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SENATE

{ REPORT
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EAST BENCH IRRIGATION DISTRICT WATER CONTRACT EXTENSION ACT AMENDMENTS

JULY 31, 2014.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1965]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1965) to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1965 is to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services.

BACKGROUND AND NEED

The East Bench Irrigation District (EBID) is a privately owned irrigation district located in Dillon, Montana. EBID had an irrigation water service contract supplied by the Bureau of Reclamation's Clark Canyon Dam and Reservoir in southwest Montana from the contract's original execution in 1958 until its expiration on December 31, 2005. EBID began to renew its 1958 contract in 2006 (which requires a Montana 5th District Court decree), but an objection was filed that is not expected to be resolved for two or more years. Short-term extensions of the 1958 contract were provided in prior year appropriations bills and most recently by Public Law 112-139 for an additional four years, but this expired on December 31, 2013. EBID is concerned about losing their right to renew their 1958 contract if it is allowed to expire prior to securing court con-

firmation of the renewed 2006 contract, so EBID is pursuing an extension of the 1958 contract. S. 1965 would further extend the 1958 contract for an additional six years (for a total of 10 years, or until December 31, 2019) or until the renewed 2006 contract is executed. S. 1965 would still defer to the court to take up the issue again at a time of its choosing.

LEGISLATIVE HISTORY

Senator Baucus introduced S. 1965 on January 28, 2014 with Senator Tester as a co-sponsor. Senator Walsh was added as a co-sponsor on June 3, 2014. A hearing was held by the Subcommittee on Water and Power on February 27, 2014 (S. Hrg. 113–284). At its business meeting on June 18, 2014, the Senate Energy and Natural Resources Committee ordered S. 1965 favorably reported without amendment.

A related bill, S. 997, was introduced by Senator Tester in the 112th Congress. A hearing was held by the Subcommittee on Water and Power on June 23, 2011 (S. Hrg. 112–129). At its business meeting on July 14, 2011, the Senate Energy and Natural Resources Committee ordered S. 997 favorably reported (S. Rpt. 112–65) and was passed into law on June 27, 2012 (P.L. 112–139).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 18, 2014, by a voice vote, recommends that the Senate pass S. 1965 without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1 amends the East Bench Irrigation District Water Contract Extension Act (Public Law 112–139; 126 Stat. 390) to extend the contract from 4 years to 10 years.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1965—A bill to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services

S. 1965 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to extend the water contract between the United States and the East Bench Irrigation District for six additional years or until a new long-term contract is executed, whichever is earlier. Based on information from the Bureau of Reclamation, CBO estimates that enacting the legislation would not affect the federal budget. Because enacting S. 1965 would not affect revenues or direct spending, pay-as-you-go procedures do not apply.

The Bureau of Reclamation supplies irrigation water from the Clark Canyon Dam and Reservoir project to the East Bench Irrigation District under an interim contract negotiated in 2006 after the original contract expired. Although the interim contract expired at the end of 2013 both the bureau and the district continue to oper-

ate under the terms of the expired contract and expect to do so until a new contract is executed.

S. 1965 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was 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. 1965.

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 could 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. 1965, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

This bill, 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

The testimony provided by the Bureau of Reclamation at the Subcommittee on Water and Power hearing on S. 1965 follows:

STATEMENT OF ROBERT QUINT, SENIOR ADVISOR, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 1965, to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services. The Department supports S. 1965.

Reclamation's Clark Canyon Dam and Reservoir are located in southwest Montana and supply irrigation water under contract to the East Bench Irrigation District (EBID). EBID's water service contract with Reclamation was first executed in October 1958 and expired on December 31, 2005. Pursuant to Section 1 of the Act of May 15, 1922 (42 Stat. 541), Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649), and Section 85-7-1957, Montana Code Annotated, execution of a new contract between the United States and any irrigation district requires confirmation by a Montana District court.

In 2006, EBID filed a petition with the Montana Fifth Judicial District Court seeking confirmation of the execution of their renewed contract with Reclamation. A hearing was convened on December 14, 2006, in Dillon, MT, and one objection to the confirmation was filed.

A part of the legal challenge to confirmation of the contract involves the proper place of use of the water, which is an element of a water right which the Montana Water Court has sole jurisdiction over. Therefore, the case was certified from the Montana District Court to the Montana Water Court.

Once the Montana Water Court addresses the proper place of use for the subject water right, it will send the case back to the Montana District Court for further proceedings on the various additional legal challenges to the contract. A decision by either the Montana Water Court or the Montana District Court may be appealed directly to the Montana Supreme Court, which is the court of last resort.

Prior year appropriations bills have extended the contracts for terms of up to two years. Most recently, in the 112th Congress, Public Law 112–139; 126 Stat. 390 extended the contract for four years (to December 31, 2013) or until the date on which a new long-term contract is executed. EBID remains concerned about losing their right to renew their 1958 contract if it is allowed to expire prior to securing court confirmation of the renewed 2006 Contract. For this reason they are pursuing extension of the 1958 contract.

Under current law, the 2006 contract is not binding on the United States until court confirmation is secured. A final decree from the court confirming the 2006 contract has not occurred. Therefore, EBID is seeking authority under S. 1965 to extend the 1958 contract. S. 1965 would extend the contract for six years beyond Public Law 112–139 for a total of ten years (to December 31, 2019) or until a new contract is executed and still defer to the court to take up the issue again at a time of its choosing. The Department believes that a 10 year extension under S. 1965 will allow adequate time for confirmation by the Montana Fifth Judicial District Court. The Department supports this legislation because it would allow water service to the EBID to continue and protects the right for contract renewal while the court confirmation process is given time to be completed.

This concludes my statement. Again, the Department supports S. 1965. I would be pleased to answer questions at the appropriate time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1965, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is in

italic, and existing law in which no change is proposed is shown in roman):

**EAST BENCH IRRIGATION DISTRICT WATER CONTRACT
EXTENSION ACT**

PUBLIC LAW 112-139

AN ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO EXTEND A WATER
CONTRACT BETWEEN THE UNITED STATES AND THE EAST BENCH IRRIGATION DISTRICT.

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SEC. 2. AUTHORITY TO EXTEND WATER CONTRACT.

The Secretary of the Interior may extend the contract for water services between the United States and the East Bench Irrigation District, numbered 14-06-600-3593, until the earlier of—

- (1) the date that is **4 years** *10 years* after the date on which the contract would have expired if this Act had not been enacted;
- or
- (2) the date on which a new long-term contract is executed by the parties to the contract.

