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BUREAU OF RECLAMATION HYDROPOWER DEVELOPMENT EQUITY AND JOBS ACT

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. 2010]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2010) to amend the Water Conservation and Utilization Act to authorize the development of non-Federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bureau of Reclamation Hydropower Development Equity and Jobs Act".

SEC. 2. AMENDMENT.

Section 9 of the Act of August 11, 1939 (commonly known as the "Water Conservation and Utilization Act") (16 U.S.C. 590z–7) is amended—

(1) by striking "In connection with" and inserting "(a) IN GENERAL.—In connection with"; and

(2) by adding at the end the following:

"(b) CERTAIN LEASES AUTHORIZED.—

"(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary—

"(A) may enter into leases of power privileges for electric power generation in connection with any project constructed pursuant to this Act; and

"(B) shall have authority over any project constructed pursuant to this Act in addition to and alternative to any existing authority relating to a particular project.

"(2) PROCESS.—In entering into a lease of power privileges under paragraph (1), the Secretary shall use the processes, terms, and conditions applicable to

the lease under section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)).

"(3) FINDINGS NOT REQUIRED.—No findings under section 3 shall be required for a lease under paragraph (1).

"(4) RIGHTS RETAINED BY LESSEE.—Except as otherwise provided under paragraph (5), all right, title, and interest in and to installed power facilities constructed by non-Federal entities pursuant to a lease under paragraph (1), and any direct revenues derived from that lease, shall remain with the lessee.

"(5) LEASE CHARGES.—Notwithstanding section 8, lease charges shall be credited to the project from which the power is derived.

"(6) EFFECT.—Nothing in this section alters or affects any agreement in effect on the date of enactment of the Bureau of Reclamation Hydropower Development Equity and Jobs Act for the development of hydropower projects or disposition of revenues.".

PURPOSE

The purpose of S. 2010 is to amend the Water Conservation and Utilization Act to authorize the development of non-Federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act.

BACKGROUND AND NEED

Both section 5 of the Town Sites and Power Development Act of 1906 (43 U.S.C. 522) and section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) authorize the Bureau of Reclamation to lease Reclamation facilities to non-federal entities to produce electric power, through what is known as a "lease of power privilege." In 2013, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act (Public Law 113–24) amended section 9(c) of the Reclamation Project Act of 1939 to give the Bureau still broader authority to enter into leases of power privileges at Reclamation projects, including small conduit facilities, and to facilitate development of hydropower at these facilities.

In addition to Reclamation projects built and operated under Reclamation law, the Bureau also administers 11 reclamation projects that were built during the Great Depression pursuant to the Water Conservation and Utilization Act (16 U.S.C. 590z–7) (WCUA) with the assistance of the Works Project Administration. The 11 projects built under the WCUA are:

1. Buffalo Rapids Project—southeastern Montana
2. Intake Project—Montana
3. Mancos Project—southwest corner of Colorado
4. Mann Creek Project—west-central Idaho
5. Milk River Project—north-central Montana
6. Angostura Unit of PSMB—southwestern South Dakota
7. Mirage Flats Project—northwestern Nebraska
8. Rathdrum Prairie Project—panhandle of Idaho
9. Newton Project—Newton, Utah
10. Missoula Valley Project—west-central Montana
11. Scofield Project—Price, Utah

Because these 11 projects were not authorized under Reclamation law, the authority to enter into leases of power privileges granted by section 5 of the Town Sites and Power Development Act of 1906 and section 9(c) of the Reclamation Project Act of 1939 do not extend to them. Additional legislation is needed to authorize

the Bureau of Reclamation to enter into leases of power privileges at the WCUA projects.

LEGISLATIVE HISTORY

S. 2010 was introduced by Senator Barrasso on February 10, 2014. A hearing was held on the bill by the Subcommittee on Water and Power on February 27, 2014. At its business meeting on June 18, 2014, the Senate Energy and Natural Resources Committee ordered S. 2010 favorably reported with an amendment in the nature of a substitute.

