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*1st Session* }

SENATE

{ REPORT  
115-96

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### TO AUTHORIZE THE USE OF THE ACTIVE CAPACITY OF THE FONTENELLE RESERVOIR

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JUNE 8, 2017.—Ordered to be printed

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

### R E P O R T

[To accompany S. 199]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 199) to authorize the use of the active capacity of the Fontenelle Reservoir, having considered the same, reports, favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 199 is to authorize the use of the active capacity of the Fontenelle Reservoir.

#### BACKGROUND AND NEED

Fontenelle Reservoir in the State of Wyoming is a principal feature of the Seedskadee Project, one of the initial projects authorized under the Colorado River Storage Project Act of 1956. Authorized uses of Fontenelle Reservoir storage water include irrigation, fish and wildlife, recreation, flood control, and municipal and industrial water use, as primary purposes, with power generation specified as the only secondary purpose.

Currently, Wyoming has the perpetual right to market 120,000 acre-feet of the original 190,250 acre-feet active capacity from the reservoir. However, in order to increase the use of water storage and supplies from the reservoir, infrastructure improvements must be made to prevent erosion.

S. 199 would authorize the Secretary to enter into an agreement with the State of Wyoming to make infrastructure improvements to enable the use of all active storage capacity of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of Fontenelle Dam, on the condition that the State pay for the entire project, including the study, design, planning, and construction of the project.

#### LEGISLATIVE HISTORY

S. 199 was introduced by Senator Barrasso on January 24, 2017.

Companion legislation, H.R. 648, was introduced by Representative Cheney in the House of Representatives on the same day. H.R. 648 was passed by the House of Representatives on a vote of 408–0 on March 15, 2017, and was received by the Senate and referred to the Committee on Energy and Natural Resources on March 21, 2017.

In the 114th Congress, S. 1305 was introduced by Senator Barrasso on May 12, 2015. The Subcommittee on Water and Power held a hearing on S. 1305 on June 18, 2015. The Committee on Energy and Natural Resources met in open business session on July 30, 2015, and ordered S. 1305 favorably reported as amended (S. Rept. 114–135).

The measure was included in Amendment No. 3234, which the Senate agreed to on April 19, 2016, as an amendment to S. 2012, the Energy Policy Modernization Act of 2016, which the Senate passed, as amended, on April 20, 2016.

Companion legislation, H.R. 2273, was introduced by Representative Lummis in the House of Representatives on May 12, 2015. The Subcommittee on Water, Power and Oceans held a hearing on June 25, 2015. The Committee on Natural Resources reported H.R. 2273, as amended, on March 14, 2016 (H. Rept. 114–450), and the House of Representatives passed the bill, as amended, by voice vote on July 5, 2016. The bill was received by the Senate and placed on the Legislative Calendar on July 6, 2016.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 199 favorably reported.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on March 30, 2017, by a majority voice vote of a quorum present, recommends that the Senate pass S. 199.

#### SECTION-BY-SECTION ANALYSIS

*Section 1(a)* authorizes the Secretary of the Interior to work with the State of Wyoming through cooperative agreements to enable the use of all active storage capacity of the Fontenelle Dam and Reservoir.

Subsection (b) outlines the minimally required components of the agreements, including that the State of Wyoming shall be responsible for all funding of activities carried out under this act.

*Section 2* includes savings provisions specifying that nothing in this act modifies, conflicts with, preempts, or otherwise affects the Boulder Canyon Project Act; the Colorado River Compact of 1922;

the Boulder Canyon Project Adjustment Act; the Treaty between the U.S. and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande; the Upper Colorado River Basin Compact; the Colorado River Storage Project Act; the Colorado River Basin Project Act; or any State of Wyoming or other State water law.

#### COST AND BUDGETARY CONSIDERATIONS

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

*S. 199—To authorize the use of the active capacity of the Fontenelle Reservoir*

S. 199 would authorize the Bureau of Reclamation (BOR) to plan and construct a project to expand water storage at Fontenelle Dam and Reservoir in southwestern Wyoming. Under current law, the amount of water storage available to the state of Wyoming at the reservoir is the difference between full capacity and the lowest water level that allows all of the authorized purposes of the Fontenelle project to be performed.

