

**AMENDMENT TO RULES COMMITTEE PRINT FOR  
H.R. 23  
OFFERED BY MR. DENHAM OF CALIFORNIA**

At the end of the bill, insert the following:

1 **TITLE VIII—NEW WATER AVAIL-**  
2 **ABLE TO EVERY RECLAMA-**  
3 **TION STATE**

4 **SEC. 801. SHORT TITLE.**

5 This title may be cited as the “New Water Available  
6 To Every Reclamation State Act” or the “New WATER  
7 Act”.

8 **SEC. 802. PURPOSES.**

9 The purposes of this title are—

10 (1) to promote increased development of critical  
11 water resources infrastructure by establishing addi-  
12 tional opportunities for financing water resources  
13 projects;

14 (2) to attract new investment capital to infra-  
15 structure projects that are capable of generating rev-  
16 enue streams through user fees or other dedicated  
17 funding sources; and

18 (3) to leverage private investment in water re-  
19 sources infrastructure.

1 **SEC. 803. AUTHORITY TO PROVIDE ASSISTANCE.**

2 (a) IN GENERAL.—For 15 years after the date of the  
3 enactment of this Act, the Secretary may provide financial  
4 assistance under this title to carry eligible projects with-  
5 in—

6 (1) any Reclamation State;

7 (2) any other State in which the Bureau of  
8 Reclamation is authorized to provide project assist-  
9 ance; and

10 (3) the States of Alaska and Hawaii.

11 (b) SELECTION.—In selecting projects to receive fi-  
12 nancial assistance under subsection (a), the Secretary  
13 shall ensure diversity with respect to—

14 (1) project types; and

15 (2) geographical locations.

16 **SEC. 804. APPLICATIONS.**

17 To be eligible to receive assistance under this title,  
18 an eligible entity shall submit to the Secretary an applica-  
19 tion at such time, in such manner, and containing such  
20 information as the Secretary may require.

21 **SEC. 805. ELIGIBILITY FOR ASSISTANCE.**

22 (a) ELIGIBLE PROJECTS.—The following projects  
23 may be carried out using assistance made available under  
24 this title:

25 (1) Any non-Federal water infrastructure  
26 project that—

1 (A) the Secretary determines, through the  
2 completion of an appraisal investigation and  
3 feasibility study, would contribute to a safe,  
4 adequate water supply for domestic, agricul-  
5 tural, environmental, or municipal and indus-  
6 trial use; and

7 (B) is otherwise eligible for assistance  
8 under this title.

9 (2) A project for enhanced energy efficiency in  
10 the operation of a water system.

11 (3) A project for accelerated repair and replace-  
12 ment of an aging water distribution facility.

13 (4) A brackish or sea water desalination  
14 project.

15 (5) Acquisition of real property or an interest  
16 in real property for water storage, reclaimed or recy-  
17 cled water, or wastewater, if the acquisition is inte-  
18 gral to a project described in paragraphs (1)  
19 through (5).

20 (6) A combination of projects, each of which is  
21 eligible under paragraphs (1) through (6), for which  
22 an eligible entity or group of eligible entities submits  
23 a single application.

24 (b) ELIGIBLE COSTS.—Assistance made available  
25 under this title (as paid by or for the account of an obli-

1 gor) may be used to cover the following costs with respect  
2 to an eligible project:

3 (1) Development-phase activities, including  
4 planning, feasibility analysis, revenue forecasting,  
5 environmental review, permitting, preliminary engi-  
6 neering and design work, and other preconstruction  
7 activities.

8 (2) Construction, reconstruction, rehabilitation,  
9 and replacement activities.

10 (3) Acquisition of real property (including water  
11 rights, land relating to the project, and improve-  
12 ments to land), environmental mitigation, construc-  
13 tion contingencies, and acquisition of equipment.

14 (4) Capitalized interest necessary to meet mar-  
15 ket requirements, reasonably required reserve funds,  
16 capital issuance expenses, and other carrying costs  
17 during construction.

18 (5) Refinancing interim construction funding,  
19 existing long-term project obligations, or a secured  
20 loan or loan guarantee made under this title.

