the allocation in order to avoid shifting CVP Restoration Fund payments from Westlands to CVP preference power contractors.

**Cost:**

The Congressional Budget Office has not completed a cost estimate for this bill.

**Administration Position:**

The Administration signaled its support for the Settlement agreement in its April 21, 2016 letter to Representative Valadao expressing that “it is our belief that the Settlement results in significant savings to American taxpayers when compared to the unavoidable costs that would occur without the terms agreed to in the Settlement.”<sup>29</sup>

**Effect on Current Law (Ramseyer):**

**Showing Current Law as Amended by H.R. 5217**

[text to be added highlighted in yellow; text to be deleted in brackets and highlighted in blue]

**The Act of June 3, 1960, Public Law No. 86-488**

An Act To [Sic] authorize the Secretary of the Interior to construct the San Luis unit of the Central Valley project, California, to enter into an agreement with the State of California with respect to the construction and operation of such unit, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) for the principal purpose of furnishing water for the irrigation of approximately five hundred thousand acres of land in Merced, Fresno, and Kings Counties, California, hereinafter referred to as the Federal San Luis unit service area, and as incidents thereto of furnishing water for municipal and domestic use and providing recreation and fish and wildlife benefits, the Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to construct, operate, and maintain the San Luis unit as an integral part of the Central Valley project. The principal engineering features of said unit shall be a dam and reservoir at or near the San Luis site, a forebay and afterbay, the San Luis Canal, the Pleasant Valley Canal, and

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<sup>29</sup> Letter from the Department of the Interior to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States dated April 21, 2016; p. 6.



necessary pumping plants, [distribution systems, drains,] channels, levees, flood works, and related facilities, but no facilities shall be constructed for electric transmission or distribution service which the Secretary determines, on the basis of an offer of a firm fifty-year contract from a local public or private agency, can through such contract be obtained at less cost to the Federal Government than by construction and operation of Government facilities. The works (hereinafter referred to as joint-use facilities) for joint use with the State of California (hereinafter referred to as the State) shall be the dam and reservoir at or near the San Luis site, forebay and afterbay, pumping plants, and the San Luis Canal. The joint-use facilities consisting of the dam and reservoir shall be constructed, and other joint-use facilities may be constructed, so as to permit future expansion; or the joint-use facilities shall be constructed initially to the capacities necessary to serve both the Federal San Luis unit service area and the State's service area, as hereinafter provided. In constructing, operating, and maintaining the San Luis unit, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto). Construction of the San Luis unit shall not be commenced until the Secretary has (1) secured, or has satisfactory assurance of his ability to secure, all rights to the use of water which are necessary to carry out the purposes of the unit and the terms and conditions of this Act, [and (2) received satisfactory assurance from the State of California that it will make provision for a master drainage outlet and disposal channel for the San Joaquin Valley, as generally outlined in the California water plan, Bulletin Numbered 3, of the California Department of Water Resources, which will adequately serve, by connection therewith, the drainage system for the San Luis unit or has made provision for constructing the San Luis interceptor drain to the delta designed to meet the drainage requirements of the San Luis unit as generally outlined in the report of the Department of the Interior, entitled "San Luis Unit, Central Valley Project," dated December 17, 1956.]

(b) No water provided by the Federal San Luis unit shall be delivered in the Federal San Luis service area to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity as estimated by the Secretary of Agriculture for the marketing year in which the bulk of the crop would normally be marketed and which will be in excess of the normal supply as defined in section 301(b) (10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary calls for an increase in production of such commodity in the interest of national security.

SEC. 2. The Secretary is authorized, on behalf of the United States, to negotiate and enter into an agreement with the State of California providing for coordinated operation of the San Luis unit, including the joint-use facilities, in order that the State may, without cost to the United States, deliver water in service areas outside the Federal San Luis unit service area as described in the report of the Department of the Interior, entitled "San Luis Unit, Central Valley Project", dated December 17, 1956. Said agreement shall recite that the liability of the United States thereunder is contingent upon the availability of appropriations to carry out its obligations under the same. No funds shall be appropriated to commence construction of the San Luis unit under any such agreement, except for the preparation of designs and specifications and other preliminary work, prior to ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) after it has been submitted to the Congress, and then only if neither the House nor the Senate Interior and Insular Affairs Committee has disapproved it by committee resolution within said ninety days. If such an agreement has not been executed