Under the bill, the BOR would coordinate with the state of Wyoming to design and construct modifications to the Fontenelle Dam and Reservoir to allow the project to operate at a lower water level, thus expanding the amount of storage available to the state. S. 199 also would require the state to contribute 100 percent of the costs to design and construct the project. Those contributions would be classified as offsetting receipts, which are treated as reductions in direct spending, and would subsequently be spent without further appropriation.

Enacting S. 199 would increase receipts and the associated direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on the budget would be negligible. Enacting the bill would not affect revenues.

CBO also estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 199 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit the state of Wyoming. Any costs incurred by the state to fund the project or participate in cooperative agreements would result from complying with conditions of federal assistance.

The CBO staff contacts for this estimate are Aurora Swanson (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, 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 the bill.

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 the bill, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

The 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

Because S. 199 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The testimony provided by the Bureau of Reclamation at the hearing before the Subcommittee on Water and Power on June 18, 2015, follows:

STATEMENT OF DIONNE THOMPSON, DEPUTY COMMISSIONER  
FOR EXTERNAL AND INTERGOVERNMENTAL AFFAIRS, BUREAU OF RECLAMATION U.S. DEPARTMENT OF THE INTERIOR

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 1305, which would amend the Colorado River Storage Project Act (Public Law 84-485). The amendment authorizes Reclamation to increase the active capacity and, as a result, the amount of water developed by Fontenelle Reservoir in Wyoming. With the concerns described below appropriately noted, the Department does not oppose S. 1305 in its current form.

Fontenelle Reservoir is part of the Seedskaadee Project, a participating project under P.L. 84-485. The dam and reservoir are located in the Upper Green River Basin in southwestern Wyoming about 50 miles from Rock Springs. Fontenelle Dam is an embankment dam standing 139 feet high with a crest length of over a mile (5,421 feet). Fontenelle Reservoir has a total capacity of 345,360 acre-feet and is operated for municipal and industrial water use, power production, flood control, and fish and wildlife—in support of the Seedskaadee National Wildlife Refuge. Recreation facilities at Fontenelle Reservoir are managed by the Bureau of Land Management under an agreement with Reclamation. The intent of S. 1305 is to increase the yield of Fontenelle Reservoir, further developing the State of Wyoming's allocation of Colorado River water under the Colorado River Compact. To understand how S. 1305 would increase the water available to Wyoming, it is important to review some basic engineering features associated with Fontenelle Dam.

In general, the active capacity of a reservoir is the space between the highest elevation at which water can be

stored and the lowest elevation from which water can be released so as to allow operation for all authorized purposes. Power is an authorized purpose of the Seedskafee Project. The lowest elevation at which Fontenelle Powerplant can be safely operated is approximately 40 feet above the bottom elevation of the inlet to the powerplant, and is referred to as "minimum power pool elevation."

In order to protect the upstream face of a dam from erosion caused by wave action, large stones that are resistant to erosion and wave action are placed on the upstream side of the dam. These stones are referred to as "riprap". In keeping with engineering practices, Fontenelle Dam includes riprap protection on the upstream face of the embankment. Because the dam would not be operated with any frequency below the lowest power production elevation, original construction and subsequent modifications did not include placing riprap on the upstream face of dam below minimum power pool elevation.

For some years, the State of Wyoming has expressed interest in placing riprap below the minimum power pool elevation, and this project has come to be known as the "Riprap Project." By doing so, it would be possible to operate the reservoir within a greater range of elevations—increasing the operating range and yield of the reservoir. S. 1305 would authorize the Department to undertake the "study, planning, design and construction activities" necessary to consider and implement the Riprap Project (a lowering of the elevation of the riprap).

In considering the Riprap Project, Reclamation has had concerns, and we appreciate the chance to review this legislation as it was drafted over the past several months. We are pleased to note that each of these concerns appears to be addressed in the introduced language of S. 1305.

