

Calendar No. 938

106TH CONGRESS }
2d Session }

SENATE

{ REPORT
106-489

KLAMATH BASIN WATER SUPPLY ENHANCEMENT ACT OF 2000

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 2882]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2882) to authorize the Bureau of Reclamation to conduct certain feasibility studies to augment water supplies for the Klamath Project, Oregon and California, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Klamath Basin Water Supply Enhancement Act of 2000”.

SEC. 2. AUTHORIZATION TO CONDUCT FEASIBILITY STUDIES.

In order to help meet the growing water needs in the Klamath River basin, to improve water quality, to facilitate the efforts of the State of Oregon to resolve water rights claims in the Upper Klamath River Basin including facilitation of Klamath tribal rights claims, and to reduce conflicts over water between the Upper and Lower Klamath Basins, the Secretary of the Interior (hereinafter referred to as the “Secretary”) is authorized and directed, in consultation with affected state, local and tribal interests, stakeholder groups and the interested public, to engage in feasibility studies of the following proposals related to the Upper Klamath Basin and the Klamath Project, a federal reclamation project in Oregon and California.

(1) Increasingly the storage capacity, and/or the yield of Klamath Project facilities while improving water quality, consistent with the protection of fish and wildlife;

(2) the potential for development of additional Klamath Basin groundwater supplies to improve water quantity and quality, including the effect of such groundwater development on non-project lands, groundwater and surface water supplies, and fish and wildlife;

(3) the potential for further innovations in the use of existing water resources, or market-based approaches, in order to meet growing water needs consistent with state water law.

SEC. 3. ADDITIONAL STUDIES.

(a) NON-PROJECT LANDS.—The Secretary may enter into an agreement with the Oregon Department of Water Resources to fund studies relating to the water supply needs of non-project lands in the Upper Klamath Basin.

(b) SURVEYS.—To further the purposes of this Act, the Secretary is authorized to compile information on native fish species in the Upper Klamath River Basin, upstream of Upper Klamath Lake. Wherever possible, the Secretary should use data already developed by Federal agencies and other stakeholders in the Basin.

(c) HYDROLOGIC STUDIES.—The Secretary is directed to complete ongoing hydrologic surveys in the Klamath River Basin currently being conducted by the U.S. Geological Survey.

(d) REPORTING REQUIREMENTS.—The Secretary shall submit the findings of the studies conducted under section 2 and Section 3(a) of this Act to the Congress within 90 days of each study's completion, together with any recommendations for projects.

SEC. 4. LIMITATION.

Activities funded under this Act shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (82 Stat. 388) and all Acts amendatory thereof or supplementary thereto.

SEC. 5. WATER RIGHTS.

Nothing in this Act shall be construed to—

- (1) create, by implication or otherwise, any reserved water right or other right to the use of water;
- (2) invalidate, preempt, or create any exception to State water law or an interstate compact governing water;
- (3) alter the rights of any State to any appropriated share of the waters of any body or surface or groundwater, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;
- (4) preempt or modify any State of Federal law or interstate compact dealing with water quality or disposal; or
- (5) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any groundwater resources.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized such sums as necessary to carry out the purposes of this Act. Activities conducted under this Act shall be non-reimbursable and non-returnable.

PURPOSE OF THE MEASURE

The purpose of S. 2882, as ordered reported, is to authorize Bureau of Reclamation to conduct certain feasibility studies to augment water supplies for the Klamath Project, Oregon and California, and for other purposes.

BACKGROUND AND NEED

The Klamath Project (the Project) on the Oregon-California border is one of the earliest Federal reclamation projects. In early 1905, the Oregon and California State Legislatures ceded title to Lower Klamath and Tule Lakes to the United States for project development under provisions of the Reclamation Act of 1902. Construction was authorized on May 15, 1905, for project works to drain and reclaim lakebed lands of the Lower Klamath and Tule Lakes; store waters of the Klamath and Lost Rivers; divert irrigation supplies; and control flooding of the reclaimed lands.

There are two main water supplies for the Project. One consists of Upper Klamath lake and the Klamath River. The other consists of Clear Lake Reservoir, Gerber Reservoir and Lost River, which are located in a closed basin.

