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### JACKSON GULCH REHABILITATION PROJECT MODIFICATION ACT

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NOVEMBER 21, 2019.—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. 860]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 860) to amend the Omnibus Public Land Management Act of 2009 to modify the terms of the Jackson Gulch rehabilitation project in Colorado, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

#### AMENDMENT

The amendment is as follows:

Beginning on page 2, strike line 22 and all that follows through page 3, line 4, and insert the following:

(C) in subparagraph (B), in the matter preceding clause (i), by striking “Secretary shall recover reimbursable expenses” and inserting “District shall pay the Project costs for which the District is liable”; and

#### PURPOSE

The purpose of S. 860 is to amend the Omnibus Public Land Management Act of 2009 to modify the terms of the Jackson Gulch rehabilitation project in Colorado.

## BACKGROUND AND NEED

The Jackson Gulch Dam and Reservoir are the principal features of the Mancos Project in the southwest corner of Colorado. The dam and reservoir are located in Jackson Gulch, east of the West Mancos River. Water is fed from the river by a 2.6-mile inlet canal and returned to the river by an 2.2-mile outlet canal. The project provides domestic water to the Mesa Verde National Park, the Mancos Rural Water Company, and the town of Mancos, and it supplies irrigation water to 13,746 acres.

The Jackson Gulch Reservoir was constructed pursuant to the Water Conservation and Utilization Act, which was enacted in 1939, during the Great Depression. The Act authorized the President to use the Works Project Administration and the Civilian Conservation Corps to construct water conservation and utilization projects in the Great Plains and arid areas to stabilize water supplies and enable farmers to remain on their land. President Roosevelt approved the Mancos Project under this authority in 1940. The first irrigation water was released to farms in Montezuma County and Mesa Verde National Park visitors in July of 1949. The Mancos Water Conservancy District took over operation and maintenance of the project in 1963.

A hydroelectric power plant was added to the dam outlet by the Mancos Water Conservancy District in 1995 to assist with operation and maintenance costs during the irrigation season. The rehabilitation of this aging infrastructure is primarily the responsibility of the Mancos Water Conservancy District.

In 2009, Congress authorized the Secretary of the Interior to provide up to \$8.25 million for rehabilitation of the Jackson Gulch Rehabilitation Project (Public Law 111–11, section 9105) and required Mancos Water Conservancy District to repay their share of the total project cost—the lesser of either 35 percent of the project cost or \$2.9 million—to the Bureau of Reclamation over a period of 15 years, less any funds the District had contributed to the project for engineering work and improvements prior to the date of enactment of the 2009 Act. The project received an initial appropriation of \$1.75 million in 2010. An additional \$850,000 in appropriated dollars was obligated to the project in 2019. The Mancos Water Conservancy District has, however, continued the rehabilitation work using its own funds.

S. 860 provides flexibility for the Mancos Water Conservancy District to continue its maintenance and operations while more clearly defining its responsibilities and funding share for the Project rehabilitation. The bill also allows for funds to be spent directly on the Project rather than advanced by the Bureau of Reclamation and then repaid.

## LEGISLATIVE HISTORY

S. 860 was introduced by Senator Gardner on March 25, 2019. The Subcommittee on Water and Power held a legislative hearing on S. 860 on June 26, 2019.

Companion legislation, H.R. 1936, was introduced by Representative Tipton in the House of Representatives on April 17, 2019, and referred to the Committee on Natural Resources.

In the 115th Congress, Senator Gardner introduced similar legislation, S. 3069, on June 14, 2018.

Companion legislation, H.R. 6083, was introduced by Representative Tipton in the House of Representatives on June 19, 2018, and referred to the Committee on Natural Resources.

The Senate Committee on Energy and Natural Resources met in open business session on September 25, 2019, and ordered S. 860 favorably reported, as amended.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 25, 2019, by a majority voice vote of a quorum present, recommends that the Senate pass S. 860, if amended as described herein.

#### COMMITTEE AMENDMENTS

During its consideration of S. 860, the Committee adopted an amendment that strikes section 2(2)(C)(ii), the provision that would have extended the cost repayment term for the non-federal share of the Jackson Gulch Rehabilitation Project from 15 to 40 years.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1. Short title*

Section 1 sets forth the short title.

