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International water rights case along U.S.-Mexico border heats up

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Legislation passed by Congress early Saturday morning, intended to put to rest a contentious legal battle over international water rights, may have exacerbated the situation instead.

At the heart of the issue, which has pitted environmentalists and Mexican business interests against the U.S. government, is whether the United States has rights to 67,700 acre feet of seepage per year from an earthen portion of the 82-mile All American Canal, which runs along part of the U.S.-Mexico border. The seepage nourishes land on both sides of the border.

The \$251 million project to line a 23-mile stretch of the canal with concrete began in July, and was halted in August by a 9th Circuit Federal Court of Appeals ruling.

Attempting to supersede legal wrangling, the legislation directs the secretary of the interior to ensure the completion of the San Diego County Water Authority's construction project. The bill is currently awaiting President Bush's authorization.

By making the project mandatory, or nondiscretionary, the bill pre-empts legal challenges brought against the project on a host of legal theories, according to SDCWA.

"This action confirms that the water conserved by this project will be used in the United States and that diplomacy, not litigation is the proper forum to address international environmental issues," said Daniel Hentschke, general counsel for the water authority.

But according to Melissa McKeith, an attorney with Lewis Brisbois Bisgaard & Smith LLP who represents the U.S. nonprofit Citizens United for Resources and the Environment, the only thing the legislation has done is invite more litigation.

"I hope it backfires, because if I was a 9th Circuit judge and Congress told me how to rule, I certainly wouldn't like it," she said. McKeith said she intends to wait for the court's ruling expected in early 2007.

The water authority is confident in its position, however, and is already estimating when construction can resume.

"The attorneys are talking to find out what vehicle they're going to use with the court to get the injunction for the construction lifted," said Halla Razak, Colorado River program manager for the water authority. "Once that happens, we will start discussing with the contractors when they'll start work."

Razak said she expects work to resume sometime in the spring.

But McKeith said this move would mark the fourth time the lawyers have asked the court to lift the injunction, adding that it is unlikely to do so.

The All-American Canal is fed by water from the Colorado River. By paving with concrete what are now dirt canals with a modern, concrete-lined canal, the project will conserve enough water to serve 135,000 households per year. Of this amount, 83 percent will go to water authority supplies, while the remainder will flow to the San Luis Rey Indian Settlement Parties.

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