The Project features consist of Link River Dam and Reservoir, Gerber Dam and Reservoir, and Clear Lake Dam and Reservoir, additional diversion dams, 5 major pumping plants and 18 canals with a total length of 185 miles. The project area includes 233,625 acres of irrigable lands. There are approximately 22,000 acres of land leased to farmers on the Lower Klamath and Tule Lake National Wildlife Refuges.

The principal crops grown in this area are cereal grains, alfalfa hay, onions, potatoes, and grass seed. Water is also used to irrigate pastures for beef cattle. The area is noted for the production of malting barley. The average irrigation season extends from April through September.

There has been growing concern about meeting the competing needs of farmers, fish, tribes, and wildlife refuges. Within the basin, a consensus is developing on the need to increase overall water supplies in order to meet these growing needs and enhance the environment. The Bureau of Reclamation has undertaken a water supply initiative study. The Federal Government has acquired the Agency Lake Ranch property for the purpose of inundating it with 30,000 to 40,000 acre-feet of water during the periods when Upper Klamath Lake would otherwise spill. In addition, the water users helped the Fish and Wildlife Service secure \$3.6 million for refuge water supply augmentation.

The water rights in this basin are not adjudicated. Oregon is trying to use an alternative process to formal adjudication. The tribes and Federal irrigators have been working to resolve issues.

As ordered reported, S. 2882 provides the Secretary of the Interior with the authority to conduct certain feasibility studies in the Klamath Basin designed to increase water supplies and improve water management and water quality in the Upper Basin. It is the Committee's intent that the Secretary will take into consideration all the water needs in the Klamath Basin in conducting these feasibility studies and making recommendations, including the water needs of fish and wildlife; refuge areas; tribes; non-project irrigators; and irrigators who receive water from the Federal reclamation project.

LEGISLATIVE HISTORY

S. 2882 was introduced by Senator Smith of Oregon on July 17, 2000. The Subcommittee on Water and Power held a hearing on the bill on July 25, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2882, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2882, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 2882, the Committee adopted an amendment in the nature of a substitute that removes the construction authorization, clarifies the scope of the feasibility studies,

and authorizes the Secretary to fund a feasibility study of non-project lands.

SECTION-BY-SECTION ANALYSIS

Section 1 designates a short title.

Section 2 authorizes the Secretary of the Interior to conduct feasibility studies of 3 identified proposals related to the Upper Klamath Basin and the Klamath Project. These studies are to be conducted in consultation with affected State, local and tribal interests, stakeholder groups, and the interested public. The studies are authorized to help meet the growing water needs in the Klamath Basin, to improve water quality, to facilitate resolution of water rights claims, and to reduce conflicts over water in the Upper and Lower Klamath Basins.

Section 3 authorizes additional studies. The Secretary may enter into an agreement with the Oregon Department of Water Resources to fund studies relating to the water supply needs of non-project lands in the Upper Klamath Basin. The Secretary is authorized to compile information on native fish species, and where possible, is to use data already developed by Federal agencies and other stakeholders. The Secretary is also directed to compete ongoing hydrologic surveys. Findings of studies conducted under section 2 and section 3(a) (water needs non-project lands) are to be submitted to Congress within 90 days of each study's completion, together with any recommendations for projects.

Section 4 provides that activities funded by this Act shall not be considered a supplemental or additional benefit under Reclamation law.

Section 5 provides that no existing water rights shall be affected by the Act.

Section 6 authorizes such sums as necessary and provides that activities conducted under the Act shall be non-reimbursable and non-returnable.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2882. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2882, as ordered reported.

EXECUTIVE COMMUNICATIONS

On, August 4, 2000, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2882. These reports had not been received at the time the report on S. 2882 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. the testimony provided by the Commissioner of the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF ROBERT T. ANDERSON, COUNSELOR TO THE
SECRETARY, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present the Administration's views on S. 2882, the Klamath Basin Water Supply Enhancement Act of 2000. The Administration opposes this bill as drafted but could support the bill if changes outlined below are made.