Identical legislation, H.R. 1963, was introduced by Rep. Daines (R-MT) on May 14, 2013. The House of Representatives passed the measure on a voice vote on December 3, 2013. A hearing was held on the bill by the Subcommittee on Water and Power on February 27, 2014. At its business meeting on June 18, 2014, the Senate Energy and Natural Resources Committee ordered H.R. 1963 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 18, 2014, by a voice vote of a quorum present, recommends that the Senate pass S. 2010, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2010, the Committee adopted an amendment in the nature of a substitute. The amendment is technical in nature and makes changes to clarify the processes used in the lease of power privileges and to make it consistent with the Reclamation Small Conduit Hydropower and Rural Jobs Act (Public Law 113–24). The amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 amends section 9 of the WCUA by adding a new subsection (b) to authorize the Secretary of the Interior to enter into leases of power privileges for electric power generation in connection with any project constructed under the WUCA, and to give the Secretary authority over any project pursuant to that Act. Paragraph (2) of the new subsection (b) requires the Secretary to use the same processes, terms, and conditions applicable under section 9(c) of the Reclamation Project Act of 1930 (43 U.S.C. 485h(c)). Paragraph (3) provides that no findings are required for a lease of power privileges. Paragraph (4) provides that the lessee retains all right, title, and interest in power facilities constructed by non-Federal entities and all direct revenues derived from the lease. Paragraph (5) provides that lease charges shall be credited the project from which the power is derived. Paragraph (6) provides that nothing in the WCUA alters any agreement in effect on the date of enactment of S. 2010 for the development of hydropower projects or disposition of revenues.

COST AND BUDGETARY CONSIDERATIONS

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

S. 2010—Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act

S. 2010 would authorize the Bureau of Reclamation to enter into leases with nonfederal entities to develop hydropower at 11 water project facilities owned by the government. Based on information from the bureau, CBO estimates that enacting the bill would affect direct spending; therefore, pay-as-you-go procedures apply. However, we estimate such effects would not be significant. Enacting the legislation would not affect revenues or discretionary spending.

In 2011, the bureau completed an assessment of the II facilities and found that seven of the locations have potential for hydropower development. Under current law, the bureau is authorized to develop hydropower production at those seven facilities if it is federally financed and owned; however, it has no plans to do so. Under the bill, the bureau would also be authorized to work with nonfederal entities to develop hydropower through lease agreements at any of the 11 facilities specified in the legislation. Under such agreements, which we expect the bureau would take advantage of, nonfederal entities would finance the necessary hydropower improvements and own the electricity derived from those improvements in exchange for a lease payment to the federal government.

Any such lease payments would either be applied to outstanding construction balances at the underlying facility where they are collected or would be available to be spent without further appropriation on rehabilitation work at the facility. As a result, CBO estimates the net effects from such lease payments would not be significant.

S. 2010 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Public entities, such as irrigation districts and water use associations, would benefit from federal hydropower leasing contracts. Any costs to those entities would be incurred voluntarily as a condition of receiving federal assistance. On September 11, 2013, CBO transmitted a cost estimate for S. 1963, the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act, as ordered reported by the House Committee on Natural Resources on July 31, 2014. The two pieces of legislation are similar, and the CBO cost estimates are the same.

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. 2010.

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. 2010, 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 February 27, 2014 Subcommittee on Water and Power hearing on S. 2010 follows:

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

Chairman Schatz, 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. 2010, the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act. The Department, with some technical amendments summarized in this statement, supports S. 2010, which amends the Water Conservation and Utilization Act (16 U.S.C. §§ 590y et seq.) to authorize the development of non-federal hydropower and issuance of leases of power privilege at projects constructed pursuant to the authority of the Water Conservation and Utilization Act (WCUA). In general, the Department supports the increase in the generation of clean, renewable hydroelectric power in existing canals and conduits. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities. My testimony today will summarize the Department's efforts to encourage the development of sustainable hydropower, provide an overview of the history of WCUA, and detail the areas in the bill where we believe improvements could be made.

DEPARTMENT'S HYDROPOWER EFFORTS

Before I share the Department's views on S. 2010, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. In March 2011, the Department of the Interior and Department of Energy announced nearly $17 million in funding over three years for research and development projects to advance hydropower technology. The funding included ten projects for a total of $7.3 million to research, develop, and test low-head, small hydropower technologies that can be deployed at existing non-powered dams or constructed waterways. The funding will further the Administration's goal of meeting 80 percent of our electricity needs from clean energy sources by 2035.

In March 2010 the Department entered into a Hydropower Memorandum of Understanding (MOU)[1] with the Department of Energy, and the Army Corps of Engineers to study and promote opportunities to develop additional hydropower. In March 2011, the Department released the results of an internal study, the Hydropower Resource Assessment at Existing Reclamation Facilities, that estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. While this first phase, completed in 2011, focused primarily on Reclamation dams, the second phase focused on constructed Reclamation waterways such as canals and conduits. In March 2012, Reclamation completed the second phase of its investigation of hydropower development, Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits, as referenced in the 2010 MOU. The two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing Reclamation sites.