21 (c) **ADDITIONAL ELIGIBILITY REQUIREMENTS.**—To  
22 be eligible to receive financial assistance under this title,  
23 a project shall meet the following criteria, as determined  
24 by the Secretary:

25 (1) **CREDITWORTHINESS.**—

1 (A) IN GENERAL.—Subject to subpara-  
2 graph (B), the project shall be creditworthy, as  
3 determined by the Secretary, who shall ensure  
4 that any financing for the project has appro-  
5 priate security features, such as a rate cov-  
6 enant, if applicable, and adequate coverage re-  
7 quirements, to ensure repayment.

8 (B) OPINION LETTER.—

9 (i) PRELIMINARY RATING OPINION  
10 LETTER.—The Secretary shall require each  
11 applicant to provide a preliminary rating  
12 opinion letter from at least one rating  
13 agency indicating that the senior obliga-  
14 tions of the project (which may be the  
15 Federal credit instrument) have the poten-  
16 tial to achieve an investment-grade rating.

17 (ii) FINAL RATING OPINION LET-  
18 TERS.—The Secretary or the Adminis-  
19 trator, as applicable, shall require each  
20 project applicant to provide, prior to final  
21 acceptance and financing of the project,  
22 final rating opinion letters from at least  
23 one rating agency indicating that the sen-  
24 ior obligations of the project have an in-  
25 vestment-grade rating.

1           (2) ELIGIBLE PROJECT COSTS.—The eligible  
2 project costs of a project shall be reasonably antici-  
3 pated to be not less than \$20,000,000.

4           (3) DEDICATED REVENUE SOURCES.—The Fed-  
5 eral credit instrument for the project shall be repay-  
6 able, in whole or in part, from dedicated revenue  
7 sources that also secure or fund the project obliga-  
8 tions.

9           (4) PUBLIC SPONSORSHIP OF PRIVATE ENTI-  
10 TIES.—In the case of a project carried out by an en-  
11 tity that is not a State or local government or an  
12 agency or instrumentality of a State or local govern-  
13 ment, the project shall be publicly sponsored as dem-  
14 onstrated by certification of the same by an agency  
15 of the relevant State, inclusion in the relevant  
16 State's official improvement plan or by other means  
17 acceptable to the Secretary.

18          (d) RECEIPT OF OTHER FEDERAL FUNDING.—Re-  
19 ceipt of a Federal grant or contract or other Federal fund-  
20 ing to support an eligible project shall not preclude the  
21 project from being eligible for assistance under this title.

22 **SEC. 806. SELECTION CRITERIA.**

23          (a) ESTABLISHMENT.—The Secretary shall establish  
24 criteria for the selection of one or more projects that meet  
25 the eligibility requirements section 805 in accordance with

1 paragraph (2). The Secretary may enter into a master  
2 credit agreement for a projects secured by a common secu-  
3 rity pledge on terms acceptable to the Secretary.

4 (b) CRITERIA.—The selection criteria shall include  
5 the following:

6 (1) The extent to which the project is nationally  
7 or regionally significant.

8 (2) The extent to which assistance under this  
9 section would foster innovative public-private part-  
10 nerships and attract private debt or equity invest-  
11 ment.

12 (3) The likelihood that assistance under this  
13 section would enable the project to proceed at an  
14 earlier date than the project would otherwise be able  
15 to proceed.

16 (4) The extent to which the project uses new or  
17 innovative approaches.

18 (5) The amount of budget authority required to  
19 fund the Federal credit instrument made available  
20 under this title.

21 (6) The extent to which the project helps main-  
22 tain or protect the environment.

1 **SEC. 807. FEDERAL REQUIREMENTS.**

2 Nothing in this section supersedes the applicability  
3 of other requirements of Federal law (including regula-  
4 tions).

5 **SEC. 808. SECURED LOANS.**

6 (a) AGREEMENTS.—

7 (1) IN GENERAL.—Subject to paragraphs (2)  
8 through (4), the Secretary may enter into agree-  
9 ments with one or more obligors to make secured  
10 loans, the proceeds of which shall be used—

11 (A) to finance eligible project costs of any  
12 project selected under section 806;

13 (B) to refinance interim construction fi-  
14 nancing of eligible project costs of any project  
15 selected under section 806; or

16 (C) to refinance long-term project obliga-  
17 tions or Federal credit instruments, if that refi-  
18 nancing provides additional funding capacity for  
19 the completion, enhancement, or expansion of  
20 any project that is selected under section 806.

