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BONNEVILLE UNIT CLEAN HYDROPOWER FACILITATION ACT

APRIL 22, 2013.—Ordered to be printed

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

R E P O R T

[To accompany S. 26]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 26) 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 bill do pass.

PURPOSE

The purpose of S. 26 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) (Public Law 102–575), 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 (Public Law 84–485). 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

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Impact Statement detail 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. S. 26 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

Senator Hatch introduced S. 26 on January 22, 2013. The bill is co-sponsored by Senator Lee. At its business meeting on March 14, 2013, the Committee ordered S. 26 favorably reported.

In the 112th Congress, the Subcommittee on Water and Power of the Committee on Energy and Natural Resources held a hearing on similar legislation, S. 499, on May 19, 2011 (S. Hrg. 112–63). The Committee on Energy and Natural Resources ordered S. 499 favorably reported without amendment at its business meeting on November 10, 2011 (S. Rept 112–110).

During the 111th Congress, the Committee considered similar legislation, S. 1758, sponsored by Senators Bennett and Hatch, and H.R. 2008, sponsored by Representative Matheson, which passed the House of Representatives by voice vote on June 8, 2010. 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 the bill favorably reported without amendment at its business meeting on June 21, 2010.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 14, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 26.

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 the 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 commenced 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 (Public Law 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:

S. 26—Bonneville Unit Clean Hydropower Facilitation Act

Summary: CBO expects that enacting S. 26 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. Based on information from the Bureau of Reclamation, CBO estimates that the federal government would receive payments from the hydropower developer of about $4 million over the 2014–2023 period. Enacting the bill would decrease direct spending (by increasing offsetting receipts); therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

S. 26 contains no intergovernmental or private-sector mandates as defined in 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 S. 26 would increase offsetting receipts by $600,000 a year beginning in 2018; collections would total about $4 million over the 2018–2023 period.

Basis of estimate: Based on information from the Bureau of Reclamation, CBO expects that under current law the federal government is unlikely 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.

Among the reasons that CBO expects the site will probably not be developed over the next 10 years under current law is a requirement that project sponsors pay the Treasury for a portion of the federal government's previous investments in the water project. According to the bureau, those payments would average about $5 million annually, beginning after the hydroelectric facilities go into service and continuing through the life of the lease.

S. 26 would eliminate that requirement, and CBO expects that the bill would encourage nonfederal entities to pursue development of the hydropower resources at Diamond Fork. Assuming that S. 26 is enacted in 2013, 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 2018. In that case, the government would collect annual fees from the project developer totaling about $600,000 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. S. 26 would increase offsetting receipts (a credit against direct spending) by about $600,000 annually beginning in 2018. The budgetary changes that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 26 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON MARCH 14, 2013

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2013–2018	2013–2023
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	0	0	0	0	−1	−1	−1	−1	−1	−1	−1	−4

Note: Components do not sum to totals because of rounding.

Intergovernmental and private-sector impact: S. 26 contains no intergovernmental or private-sector mandates as defined in UMRA; any additional costs to state and local governments would result from participating in a voluntary federal program.

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: Theresa Gullo, Deputy 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 S. 26.

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. 26, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 26, as 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

Executive Communications were not requested by the Senate Committee on Energy and Natural Resources in the 113th Congress. The following Administration testimony references similar legislation introduced in the 112th Congress.

The testimony provided by the Bureau of Reclamation at the May 19, 2011 Subcommittee on Water and Power hearing on S. 499 follows:

STATEMENT OF DAVID MURILLO, DEPUTY COMMISSIONER, OPERATIONS, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairwoman and members of the Committee, I am David Murillo, Deputy Commissioner for Operations 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. 499, 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 were 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 for Strawberry Valley Project water users.

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 plant construction costs, the costs of conveyance facilities upstream of Diamond Fork System that are allocated to power would have to be repaid. 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. 499 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. 499 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.

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

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