##### *Sec 2. Modification of Jackson Gulch Rehabilitation Project, Colorado*

Section 2(1) amends section 9105(b)(1) of the Omnibus Public Lands Management Act of 2009 to change the reimbursement requirements to “cost-sharing requirements”, and limit the federal cost share to no more than 65 percent of the total cost.

Section 2(2) amends section 9105(b)(3) to change the manner in which the District share is paid from reimbursement to direct payment and specifies that all amounts paid by the District for engineering work and improvements directly associated with the Project whether before, on, or after the date of enactment of this Act is to be credited toward the District’s liability for the Project.

Section 2(3) amends section 9105(b)(7) to reduce the federal authorization level from \$8.25 million to be the lesser of 65 percent of the total cost of carrying out the project or \$5.35 million.

#### COST AND BUDGETARY CONSIDERATIONS

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

<b>S. 860, Jackson Gulch Rehabilitation Project Modification Act</b>			
As ordered reported by the Senate Committee on Energy and Natural Resources on September 25, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	Yes	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 860 would authorize the Bureau of Reclamation (BOR) to credit the Mancos Water Conservancy District for some of the work it performed on the Jackson Gulch Rehabilitation Project in Colorado. Under current law, the conservancy district is required to reimburse the federal government for its share (35 percent) of the project's total costs in 15 annual installments, without interest. The district begins to make those payments one year after it receives any funding for the project from the BOR. The conservancy district received credit toward its share of the project's costs for expenditures that it incurred before the Congress authorized the project in March 2009.

After March 2009, the conservancy district continued to work at its own expense to advance the project and the conservancy district will not receive credit toward its share of project costs for that work. S. 860 would require the BOR to credit the district for expenditures made after March 2009. That requirement would have the effect of reducing annual payments from the district (which are recorded as reductions in direct spending). Those reductions would total less than \$500,000 over the 2020–2029 period.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed 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 S. 860. 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. 860, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

S. 860, 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

The testimony provided by the Department of the Interior at the June 26, 2019, Subcommittee on Water and Power hearing on S. 860 follows:

STATEMENT OF KIEL WEAVER, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Chairman McSally, Ranking Member Cortez Masto, and Members of the Subcommittee, I am Kiel Weaver, Principal Deputy Assistant Secretary for Water and Science with the U.S. Department of the Interior (“Department”). Thank you for the opportunity to provide the views of the Department on several water related pieces of legislation. I will address each of these individually.

*S. 860, the Jackson Gulch Rehabilitation Project Modification Act*

The Jackson Gulch Rehabilitation Project Modification Act, introduced by Senator Cory Gardner (R-CO), amends Section 9105 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) to allow the Mancos Water Conservancy District (District) the ability to credit their share of engineering work and improvements directly associated with the Jackson Gulch Rehabilitation Project in Colorado as part of the local cost share. The bill also adjusts the District’s Project cost repayment period from 15 to not more than 40 years and reduces the authorization for Federal appropriations to cost share this project from \$8,250,000 to not more than \$5,350,000.

Jackson Gulch Reservoir provides water to the town of Mancos, the Mancos Water Conservancy District, and the Mancos Rural Water Company. Since 1963, the District has performed operation and maintenance of the project, which includes the inlet and outlet canal systems and Jackson Gulch Dam and reservoir. The canal systems convey water to and from Jackson Gulch Reservoir, an off-stream storage facility.

Pursuant to Section 9105 of P.L. 111-11, Reclamation is authorized to receive appropriations to pay a specified Federal share of the total cost of carrying out the Jackson Gulch Rehabilitation Project (Project) of up to, but not to exceed \$8,250,000. Under current law, the District is to reimburse the United States the amount equal to 35 percent of the total cost of the Project, or \$2,900,000, whichever is less; under S. 860, this amount can change subject to the amount credited for work the District performed to date. Reclamation and the District entered into a repayment

contract in July 2010 to carry out these and other provisions of the Act.

In August 2010, the District received \$1,750,000 in Federal funds through Reclamation; since 2010, Reclamation has received only \$850,000 in additional appropriations for the Project in the Reclamation Fiscal Year 2019 Spend Plan. The District has continued to expend funds on the rehabilitation. Subject to the availability of appropriations, Reclamation supports this proposal which provides additional flexibility to the District to rehabilitate the canal system.