21 (2) LIMITATION ON REFINANCING OF INTERIM  
22 CONSTRUCTION FINANCING.—A secured loan under  
23 paragraph (1) shall not be used to refinance interim  
24 construction financing under paragraph (1)(B)—



1 (A) if the maturity of such interim con-  
2 struction financing is later than 1 year after  
3 the substantial completion of the project; and

4 (B) later than 1 year after the date of sub-  
5 stantial completion of the applicable project.

6 (3) RISK ASSESSMENT.—Before entering into  
7 an agreement under this subsection for a secured  
8 loan, the Secretary, in consultation with the Director  
9 of the Office of Management and Budget shall deter-  
10 mine an appropriate capital reserve subsidy amount  
11 for the secured loan, taking into account each such  
12 preliminary rating opinion letter.

13 (4) INVESTMENT-GRADE RATING REQUIRE-  
14 MENT.—The execution of a secured loan under this  
15 section shall be contingent on receipt by the senior  
16 obligations of the project secured by the same rev-  
17 enue pledge of an investment-grade rating from at  
18 least one rating agency.

19 (b) TERMS AND LIMITATIONS.—

20 (1) IN GENERAL.—A secured loan provided for  
21 a project under this section shall be subject to such  
22 terms and conditions, and contain such covenants,  
23 representations, warranties, and requirements (in-  
24 cluding requirements for audits), as the Secretary  
25 determines to be appropriate.

1           (2) MAXIMUM AMOUNT.—The amount of a se-  
2           cured loan under this section shall not exceed the  
3           lesser of—

4                   (A) an amount equal to 49 percent of the  
5                   reasonably anticipated eligible project costs; and

6                   (B) if the secured loan does not receive an  
7                   investment-grade rating, the amount of the sen-  
8                   ior project obligations of the project.

9           (3) PAYMENT.—A secured loan under this sec-  
10          tion—

11                   (A) shall be payable, in whole or in part,  
12                   from State or local taxes, user fees, or other  
13                   dedicated revenue sources that also secure the  
14                   senior project obligations of the relevant  
15                   project;

16                   (B) shall include a rate covenant, coverage  
17                   requirement, or similar security feature sup-  
18                   porting the project obligations; and

19                   (C) may have a lien on revenues described  
20                   in subparagraph (A), subject to any lien secur-  
21                   ing project obligations.

22          (4) INTEREST RATE.—The interest rate on a  
23          secured loan under this section shall not be less than  
24          a rate equal to the yield on United States Treasury  
25          securities of a similar maturity to the maturity of

1 the secured loan on the date of execution of the loan  
2 agreement.

3 (5) MATURITY DATE.—The final maturity date  
4 of a secured loan under this section shall be not  
5 later than the earlier of—

6 (A) 35 years after the date of substantial  
7 completion of the relevant project; and

8 (B) the final day of the useful life of the  
9 capital asset being financed.

10 (6) NONSUBORDINATION.—A secured loan  
11 under this section shall not be subordinated to the  
12 claims of any holder of project obligations in the  
13 event of bankruptcy, insolvency, or liquidation of the  
14 obligor.

15 (7) FEES.—The Secretary may establish fees,  
16 as provided for in section 810(b), at a level sufficient  
17 to cover all or a portion of the costs to the Federal  
18 Government of making a secured loan under this  
19 section.

20 (8) NON-FEDERAL SHARE.—The proceeds of a  
21 secured loan under this section may be used to pay  
22 any non-Federal share of project costs required if  
23 the loan is repayable from non-Federal funds.

24 (9) MAXIMUM FEDERAL INVOLVEMENT.—For  
25 each project for which assistance is provided under

1       this title, the total amount of Federal assistance  
2       from all sources, including the assistance provided  
3       under this title, shall not exceed 80 percent of the  
4       total project cost.

5       (c) REPAYMENT.—

6           (1) SCHEDULE.—The Secretary shall establish  
7       a repayment schedule for each secured loan provided  
8       under this section, based on the projected cash flow  
9       from project revenues, other repayment sources, and  
10      the useful life of the project.

11          (2) COMMENCEMENT.—Scheduled loan repay-  
12      ment of principal or interest on a secured loan under  
13      this section shall commence not later than 5 years  
14      after the date of substantial completion of the  
15      project.