by January 1, 1962, and if, after consultation with the Governor of the State, the Secretary determines that the prospects of reaching accord on the terms thereof are not reasonably firm, he may proceed to construct and operate the San Luis unit in accordance with section 1 of this Act: Provided, That, if the Secretary so determines, he shall report thereon to the Congress and shall not commence construction for ninety calendar days from the date of his report (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three days). In considering the prospects of reaching accord on the terms of the agreement the Secretary shall give substantial weight to any relevant affirmative action theretofore taken by the State, including the enactment of State legislation authorizing the State to acquire and convey to the United States title to lands to be used for the San Luis unit or assistance given by it in financing Federal design and construction of the unit. The authority conferred upon the Secretary by the first sentence of this section shall not, except as is otherwise provided in this section, be construed as a limitation upon the exercise by him of the authority conferred in section 1 of this Act, but if the State shall agree that, if it later enlarges the joint-use facilities, or any of them, it will pay an equitable share of the cost to the United States of those facilities as initially constructed before utilizing them for the storage or delivery of water and will bear the entire cost of enlarging the same and if, as a part of said equitable share, it makes available to the Secretary sufficient funds to pay the additional cost of designing and constructing the joint-use facilities so as to permit enlargement, it shall have an irrevocable right to enlarge or modify such facilities at any time in the future, and a perpetual right to the use of such additional capacity: Provided, That the performance of such work by the State, after approval of its plans by the Secretary, shall be so carried on as not to interfere unduly with the operation of the project for the purposes set forth in section 1 of this Act and the use of the additional capacity for water service shall be limited to service outside of the Federal San Luis unit service area: And provided further, That this right may be relinquished by the State at any time at its option.

SEC. 3. The agreement between the United States and the State referred to in section 2 of this Act shall provide, among other things, that—

(a) the joint-use facilities to be constructed by the Secretary shall be so designed and constructed to such capacities and in such manner as to permit either (i) immediate integration and coordinated operation with the State's water projects by providing, among other things, a capacity in San Luis Reservoir of approximately two million one hundred thousand acre-feet and corresponding capacities in the other joint-use facilities or (ii) such subsequent enlargement or other modification as may be required for integration and coordinated operation therewith;

(b) the State shall make available to the Secretary during the construction period sufficient funds to pay an equitable share of the construction costs of any facilities designed and constructed as provided in paragraph (a) above. The State contribution shall be made in annual installments, each of which bears approximately the same ratio to total expenditures during that year as the total of the State's share bears to the total cost of the facilities; the State may make advances to the United States in order to maintain a timely construction schedule of the joint-use facilities and the works of the San Luis unit to be used by the State and the United States;

(c) the State may at any time after approval of its plans by the Secretary and at its own expense enlarge or modify San Luis Dam and Reservoir and other facilities to be used jointly by the State and the United States, but the performance of such work shall be so carried on as not to interfere unduly with the operation of the San Luis unit for the purposes set forth in section 1 of this Act;

- (d) the United States and the State shall each pay annually an equitable share of the operation, maintenance, and replacement costs of the joint-use facilities;
- (e) promptly after execution of this agreement between the Secretary and the State, and for the purpose of said agreement, the State shall convey to the United States title to any lands, easements, and rights-of-way which it then owns and which are required for the joint-use facilities. The State shall be given credit for the costs of these lands, easements, and rights-of-way toward its share of the construction cost of the joint-use facilities. The State shall likewise be given credit for any funds advanced by it to the Secretary for preparation of designs and specifications or for any other work in connection with the joint-use facilities;
- (f) the rights to the use of capacities of the joint-use facilities of the San Luis unit shall be allocated to the United States and the State, respectively, in such manner as may be mutually agreed upon. The United States shall not be restricted in the exercise of its right so allocated, which shall be sufficient to carry out the purposes of section 1 of this Act and which shall extend throughout the repayment period and so long thereafter as title to the works remains in the United States. The State shall not be restricted in the exercise of its allocated right to the use of the capacities of the joint-use facilities for water service outside the Federal San Luis unit service area;
- (g) the Secretary may turn over to the State the care, operation, and maintenance of any works of the San Luis unit which are used jointly by the United States and the State at such time and under such conditions as shall be agreed upon by the Secretary and the State;
- (h) notwithstanding transfer of the care, operation, and maintenance of any works to the State, as hereinbefore provided, any organization which has theretofore entered into a contract with the United States under the Reclamation Project Act of 1939, and amendments thereto, for a water supply through the works of the San Luis unit, including joint-use facilities, shall continue to be subject to the same limitations and obligations and to have and to enjoy the same rights which it would have had under its contract with the United States and the provisions of paragraph (4) of section 1 of the Act of July 2, 1956 (70 Stat. 483, 43 U.S.C. 485h-1) in the absence of such transfer, and its enjoyment of such rights shall be without added cost or other detriment arising from such transfer;
- (i) if a nonreimbursable allocation to the preservation and propagation of fish and wildlife has been made as provided in section 2 of the Act of August 14, 1946 (60 Stat. 1080, 16 U.S.C. 662), as amended, the features of the unit to which such allocation is attributable shall, notwithstanding transfer of the care, operation, and maintenance to the State, be operated and maintained in such wise as to retain the bases upon which such allocation is premised and, upon failure so to operate and maintain those features, the amount allocated thereto shall become a reimbursable cost to be paid by the State;
- (j) the State shall not serve any lands within the Federal San Luis unit service area except as such service is required as a consequence of its acceptance of the care, operation, and maintenance of works under paragraph (g) of this section.

