

Calendar No. 544

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-274

BONNEVILLE UNIT CLEAN HYDROPOWER FACILITATION ACT

AUGUST 5, 2010.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 2008]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2008) to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 2008 is to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project.

BACKGROUND AND NEED

The Central Utah Project was authorized in 1956 as part of the Colorado River Storage Project Act. The Bonneville Unit is the largest unit of the Central Utah Project. The Diamond Fork System is a completed project within the Bonneville Unit and is located in Utah County, Utah. Pursuant to the Central Utah Project Completion Act of 1992 (CUPCA), the Central Utah Water Conservancy District is responsible for completion of the Central Utah Project, including the Bonneville Unit.

Hydropower development on Central Utah Project facilities was authorized as part of the original Colorado River Storage Project Act of 1956. The 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit and the 2004 Utah Lake Drainage Basin Water Delivery System Final Environmental Impact Statement de-

tail the proposed power facilities that could be developed within the Diamond Fork System, which include two hydroelectric power plants. It is estimated that the Diamond Fork project has the capability to generate up to 50 megawatts of hydroelectric power.

The Colorado River Storage Project Act requires that project costs be allocated for repayment by power generation and, as a result, any non-federal developer of power within the Diamond Fork system would be responsible for payment of those costs prior to initiation of power production. H.R. 2008 provides that the project costs would be permanently deferred under the same terms as certain municipal and industrial costs are allowed to be deferred under section 211 of CUPCA so long as the Central Utah Water Conservancy District complies with certain water management requirements.

LEGISLATIVE HISTORY

H.R. 2008, sponsored by Representative Matheson, passed the House of Representatives by voice vote on June 8, 2010. Companion legislation, S. 1758, was introduced by Senator Bennett on October 6, 2009. The Subcommittee on Water and Power held a hearing on S. 1758 on November 5, 2009 (S. Hrg. 111–339). The Committee on Energy and Natural Resources considered H.R. 2008 at its business meeting on June 16, 2010, and ordered it favorably reported without amendment at its business meeting on June 21, 2010.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by voice vote of a quorum present, recommends that the Senate pass H.R. 2008.

SECTION-BY-SECTION ANALYSIS

Section 1 identifies the short title of the bill as the Bonneville Unit Clean Hydropower Facilitation Act.

Section 2 defines the Diamond Fork System as the facilities described in chapter 4 of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit.

Section 3 provides that the current amount of reimbursable costs allocated to project power for the Diamond Fork System shall be the final costs.

Section 4 provides that nothing in the Act shall obligate the Western Area Power Administration to purchase or market any of the power produced by the Diamond Fork power plant and that none of the costs associated with development of transmission facilities to transmit power from the Diamond Fork power plant shall be assigned to power for the purpose of Colorado River Storage Project ratemaking.

Section 5 prohibits the use of tax-exempt financing to fund any facility for the generation or transmission of hydroelectric power on the Diamond Fork System.

Section 6 requires the Secretary of Interior to report to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate if hydropower production on the Diamond Fork System has not com-

menced within twenty-four months after the date of enactment and to supply a detailed timeline for future hydropower production.

Section 7 contains language complying with the Statutory Pay-As-You-Go Act of 2010.

Section 8 provides that the authority under the provisions of section 301 of the Hoover Power Plant Act of 1984 (P.L. 98–381; 42 U.S.C. 16421a) shall not be used to fund any study or construction of transmission facilities developed as a result of the bill.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

H.R. 2008—Bonneville Unit Clean Hydropower Facilitation Act

Summary: CBO expects that enacting H.R. 2008 would lead to the development of hydropower facilities at the Diamond Fork Project in Utah by a nonfederal entity within a few years, sooner than expected under current law. As a result, CBO estimates that the government would receive payments from the hydropower developer of about \$2 million over the 2011–2020 period. Pay-as-you-go procedures apply to this legislation because it would increase offsetting receipts (a credit against direct spending).