S. 1305 amends P.L. 84-485 to authorize consideration and implementation of the Riprap Project. In doing so, it grounds the Riprap Project on the statute that originally authorized the Seedskafee Project. S. 1305 relies upon the authority of the Contributed Funds Act (Act of March 4, 1921) as the means for the State of Wyoming to provide the funding to consider and undertake the Riprap Project. With this arrangement, Reclamation believes that the Riprap Project can be implemented without any request for new appropriations, and with no foreseeable impact to Reclamation's already constrained budget.

It is unlikely that the Riprap Project will adversely affect other states dependent on the Colorado River or Mexico beyond what they would face when the Upper Basin States make full utilization of their apportionments, considering their apportionments and required releases from the Upper Basin to the Lower Basin under current operational guidelines that implement key provisions of the Law of the River including the Colorado River Compact. Having said that, if S. 1305 becomes law, it will be important to conduct additional analysis to ensure that other interests are protected. S. 1305 includes the following ele-

ments that should provide some assurance of no adverse impacts to other water uses.

First, S. 1305 appears to create robust sideboards to prevent the Riprap Project from conflicting with law, compacts, and treaties. This protects against Wyoming expanding its entitlement to Colorado River water. In Section 2, S. 1305 provides reassurance that it will not modify, conflict with, preempt, or otherwise affect any applicable federal statutes or decrees, including, but not limited to:

- Boulder Canyon Project Act
- Colorado River Compact of 1922
- Boulder Canyon Project Adjustment Act
- Treaty between the United States of America and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande
  - Upper Colorado River Basin Compact
  - Colorado River Storage Project Act (P.L. 84-485), other than as indicated in Section 1 of S. 1305
  - Colorado River Basin Project Act (Public Law 90-537; 82 Stat. 885)
- Any State of Wyoming or other State water law

Second, S. 1305 amends P.L. 84-485 to authorize the planning, design, and construction of the Riprap Project. The bill's stated purposes include "making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apporportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively." P.L. 84-485 sets a clear boundary around the Riprap Project; it cannot permit Wyoming to expand its entitlements under the Colorado River Compact and the Upper Colorado River Basin Compact.

Another important element of S. 1305 is the definition of active storage capacity. Although active capacity can generally be understood as the difference between the upper and lower elevations at which a reservoir may be operated, the elevation of both the upper and lower limit may also be defined by considerations beyond engineering. Other considerations often limit the degree to which a reservoir may be drained. These considerations include issues of law, hydrology, economics, and environment. S. 1305 acknowledges these limitations; in the bill "active storage capacity" is "defined or limited by legal, hydrologic, structural, engineering, economic, and environmental considerations."

Environmental compliance concerns also are addressed under S. 1305. The bill requires compliance under the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act.

While S. 1305 is clearly written to integrate with existing law, regulations and contracts, there are some questions associated with operation and design that may limit the scope of the Riprap Project. Reclamation has not studied the operation of Fontenelle Dam at the lower ele-

vations proposed under the Riprap Project. The original planning and design for the facility did not include operations at such low levels. Operation at lower levels could raise the following issues that should be explored by the study to be authorized by this Act:

- **Water Delivery Requirements**—At lower reservoir elevations, the rate at which the reservoir can be drained is slowed (because of the reduced hydraulic head). Without the study and planning that would be conducted pursuant to this bill, Reclamation does not know whether water can be delivered at such rates as would be necessary.

- **Instream Flows**—Under current operations and agreements, Reclamation is required to deliver 5,000 acre-feet to the Seedskadee National Wildlife Refuge for fish and wildlife purposes on an annual basis. As noted above, without additional study Reclamation does not know whether it will be able to meet these flow requirements at lower reservoir levels.

- **Power Generation**—Operating the reservoir at lower elevations will affect powerplant operations. There would be periods when the powerplant cannot be operated efficiently and when the powerplant cannot be operated at all. The result will be impacts on Reclamation's ability to generate and deliver power under P.L. 84-485. There is a potential for impacts to irrigators and municipalities that use Colorado River Storage Project power as well as to the members of the Colorado River Energy Distributors Association, which rely upon and purchase the power.

That concludes my statement. 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, the Committee notes that no changes in existing law are made by the bill as ordered reported.