16          (3) DEFERRED PAYMENTS.—

17           (A) AUTHORIZATION.—If, at any time  
18      after the date of substantial completion of a  
19      project for which a secured loan is provided  
20      under this section, the project is unable to gen-  
21      erate sufficient revenues to pay the scheduled  
22      loan repayments of principal and interest on the  
23      secured loan, the Secretary may allow the obli-  
24      gor, subject to subparagraph (C), to add unpaid

1 principal and interest to the outstanding bal-  
2 ance of the secured loan.

3 (B) INTEREST.—Any payment deferred  
4 under subparagraph (A) shall—

5 (i) continue to accrue interest in ac-  
6 cordance with subsection (b)(4) until fully  
7 repaid; and

8 (ii) be scheduled to be amortized over  
9 the remaining term of the secured loan.

10 (C) CRITERIA.—

11 (i) IN GENERAL.—Any payment defer-  
12 ral under subparagraph (A) shall be con-  
13 tingent on the project meeting such cri-  
14 teria as the Secretary may establish.

15 (ii) REPAYMENT STANDARDS.—The  
16 criteria established under clause (i) shall  
17 include standards for reasonable assurance  
18 of repayment.

19 (4) PREPAYMENT.—

20 (A) USE OF EXCESS REVENUES.—Any ex-  
21 cess revenues that remain after satisfying  
22 scheduled debt service requirements on the  
23 project obligations and secured loan and all de-  
24 posit requirements under the terms of any trust  
25 agreement, bond resolution, or similar agree-

1           ment securing project obligations may be ap-  
2           plied annually to prepay a secured loan under  
3           this section without penalty.

4           (B) USE OF PROCEEDS OF REFI-  
5           NANCING.—A secured loan under this section  
6           may be prepaid at any time without penalty  
7           from the proceeds of refinancing from non-Fed-  
8           eral funding sources.

9           (d) SALE OF SECURED LOANS.—

10           (1) IN GENERAL.—Subject to paragraph (2), as  
11           soon as practicable after the date of substantial  
12           completion of a project and after providing a notice  
13           to the obligor, the Secretary may sell to another en-  
14           tity or reoffer into the capital markets a secured  
15           loan for a project under this section, if the Secretary  
16           determines that the sale or reoffering can be made  
17           on favorable terms.

18           (2) CONSENT OF OBLIGOR.—In making a sale  
19           or reoffering under paragraph (1), the Secretary  
20           may not change the original terms and conditions of  
21           the secured loan without the written consent of the  
22           obligor.

23           (e) LOAN GUARANTEES.—

24           (1) IN GENERAL.—The Secretary may provide a  
25           loan guarantee to a lender in lieu of making a se-

1       cured loan under this section, if the Secretary deter-  
2       mines that the budgetary cost of the loan guarantee  
3       is substantially the same as that of a secured loan.

4           (2) TERMS.—The terms of a loan guarantee  
5       provided under this subsection shall be consistent  
6       with the terms required under this section for a se-  
7       cured loan, except that the rate on the guaranteed  
8       loan and any prepayment features shall be nego-  
9       tiated between the obligor and the lender, with the  
10       consent of the Secretary.

11 **SEC. 809. PROGRAM ADMINISTRATION.**

12       (a) REQUIREMENT.—The Secretary shall establish a  
13       uniform system to service the Federal credit instruments  
14       made available under this title.

15       (b) SERVICER.—

16           (1) IN GENERAL.—The Secretary may appoint  
17       a financial entity to assist the Secretary in servicing  
18       the Federal credit instruments provided under this  
19       title.

20           (2) DUTIES; FEE.—A servicer appointed under  
21       paragraph (1) shall—

22               (A) act as the agent for the Secretary; and

23               (B) receive a servicing fee, subject to ap-  
24       proval by the Secretary.

1 (c) ASSISTANCE FROM EXPERTS.—The Secretary  
2 may retain the services, including counsel, of any organi-  
3 zation or entity with expertise in the field of municipal  
4 and project finance to assist in the underwriting and serv-  
5 icing of Federal credit instruments provided under this  
6 title.