H.R. 2008 would reduce the amounts that developers of hydropower resources at the Diamond Fork Project would have to pay to the U.S. Treasury for certain reimbursable expenses. (Reimbursable expenses are the portion of a project's costs that are repaid to the federal government by other entities.) Under current law, a sponsor of this project would have to pay about \$5.3 million annually for a period of 50 years following the start of electricity production. H.R. 2008 would effectively eliminate that potential obligation. Instead, under H.R. 2008, sponsors would be required to pay certain annual fees, which are estimated to total about \$400,000 a year, adjusted for inflation, beginning in 2016.

H.R. 2008 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The costs of this legislation fall within budget function 300 (natural resources and environment). CBO estimates that enacting H.R. 2008 would increase offsetting receipts by \$400,000 a year over the 2016–2020 period, or a total collection of \$2 million.

Basis of estimate: Based on information from the Bureau of Reclamation, CBO expects that the federal government is unlikely—under current law—to develop the hydropower resources of the Diamond Fork project for at least the next 10 years. Although there are no formal development proposals currently being considered by the bureau, two nonfederal entities—the Central Utah Water Conservancy District and the Strawberry Water Users' Association—have expressed interest in developing those resources since at least 1995. Whether one of those entities or another nonfederal developer will propose a hydroelectric project at Diamond Fork under current law over the next decade is unclear. Among the issues that have delayed development of the site is a requirement to pay the Treasury for the federal government's power-related investments in the water project. According to the bureau, such payments would

begin after the hydroelectric facilities go into service and would average \$5.3 million a year for 50 years.

CBO expects that eliminating the required annual payment to the Treasury would encourage nonfederal entities to pursue development of the hydropower resources at Diamond Fork. Assuming that H.R. 2008 is enacted near the end of 2010, we expect that the Bureau of Reclamation would receive a proposal to develop the hydroelectric resources within a year or two and that such a project could be completed by 2016. In that case, the government would collect annual fees from the project developer totaling about \$400,000 a year (adjusted for inflation) for the life of the project.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 2008 would increase offsetting receipts (a credit against direct spending) beginning in 2016. The budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR H.R. 2008, THE BONNEVILLE UNIT CLEAN HYDROPOWER FACILITATION ACT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON JUNE 21, 2010

	By fiscal year, in millions of dollars—													
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020	
	NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0	–2

Intergovernmental and private-sector impact: H.R. 2008 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On September 23, 2009, CBO transmitted a cost estimate for H.R. 2008 as ordered reported by the House Committee on Natural Resources on September 10, 2009. The two pieces of legislation are identical, and the estimated costs are the same.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

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 H.R. 2008.

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 H.R. 2008, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 2008, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairwoman and members of the Committee, I am Michael Connor, Commissioner of the Bureau of Reclamation. I am pleased to be here today on behalf of the Assistant Secretary for Water and Science who oversees the Central Utah Project Completion Act activities to present the Administration's views on S. 1758, the Bonneville Unit Clean Hydropower Facilitation Act. The proposed legislation is associated with development of hydropower on the Diamond Fork System, Bonneville Unit, Central Utah Project.

The Central Utah Project Completion Act (CUPCA) provides for the completion of the construction of the Central Utah Project (CUP) by the Central Utah Water Conservancy District (CUWCD). CUPCA also authorizes programs for fish, wildlife, and recreation mitigation and conservation; establishes an account in the Treasury for deposit of appropriations and other contributions; establishes the Utah Reclamation Mitigation and Conservation Commission to coordinate mitigation and conservation activities; and provides for the Ute Indian Water Rights Settlement.

Hydropower development on CUP facilities was authorized as part of the Colorado River Storage Project Act (CRSPA) under which the Central Utah Project is a participating project. The development of hydropower on the Diamond Fork System has been contemplated since the early days of the CUP. The 1984 Environmental Impact Statement on the Diamond Fork System described the construction of five hydropower plants with a combined capacity of 166 MW of power.

However, these hydropower plants were never constructed and the 1999 Environmental Impact Statement on the Diamond Fork System presented a plan which specifically excluded the development of hydropower, stating ". . . there are no definite plans or designs, and it is not known if or by whom they may be developed."