For the last decade, the conflict over water availability in the Klamath Basin has escalated and the competition for water supplies has increased. While much of the focus has been on operation of the Bureau of Reclamation (Reclamation) Klamath Project, there are myriad factors which affect the availability of water for meeting the Klamath Basin needs as well as a number of potentially competing uses. For example, the water rights of the Klamath Basin remain unadjudicated. While the courts have reaffirmed the existence of senior Indian water rights, these rights have not yet been quantified. The Department of the Interior (Interior) has trust responsibilities for the Klamath Basin tribes. In the upper basin there are two endangered fish, the Lost River sucker and the short nose sucker. Down river, the coho salmon is listed as threatened, under the Endangered Species Act. Four national wildlife refuges—Clear Lake, Tule Lake, Lower Klamath and Upper Klamath—were established to enhance migratory bird populations and are currently facing water shortages. Farmers dependent on the Klamath Project are facing annual uncertainty over water availability. Appropriators junior to the Klamath Project may face an even more uncertain water supply. In short, it has become apparent that in dry years there is not enough water to meet all basin needs.

There are many processes currently underway to grapple with these seemingly intractable water use conflicts. In the upper Klamath Basin, the State of Oregon is in the process of adjudicating water rights. Recognizing the potential for parties to negotiate settlement of their water rights claims prior to final adjudication, Oregon is conducting a parallel alternative dispute resolution (ADR) process. Interior, the U.S. Forest Service, and the Klamath Basin tribes are active participants in the ADR, as are many others with interest in the outcome of the adjudication. While that process may be far from resolution, parties to the ADR agree on two points: (1) there is a great potential to develop ad-

ditional water supply and (2) increased water supplies are a key element in accomplishing negotiated settlements.

In addition to our participation in the ADR process, Interior is working with other agencies, tribes, and stakeholders in other forums to help resolve these conflicts over water. In all these activities, it has become clear that the solution involves finding additional water supplies and managing water supplies to achieve efficiencies. Therefore, the Administration is encouraged that the Oregon delegation would lend such important support to an effort to expand the manageable water supply in the Basin. We believe that, with a few changes, S. 2882 will move the interested parties toward solutions that address the needs of all in the Basin.

S. 2882 would authorize and direct the Secretary of the Interior to engage in feasibility studies of proposals: (1) to increase the storage capacity and/or yield of the Klamath Project, (2) to develop additional Klamath Basin groundwater supplies to improve water quantity and quality, and (3) for the use of the water made available by activities authorized by this bill. Once Congress has had 90 calendar days to review the feasibility studies, and the requirements of the National Environmental Policy Act have been fulfilled, the Secretary is authorized to commence planning, design and construction. The United States would pay all of the costs associated with this legislation, including feasibility studies, design, planning and construction.

We believe enactment of the feasibility studies proposed in S. 2882 if amended would benefit the threatened and endangered fish species as well as the four national wildlife refuges in the Klamath Basin. In addition, water made available by strategies studied under S. 2882 could play a key role in the adjudication of Indian and private irrigation water rights claims. The Administration strongly supports provisions in S. 2882 requiring compliance with Federal law, including the National Environmental Policy Act and Endangered Species Act, to ensure public involvement and resolution of environmental issues prior to implementation. For these reasons, the Administration supports authorizing the feasibility studies and the planning and design of facility modifications and for ground water development.

The Department and others recognize the potential to augment the water supply by modifying Klamath Project features and developing groundwater supplies. Interior is confident that the feasibility studies will demonstrate that there are steps that can be taken to alleviate the very real potential for shortages in the near future. The Administration recognizes there are tribal trust and wildlife refuge aspects that must be considered in focusing studies and allocating costs.

However, the Administration cannot support: (1) authorizing construction prior to completion of Administration and Congressional review of feasibility studies, and (2) making all activities authorized under this bill non-reim-

bursable and non-returnable. Longstanding Administration policy opposes simultaneously authorizing feasibility reports and construction. Additionally, we oppose provisions making 100 percent of construction costs reimbursable up front, as Reclamation policy calls for assigning costs based on a feasibility study according to project purposes with beneficiaries assuming appropriate levels of repayment responsibility. Therefore, Section 3 should be deleted. Under Section 7, the United States would pay 100 percent of the costs of the feasibility reports despite the benefits the studies could have for the State, power and irrigation interests, among others. Normally Administration policy has the United States bear 50 percent of the feasibility study costs with appropriate non-Federal interests contributing 50 percent. However, the factors discussed above may justify some flexibility on this standard.

This concludes my testimony. I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2882, as ordered reported.