7 **SEC. 810. STATE, TRIBAL, AND LOCAL PERMITS.**

8 The provision of financial assistance for a project  
9 under this title shall not—

10 (1) relieve any recipient of the assistance of any  
11 obligation to obtain any required State, local, or  
12 tribal permit or approval with respect to the project;

13 (2) limit the right of any unit of State, local,  
14 or tribal government to approve or regulate any rate  
15 of return on private equity invested in the project;  
16 or

17 (3) otherwise supersede any State, local, or  
18 tribal law (including any regulation) applicable to  
19 the construction or operation of the project.

20 **SEC. 811. REGULATIONS.**

21 The Secretary may promulgate such regulations as  
22 the Secretary determines to be appropriate to carry out  
23 this title.



1 **SEC. 812. FUNDING.**

2       There is authorized to be appropriated \$25,000,000  
3 to each of the Secretary and the Administrator to carry  
4 out this title, to remain available until expended.

5 **SEC. 813. REPORT TO CONGRESS ON PILOT PROJECT IM-**  
6 **PLEMENTATION.**

7       Not later than 2 years after the date of enactment  
8 of this Act, and every 2 years thereafter, the Secretary  
9 shall submit to the Committee on Energy and Natural Re-  
10 sources of the Senate and the Committee on Natural Re-  
11 sources of the House of Representatives a report summa-  
12 rizing the financial performance of the projects that are  
13 receiving, or have received, assistance under this title, in-  
14 cluding an assessment of whether the objectives of this  
15 title are being met.

16 **SEC. 814. FINANCING.**

17       No project receiving Federal credit assistance under  
18 this title may be financed (directly or indirectly), in whole  
19 or in part, with proceeds of any obligation—

20           (1) the interest on which is exempt from the  
21 tax imposed those provisions of the Internal Revenue  
22 Code of 1986 found in chapter 1 of title 26 of the  
23 United States Code; or

24           (2) with respect to which credit is allowable  
25 under those provisions of the Internal Revenue Code  
26 of 1986 found in subpart I or J of part IV of sub-

1 chapter A of chapter 1 of title 26 of the United  
2 States Code.

3 **SEC. 815. DEFINITIONS.**

4 In this title:

5 (1) **ELIGIBLE ENTITY.**—The term “eligible enti-  
6 ty” means—

7 (A) a corporation;

8 (B) a partnership;

9 (C) a joint venture;

10 (D) a trust;

11 (E) a State, local or non-Federal govern-  
12 mental entity, agency, or instrumentality; and

13 (F) a conservancy district, irrigation dis-  
14 trict, canal company, mutual water company,  
15 water users’ association, Indian tribe, agency  
16 created by interstate compact, or any other en-  
17 tity that has the capacity to contract with the  
18 United States under Federal reclamation law.

19 (2) **ELIGIBLE PROJECT COSTS.**—The term “eli-  
20 gible project costs” means the total cost of activities  
21 deemed eligible for assistance in section 806(b) of  
22 this title.

23 (3) **FEDERAL CREDIT INSTRUMENT.**—The term  
24 “Federal credit instrument” means a secured loan

1 or loan guarantee authorized to be made available  
2 under this title with respect to a project.

3 (4) INVESTMENT-GRADE RATING.—The term  
4 “investment-grade rating” means a rating of BBB  
5 minus, Baa3, bbb minus, BBB (low), or higher as  
6 assigned by a rating agency to project obligations.

7 (5) LENDER.—

8 (A) IN GENERAL.—The term “lender”  
9 means any non-Federal qualified institutional  
10 buyer (as defined in section 230.144A(a) of  
11 title 17, Code of Federal Regulations (or a suc-  
12 cessor regulation) (commonly known as “Rule  
13 144A(a) of the Securities and Exchange Com-  
14 mission” and issued under the Securities Act of  
15 1933 (15 U.S.C. 77a et seq.))).

16 (B) INCLUSIONS.—The term “lender” in-  
17 cludes—

18 (i) a qualified retirement plan (as de-  
19 fined in section 4974 of the Internal Rev-  
20 enue Code of 1986) that is a qualified in-  
21 stitutional buyer; and

22 (ii) a governmental plan (as defined in  
23 section 414 of the Internal Revenue Code  
24 of 1986) that is a qualified institutional  
25 buyer.

1           (6) LOAN GUARANTEE.—The term “loan guar-  
2           antee” means any guarantee or other pledge by the  
3           Secretary to pay all or part of the principal of, and  
4           interest on, a loan or other debt obligation issued by  
5           an obligor and funded by a lender.