*Conclusion*

Again, thank you for the opportunity to testify. The Department looks forward to working closely with this Committee on these bills. I would be 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 changes in existing law made by the original bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**THE OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009**

AN ACT To designate certain land as components of the National Wilderness Preservation System, to authorize certain programs and activities in the Department of the Interior and the Department of Agriculture, and for other purposes

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**TITLE IX—BUREAU OF RECLAMATION AUTHORIZATIONS**

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**Subtitle B—Project Authorizations**

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**SEC. 9105. JACKSON GULCH REHABILITATION PROJECT, COLORADO.**

(a) DEFINITIONS.—In this section:

(1) ASSESSMENT.—The term “assessment” means the engineering document that is—

(A) entitled “Jackson Gulch Inlet Canal Project, Jackson Gulch Outlet Canal Project, Jackson Gulch Operations Facilities Project: Condition Assessment and Recommendations for Rehabilitation”;

(B) dated February 2004; and

(C) on file with the Bureau of Reclamation.

(2) DISTRICT.—The term “District” means the Mancos Water Conservancy District established under the Water Conservancy Act (Colo. Rev. Stat. 37–45–101 et seq.).

(3) PROJECT.—The term “Project” means the Jackson Gulch rehabilitation project, a program for the rehabilitation of the Jackson Gulch Canal system and other infrastructure in the State, as described in the assessment.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(5) STATE.—The term “State” means the State of Colorado.

(b) AUTHORIZATION OF JACKSON GULCH REHABILITATION PROJECT.—

(1) IN GENERAL.—Subject to the reimbursement **[requirement]** and *cost-sharing requirements* described in paragraph (3), the Secretary shall pay the Federal share of the total cost of carrying out the Project, *which shall be not more than 65 percent of that total cost.*

(2) USE OF EXISTING INFORMATION.—In preparing any studies relating to the Project, the Secretary shall, to the maximum extent practicable, use existing studies, including engineering and resource information provided by, or at the direction of—

- (A) Federal, State, or local agencies; and
- (B) the District.

(3) REIMBURSEMENT **[REQUIREMENT]** AND COST-SHARING REQUIREMENTS.

(A) AMOUNT.—**[The Secretary shall recover from the District as reimbursable expenses]** *Subject to subparagraph (C), the District shall be liable under this subsection for an amount equal to the lesser of—*

- (i) the amount equal to 35 percent of the cost of the Project; or
- (ii) \$2,900,000.

(B) MANNER.—The **[Secretary shall recover reimbursable expenses]** *District shall pay the Project costs for which the District is liable under subparagraph (A)—*

- (i) in a manner agreed to by the Secretary and the District;
- (ii) over a period of 15 years; and
- (iii) with no interest.

**[(C) CREDIT.—In determining the exact amount of reimbursable expenses to be recovered from the District, the Secretary shall credit the District for any amounts it paid before the date of enactment of this Act for engineering work and improvements directly associated with the Project.]**

*(C) CREDIT.—In determining the exact amount for the the District is liable under this paragraph, the Secretary shall—*

- (i) review and approve all final costs associated with the completion of the project; and*
- (ii) credit the District for all amounts paid by the District for engineering work and improvements directly associated with the Project, whether before, on, or after the date of enactment of this Act.*

(4) PROHIBITION ON OPERATION AND MAINTENANCE COSTS.—The District shall be responsible for the operation and maintenance of any facility constructed or rehabilitated under this section.

(5) LIABILITY.—The United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to a facility rehabilitated or constructed under this section.

(6) EFFECT.—An activity provided Federal funding under this section shall not be considered a supplemental or additional benefit under—

(A) the reclamation laws; or

(B) the Act of August 11, 1939 (16 U.S.C. 590y et seq.).

(7) AUTHORIZATION OF APPROPRIATIONS—There is authorized to be appropriated to the Secretary to pay the Federal share of the total cost of carrying out the Project **[\$8,250,000]** *the lesser of—*

(A) *not more than 65 percent of the total cost of carrying out the Project; and*

(B) *\$5,350,000.*

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