Reclamation worked diligently with our stakeholders and the hydropower industry to improve our lease of power privilege (LOPP) processes, and this collaboration culminated in the release of an updated and improved LOPP directive and standard in September 2012. These new procedures better define roles, timelines and responsibilities that will allow us to better support and encourage sustainable hydropower development at Reclamation facilities. This directive and standard was revised earlier this month to incorporate new process requirements established by Public Law 113–24, Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act. New process requirements updated in the document include: LOPPs being offered first to irrigation districts or water user associations operating or receiving water from Reclamation transferred or reserved works and establishing timeframes for irrigation districts or water user associations to accept or reject the LOPP offer. The temporary revised procedures are out for public comment until March 28, 2014.

OVERVIEW OF HISTORY OF WCUA

The WCUA was enacted on August 11, 1939 (amended October 14, 1940) to provide assistance to people hard hit by drought in the Dust Bowl and other similar arid and semiarid areas of the United States through the construction and development of irrigation projects. WCUA leveraged the considerable labor available by the Work Project Administration and other federal agencies during the New Deal, which absent congressional authorization, were precluded from using appropriations for many of the requisite needs of irrigation projects. For example, the Work Project Administration and other federal agencies did not have the authority to purchase water rights, rights-of-way, heavy

[1] *http://www.usbr.gov/power/SignedHydropowerMOU.pdf*, 2010

machinery, and the services required to design and construct engineering features, prepare legal documents, and administer projects. WCUA resolved this issue by authorizing the Bureau of Reclamation to use appropriations to purchase rights-of-way, equipment and supplies, and for the payment of competent supervisory, technical, legal and administrative assistance, while the Work Project Administration and other federal agencies funded the costs of mechanics and laborers. Under WCUA, the Bureau of Reclamation retained the responsibility for the construction and administration of these projects. The Bureau of Reclamation has been authorized to construct 11 projects and three separate units under the WCUA.[2]

Reclamation is authorized to issue LOPP contracts on projects that were authorized under Reclamation law pursuant to Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c). However, WCUA projects were not authorized pursuant to Reclamation law and the provisions of WCUA are only subject to Reclamation law where explicitly identified in the WCUA. The LOPP authority granted in Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c) does not apply to WCUA projects since it is not identified in the WCUA, and therefore WCUA projects are not authorized to develop non-federal hydropower absent congressional action. The Mancos Project in southwestern Colorado is such a case where Congress authorized the nonfederal development of hydropower on a WCUA project through project specific legislation (P.L. 103–434).

S. 2010

Reclamation testified on H.R. 1963, a companion measure to the legislation before the subcommittee today, last May before the House Water and Power Subcommittee. The legislation was amended by the House of Representatives, and that bill is identical to the legislation before the Subcommittee today, S. 2010. The Department would be pleased to work with the Subcommittee to further refine the legislation.

Section 2(c) of S. 2010 would specifically authorize Reclamation to develop or enter into LOPP contracts for the development of new hydropower on projects and facilities authorized by WCUA, consistent with the Reclamation Project Act of 1939. In accordance with federal Reclama-

[2] WCUA Projects: Mancos Project, Colorado; Buford-Trenton Project (North Dakota); Buffalo Rapids Project, Montana; Scofield Project, Utah; Intake Project, Montana; Mirage Flats Project, Nebraska; Missoula Valley Project, Montana; Mann Creek Project, Idaho (not eventually constructed under WCUA); Newton Project, Utah; Rapid Valley Project, South Dakota; Balmorhea Project, Texas. The Eden Project, Wyoming, was originally considered under the WCUA but was constructed under separate authority. In addition, three units were authorized pursuant to WCUA authority. Each unit is part of a Reclamation project that was not altogether authorized by the WCUA. The three units include: Dodson Pumping Unit, Milk River Project, Montana; Post Falls Unit, Rathdrum Prairie Project, Idaho; and the Woodside Unit, Bitterroot Valley Project, Montana (no construction has been undertaken).

tion law, typically LOPP charges paid by Lessees are deposited in the Reclamation Fund as a credit to the affected project. However, WCUA projects were not funded by the Reclamation Fund, but rather the General Fund of the Treasury. To this point, the WCUA states that all receipts from WCUA project operations—including power—are to be covered into the Treasury, rather than the Reclamation Fund, to the credit of miscellaneous receipts. Therefore, if the intention of S. 2010 is for WCUA LOPP charges to credit the affected WCUA project, additional clarification is necessary in Section 2(g) of S. 2010 detailing where the charges will be covered and how they will be applied to the affected project. The Department looks forward to the opportunity to work with the sponsors to address this issue.