6           (7) MASTER CREDIT AGREEMENT.—The term  
7           “master credit agreement” means an Agreement to  
8           extend credit assistance for one or more projects se-  
9           cured by a common security pledge (which shall re-  
10          ceive an investment-grade rating from a rating agen-  
11          cy), or for a single project that would—

12                   (A) make contingent commitments of one  
13                   or more secured loans or other Federal credit  
14                   instruments at future dates, subject to the  
15                   availability of future funds being made available  
16                   to carry out this title;

17                   (B) establish the maximum amounts and  
18                   general terms and conditions of the secured  
19                   loans or other Federal credit instruments;

20                   (C) identify the one or more dedicated  
21                   non-Federal revenue sources that will secure  
22                   the repayment of the secured loans or secured  
23                   Federal credit instruments;

24                   (D) provide for the obligation of funds for  
25                   the secured loans or secured Federal credit in-

1           struments after all requirements have been met  
2           for the projects subject to the master credit  
3           agreement, including—

4                   (i) completion of an environmental im-  
5                   pact statement or similar analysis required  
6                   under the National Environmental Policy  
7                   Act of 1969 (42 U.S.C. 4321 et seq.);

8                   (ii) compliance with such other re-  
9                   quirements as are specified in this title;  
10                  and

11                  (iii) the availability of funds to carry  
12                  out this title; and

13                  (E) require that contingent commitments  
14                  result in a financial close and obligation of  
15                  credit assistance not later than 3 years after  
16                  the date of entry into the master credit agree-  
17                  ment, or release of the commitment, unless oth-  
18                  erwise extended by the Secretary.

19                  (8) OBLIGOR.—The term “obligor” means an  
20                  eligible entity that is primarily liable for payment of  
21                  the principal of, or interest on, a Federal credit in-  
22                  strument.

23                  (9) PROJECT OBLIGATION.—

24                   (A) IN GENERAL.—The term “project obli-  
25                   gation” means any note, bond, debenture, or

1 other debt obligation issued by an obligor in  
2 connection with the financing of a project.

3 (B) EXCLUSION.—The term “project obli-  
4 gation” does not include a Federal credit in-  
5 strument.

6 (10) RATING AGENCY.—The term “rating agen-  
7 cy” means a credit rating agency registered with the  
8 Securities and Exchange Commission as a nationally  
9 recognized statistical rating organization (as defined  
10 in section 3(a) of the Securities Exchange Act of  
11 1934 (15 U.S.C. 78c(a))).

12 (11) RECLAMATION STATE.—The term “Rec-  
13 lamation State” means any of the following States:

14 (A) Arizona;

15 (B) California;

16 (C) Colorado;

17 (D) Idaho;

18 (E) Kansas;

19 (F) Montana;

20 (G) Nebraska;

21 (H) Nevada;

22 (I) New Mexico;

23 (J) North Dakota;

24 (K) Oklahoma;

25 (L) Oregon;

- 1 (M) South Dakota;  
2 (N) Texas;  
3 (O) Utah;  
4 (P) Washington; and  
5 (Q) Wyoming.

6 (12) SECRETARY.—The term “Secretary”  
7 means the Secretary of the Interior.

8 (13) SECURED LOAN.—The term “secured  
9 loan” means a direct loan or other debt obligation  
10 issued by an obligor and funded by the Secretary in  
11 connection with the financing of a project under this  
12 title.

13 (14) SUBSIDY AMOUNT.—The term “subsidy  
14 amount” means the amount of budget authority suf-  
15 ficient to cover the estimated long-term cost to the  
16 Federal Government of a Federal credit instrument,  
17 as calculated on a net present value basis, excluding  
18 administrative costs and any incidental effects on  
19 governmental receipts or outlays in accordance with  
20 the Federal Credit Reform Act of 1990 (2 U.S.C.  
21 661 et seq.).

22 (15) SUBSTANTIAL COMPLETION.—The term  
23 “substantial completion”, with respect to a project,  
24 means—

1                   (A) the initial operation of a project (after  
2                   completion of any startup tests), resulting in  
3                   producing, storage, delivery, receiving, or con-  
4                   serving water; or

5                   (B) a comparable event, as determined by  
6                   the Secretary and specified in the master credit  
7                   agreement.

