

UNITED STATES CONGRESSMAN

# DAVID G. VALADAO

## H.R. 23, the *Gaining Responsibility on Water Act*

### **Title I. Central Valley Project Water Reliability**

Restores water deliveries that have been cut off by environmental lawsuits and a series of illogical regulations by codifying the Bay-Delta Accord. Title I also reaffirms that if the State Water Project (SWP) and Central Valley Project (CVP) are operated consistent with the Bay-Delta Accord, they are in compliance with the requirements of the Endangered Species Act. Additionally, updates to the Central Valley Project Improvement Act (CVPIA) in Title I will ensure water resources are reliable, predictable, and available to fulfill contract supplies. Title I protects native species populations by allowing the removal or nonnative predatory fish in the Sacramento and San Joaquin Rivers, their tributaries, and the Sacramento-San Joaquin Rivers Delta, and allows artificially-spawned Delta smelt and Chinook salmon to be counted when determining fish populations. Title I replaces and satisfies the requirements of the San Joaquin River Restoration Settlement with a warm water fishery program.

### **Title II. CALFED Storage Feasibility Studies**

Requires Reclamation to complete five feasibility studies for storage projects in California by certain time lines. This title also prohibits an administrative Wild and Scenic River designation from hindering the completion of the proposed Temperance Flat storage facility.

### **Title III. Water Rights Protections**

Includes provisions designed to preserve water rights seniority and to protect the joint operation of the CVP and SWP.

### **Title IV: Miscellaneous California Water Provisions**

Requires the Secretary of Interior, in consultation with the Secretary of Commerce, and the Secretary of the Natural Resources of the State of California, to publish an annual report to provide details regarding instream flow releases from the CVP and SWP, as well as the purpose and measured environmental benefit of the releases. Title IV protects private land owners, businesses, and power utilities whose existing buildings or facilities may be flooded as a result of the construction of any new or modified Federal surface water storage project. Title IV expresses Congressional disapproval and opposition to the violation of private property rights by the California State Water Resources Control Board and expresses the need to provide reliable water supplies to municipal, industrial, and agricultural users across the State.

### **Title V: Water Supply Permitting Act**

The regulatory process of constructing new surface water storage - whether federally or non-federally owned - often involves a host of federal, state, and local permits and approvals from various agencies.

Throughout this process federal agencies are not required to coordinate their permits and approvals with one another and have little incentive to do so. As a result, conflicting agency permit requirements add time to the project planning and implementation process and increases the potential for last minute surprises that could endanger the success of a project or require significant additional work.

Title V creates a “one-stop-shop” permitting process to expedite construction of non-federal surface storage facilities. Specifically, this title establishes Reclamation as the lead agency for purposes of coordinating all reviews, analysis, opinions, statements, permits, licenses, or other federal approvals required under federal law. As the point of contact for the federal government, Reclamation shall coordinate the preparation of the unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands, as well as coordinate the project development and construction of qualifying projects. The consolidated permitting process authorized under this Title is modeled after the Obama Administration’s “Interagency Rapid Response Team for Transmission”.

The title also allows the Secretary of the Interior to accept and spend funds contributed by a non-federal public entity to expedite the evaluation of a permit relating to the qualifying project. This process is based on provisions authorized under Section 140 of P.L. 108-137 to finance upgrades to the Hetch Hetchy project, which provides water supplies to San Francisco California.

#### **Title VI. Bureau of Reclamation Project Streamlining**

Reclamation has built only one large multi-purpose water storage project, such as a dam or reservoir, over the last generation. One of the primary reasons is the length of study time and regulatory analysis required under current law. While the previous title is intended to help facilitate the construction of non-federal dams by requiring Reclamation to be the lead agency in coordinating multi-agency permitting reviews, Title VI is designed to speed up Reclamation’s feasibility study process on surface water storage that “would be owned, funded, or operated” by the agency, a water recycling or desalination project under the purview of Title XVI of Public Law 102-575, or a rural water supply project investigated under Public Law 109-451.