Sections 2(h), 2(i), 2(j), 2(k), and 2(m) are duplicative of Section 9(c) of the Reclamation Project Act of 1939, as amended by PL 113–24, Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act. If the 1939 Act is amended again, there will be two distinct LOPP processes, one for traditional Reclamation projects and one for WCUA projects, as prescribed in S. 2010. For that reason, the Department recommends deleting these duplicative areas of the bill. Reclamation would be happy to work with the Subcommittee to address these concerns.

Finally, Reclamation is concerned that the bill as written may be interpreted in such a way that the LOPP authorization granted is restricted to small conduit hydropower development and would not apply to all WCUA conduit development or dam development. For context, all WCUA conduit sites that show hydropower potential are under 5 MW and would qualify as "small conduit hydropower;" however, the majority of WCUA hydropower potential exists at WCUA dams. Therefore, if the intent of the bill is to "unlock" the WCUA for non-federal development through LOPP, the authorization needs to extend to all WCUA conduits and dams. As the bill is written, it is unclear if the authorization extends to all WCUA conduits and dams. Reclamation would be happy to work with the Subcommittee to address this concern.

In conclusion, as stated at previous hydropower hearings before this subcommittee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, or recreation. As the nation's second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource.

Thank you for the opportunity to discuss S. 2010. This concludes my written statement, and I am 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.

2010, 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):

WATER CONSERVATION AND UTILIZATION ACT

Public Law 76–848

AN ACT Authorizing construction of water conservation and utilization projects in the Great Plains and arid and semiarid areas of the United States

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SEC. 9 [In connection with] *(a) IN GENERALL.—In connection with* any project undertaken pursuant to this Act, provisions, including contracts of sale, may be made for furnishing municipal or miscellaneous water supplies, or for developing and furnishing power in addition to the power requirements of irrigation: Provided, That expenditures from appropriations made directly pursuant to the authority contained in section 12 (1) to meet costs allocated to municipal or miscellaneous water supplies or surplus power shall not exceed $500,000 for any one project: Provided further, That no contract relating to a water supply for municipal or miscellaneous purposes or to electric power shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes. On any project where such provisions are made, the Secretary shall allocate to municipal or miscellaneous water purposes or to surplus power the part of the estimated construction costs of the project which he deems properly so allocable; and such allocations shall not be included in the reimbursable construction costs covered by the repayment contract or contracts required under section 4. All right, title, and interest in the facilities provided for such municipal or miscellaneous water supplies or surplus power and the revenues derived therefrom shall be and remain in the United States. Contracts for such municipal or miscellaneous water supplies or for such surplus power shall be at such rates as, in the Secretary's judgment, will produce revenues at least sufficient to cover the appropriate share of the annual operation and maintenance cost of the project and such fixed charges, including interest, as the Secretary deems proper. Contracts for the sale of surplus power shall be for periods not to exceed forty years and contracts for water supply for municipal or miscellaneous purposes shall be for such periods as the Secretary may determine and may include such renewal options as the Secretary deems desirable: And provided further, That in sales or leases of such power, preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.

(b) CERTAIN LEASES AUTHORIZED.—

(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary—

(A) may enter into leases of power privileges for electric power generation in connection with any project constructed pursuant to this Act; and

(B) shall have authority over any project constructed pursuant to this Act in addition to and alternative to any existing authority relating to a particular project.

(2) PROCESS.—In entering into a lease of power privileges under paragraph (1), the Secretary shall use the processes, terms, and conditions applicable to the lease under section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)).

(3) FINDINGS NOT REQUIRED.—No findings under section 3 shall be required for a lease under paragraph (1).

(4) RIGHTS RETAINED BY LESSEE.—Except as otherwise provided under paragraph (5), all right, title, and interest in and to installed power facilities constructed by non-Federal entities pursuant to a lease under paragraph (1), and any direct revenues derived from that lease, shall remain with the lessee.

(5) LEASE CHARGES.—Notwithstanding section 8, lease charges shall be credited to the project from which the power is derived.

(6) EFFECT.—Nothing in this section alters or affects any agreement in effect on the date of enactment of the Bureau of Reclamation Hydropower Development Equity and Jobs Act for the development of hydropower projects or disposition of revenues.

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