Although hydropower development was not included, construction of pipelines and tunnels for the Diamond Fork System was completed and put into operation in July 2004. Under full operation the Diamond Fork system will annually convey 101,900 acre-feet of CUP Water and 61,500 acre-feet of Strawberry Valley Project Water.

In 2002 CUPCA was amended to authorize development of federal project power on CUP facilities. With this new

amendment plans for hydropower development at Diamond Fork were included in the 2004 Utah Lake System Environmental Impact Statement and the 2004 Supplement to the Definite Plan Report for the Bonneville Unit (DPR). These documents describe the construction of two hydropower plants on the existing Diamond Fork System for a total generating capacity of 50 MW.

Section 208 of CUPCA included provisions that power on CUP features would be developed and operated in accordance with CRSPA and CUP water diverted out of the Colorado River Basin for power purposes would be incidental to other project purposes.

There are two options for hydropower development on the Diamond Fork System: (1) federal project development or (2) private development under a Lease of Power Privilege contract with the United States.

Under the first option the CUWCD would construct the Diamond Fork hydropower plants under contract with the United States and contribute an upfront local cost share of 35 percent of the construction costs. In addition to the hydropower construction costs, the costs associated with conveyance facilities upstream of the Diamond Fork would have to be repaid by the non-Federal project sponsors.

The DPR allocates costs of the CUP according to project purposes. The reimbursable costs allocated to power are \$161 million based upon the costs of developed features upstream of the Diamond Fork System. It is anticipated that under this option, these allocated costs would be repaid through an arrangement among Interior, CUWCD, and the Western Area Power Administration (WAPA).

Under the second option, private hydropower could be developed. Although the DPR and 1999 EIS describe federal hydropower development, they also provide the option for a Lease of Power Privilege arrangement with the United States. Under this arrangement Interior would implement a competitive process to select a lessee for private development of hydropower at Diamond Fork. The lease arrangement would require repayment of the \$161 million of upstream costs plus annual payments to the United States for the use of the federal facilities, amounting to at least a 3 mil rate paid by the lessee to the United States.

S. 1758 does not preclude federal development of hydropower, but it does increase the likelihood of private development. If enacted, this bill would indefinitely defer the \$161 million in costs allocated to power development in the Diamond Fork System under section 211 of CUPCA, thus reducing the cost of hydropower development at this site. This bill would increase the likelihood that a private developer would pursue a Lease of Power Privilege arrangement because the private developer would not, under this legislation, be required to repay the \$161 million of construction costs that were allocated to power as would be required under existing law.

We understand and appreciate the goal of this legislation of facilitating the development of hydroelectric power on the Diamond Fork System.

However, the Administration has serious concerns about losing our ability to recoup the Federal investment made in these facilities as set forth in this legislation. The Federal government may benefit in the medium term from the annual payments for the use of Federal facilities that would be paid if a lessee entered into a Lease of Power Privilege arrangement for production of hydroelectric power on the Diamond Fork System. Assuming only a summer water supply as under current deliveries, these payments are estimated at about \$400,000 a year starting the year that the project is completed and continuing for the life of the project. However, because payment of \$161 million of allocated power costs would be postponed indefinitely, it is unclear what the long-term fiscal implications of enactment of this legislation would be and how the United States Treasury would be made whole. This legislation would potentially permanently postpone anticipated receipts to the U.S. Treasury at the expense of the Federal taxpayer. While it is not clear at this time whether a non-federal developer would propose a hydroelectric project at Diamond Fork under current law, if this were to occur, repayment of the allocated power costs would begin after the hydroelectric project is completed and average \$5.3 million a year for 50 years.

Section 5 of S. 1758 would prohibit the use of tax-exempt financing to develop any facility for the generation or transmission of hydroelectric power on the Diamond Fork System. This provision was added to the bill to prevent any loss of revenue to the federal government as a result of the financing mechanism used for development of hydropower at this site.

Further analysis would help to determine whether this legislation to facilitate private development of hydropower at Diamond Fork would provide sufficient benefits to justify the costs.

This concludes my testimony. I am happy to answer any questions.

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 H.R. 2008, as ordered reported.