SEC. 4. If the Secretary proceeds to construct, operate, and maintain the San Luis works under the terms of section 1 of this Act solely as a Federal project, the operation shall be subject to the following restriction: Whenever the chlorides in the water at the head of the Delta-Mendota Canal exceed one hundred and fifty parts per million during the months of July, August, or September, the mean daily diversion from the Sacramento-San Joaquin Delta to San Luis unit via Tracy pumping plant and Delta-Mendota Canal as measured at the San Luis pumping plant shall not exceed the mean daily import to the Sacramento Valley from the Trinity project.

SEC. 5. [In constructing, operating, and maintaining a drainage system for the San Luis unit, the Secretary is authorized to permit the use thereof by other parties under contracts the terms of which are as nearly similar as is practicable to those required by the Federal reclamation laws in the case of irrigation repayment or service contracts and is further authorized to enter into agreements and participate in construction and operation of drainage facilities designed to serve the general area of which the lands to be served by the San Luis unit are a part, to the extent the works authorized in section 1 of this Act contribute to drainage requirements of said area.] Notwithstanding any other provision of law, the Secretary of the Interior shall have no duty to provide drainage or drainage service to the San Luis Unit. Each contractor within the San Luis Unit that receives water for the purpose of irrigation shall be responsible for the management of drainage water within its boundaries, in accordance with Federal and California law consistent with the Agreement between the United States and Westlands Water District August 2015, signed September 15, 2015, and Agreement \_\_\_\_\_ between the Secretary and San Luis Water District, Panoche Water District, and Pacheco Water District, respectively. The Secretary is also authorized to permit the use of the irrigation facilities of the San Luis unit, including its facilities for supplying pumping energy, under contracts entered into pursuant to section 1 of the Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523).

SEC. 6. The Secretary is directed to plan the works authorized in this Act in such a manner as to contemplate and make possible the future provision of Central Valley project service, by way of the Pacheco Tunnel route, to lands and municipalities in Santa Clara, San Benito, Santa Cruz, and Monterey Counties heretofore anticipated as a possibility by the Acts of October 14, 1949 (63 Stat. 852), and August 27, 1958 (72 Stat. 937). Construction of additional works to provide such service shall not be undertaken until a report demonstrating their physical and economic feasibility has been completed, reviewed by the State, and approved by the Secretary, and the works have been authorized by Act of Congress.

SEC. 7. The Secretary is authorized, in connection with the San Luis unit, to construct minimum basic public recreational facilities and to arrange for the operation and maintenance of the same by the State or an appropriate local agency or organization. The cost of such facilities shall be nonreturnable and nonreimbursable under the Federal reclamation laws.

SEC. 8. There is hereby authorized to be appropriated for construction of the works of the San Luis unit, including joint-use facilities, authorized by this Act, [other than distribution systems and drains,] the sum of \$290,430,000, plus such additional amount, if any, as may be required by reason of changes in costs of construction of the types involved in the San Luis unit as shown by engineering indexes. Said base sum of \$290,430,000 shall, however, be diminished to the extent that the State makes funds or lands or interests in land available to the Secretary pursuant to sections 2 or 3 of this Act which decrease the costs which would be incurred if the works authorized in section 1 of of this Act (including provision for their subsequent expansion) were constructed solely as a Federal project. There are also authorized to be appropriated, in addition thereto, such amounts as are required [(a) for construction of such distribution systems and drains as are not constructed by local interests, but not to exceed in total cost the sum of \$192,650,000, and (b)] for operation and maintenance of the unit.[: *Provided*, That no funds shall be appropriated for construction of distribution systems and drains prior to ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) after a contract has been submitted to the Congress calling for complete repayment of the distribution systems and drains within a period of forty years from the

date such works are placed in service. All moneys received by the Secretary from the State under this Act shall be covered into the same accounts as moneys appropriated hereunder and shall be available, without further appropriation, to carry out the purposes of this Act.]

Approved June 3, 1960.