Modeled after Title VII in the Water Resources Reform and Development Act of 2014 (P.L. 113-121) – which passed the House by a vote of 412-4 and the Senate by 91-7 – the provisions found in Title VI would reform bureaucratic permitting procedures, strengthen oversight of the agency, and ultimately allow for a more efficient process of congressional approval of water resource projects.

Specifically, Title VI requires future Reclamation feasibility studies to be completed within three years after the date of initiation and have a maximum federal cost of \$3 million; providing for a maximum seven-year extension of that time and cost if the Interior Secretary provides a detailed justification to the non-federal project sponsor and the Congress. Title VI also requires the Interior Secretary to expedite the completion of any ongoing feasibility studies initiated before the date of enactment. If the Secretary determines that the project is justified in a completed report, he/she shall proceed to pre-construction planning, engineering, and design of the project.

To reduce the amount of duplicative review, Title VI directs the Interior Secretary to develop and implement a coordinated environmental review process with Reclamation and the non-federal project sponsor as lead agencies for expedited environmental review of a project. Finally, Title VI directs the Interior Secretary to develop and submit a report to the relevant committees in Congress that identifies project reports, proposed projects, and proposed modifications to studies and federal and non-federal cost estimates for all three. These activities would be similar to the studies listed in Section 7002 of P.L. 113-121, which authorized construction of projects by Congress.

## **Title VII. Accelerated Revenue, Repayment, and Surface Water Storage Enhancement**

Under federal law, any irrigation district or water utility that receives contracted water from a Reclamation facility must repay its allocated portion of the capital costs of the federal water project if it has a capital repayment contract. These repayment costs are typically set forth in long-term contracts between a water district and the federal government. At the same time, irrigation districts are subject to federal land-use restrictions and paperwork requirements under the Reclamation Reform Act of 1982 (P.L. 97-293), as long as they owe a capital debt to Reclamation. The same law does not allow these water users to make an early repayment to the U.S. Treasury.

Title VII allows water users to pre-pay their repayment contracts. This prepayment arrangement is based on provisions included by the then-Democratic majority in the 111<sup>th</sup> Congress to help pay for the San Joaquin River Restoration Settlement Act. Title VII also creates a surface water storage enhancement program by directing the Secretary to use some of the receipts from early repayment to be used for the construction of new surface water storage.

## **Title VIII. Safety of Dams**

Reclamation is responsible for maintaining over 400 dams in the western United States. Of those, 366 would likely cause loss of life if they were to fail. The Safety of Dams program allows modification of Reclamation dams if “the cause of which results from new hydrologic or seismic data or changes in the state-of-the-art criteria deemed necessary for safety purposes.” Modifications can include structural strengthening and construction of spillways, filters and drains. Under the current Safety of Dams program, Reclamation can only evaluate the corrective action necessary to repair the facility. Current federal law does not allow the agency to consider various types of dam improvements, including dam raises, while studying or making safety repairs.

This title allows Reclamation to study and construct, if found feasible and in compliance with Reclamation law, other dam improvements that would be paid for by project beneficiaries in conjunction with dam safety repairs under the Safety of Dams Act.

## **Title IX. Water Rights Protection**

Western water law gives states the rights to develop their own systems of water law. Over the past few years, however, Westerners have seen a number of federal proposals that have attempted to extort their water rights in return for special use permits necessary to operate businesses and family farms.

Title IX prohibits the Departments of the Interior and Agriculture from conditioning or withholding issuance, renewal, amendments or extension of any land use permit on the limitation or encumbrance of any water right to the United States. It also prohibits requiring water users to apply for or acquire a water right in the name of the United States under state law as a condition or such a permit, and prohibits the federal government from asserting jurisdiction over groundwater withdrawals or impacts on groundwater resources.

*For more information, please contact Congressman Valadao's Office at (202) 225-4695.*