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SENATE

{ REPORT
{ 104-24

CONTROL OF SALINITY UPSTREAM OF IMPERIAL DAM

APRIL 3 (legislative day, MARCH 27), 1995.—Ordered to be printed

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

REPORT

[To accompany S. 523]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 523) to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, 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 out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AMENDMENTS TO THE COLORADO RIVER BASIN SALINITY CONTROL ACT.

The Colorado River Basin Salinity Control Act (43 U.S.C. 1571 et seq.) is amended—

(1) in section 202(a)—

(A) in the first sentence—

(i) by striking “the following salinity control units” and inserting “the following salinity control units and salinity control program”; and

(ii) by striking the period and inserting a colon; and

(B) by adding at the end the following new paragraph:

“(6) A basinwide salinity control program that the Secretary, acting through the Bureau of Reclamation, shall implement. The Secretary may carry out the purposes of this paragraph directly, or may make grants, commitments for grants, or advances of funds to non-Federal entities under such terms and conditions as the Secretary may require. Such program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources that the Secretary considers appropriate. Such program shall provide for the mitigation of incidental fish and wildlife values that are lost as a result of the measures and associated works. The Secretary shall submit a planning report concerning the program established under this paragraph to the appropriate committees of Congress. The

Secretary may not expend funds for any implementation measure under the program established under this paragraph before the expiration of a 30-day period beginning on the date on which the Secretary submits such report"; and

(2) in section 205(a)—

(A) in paragraph (1) by striking "authorized by section 202(a) (4) and (5)" and inserting "authorized by paragraphs (4) through (6) of section 202(a)"; and

(B) in paragraph (4)(i), by striking "section 202(a) (4) and (5)" each place it appears and inserting "paragraphs (4) through (6) of section 202";

(3) in section 208, by adding at the end the following new subsection:

"(c) In addition to the amounts authorized to be appropriated under subsection (b), there are authorized to be appropriated \$75,000,000 for subsection 202(a), including constructing the works described in paragraph 202(a)(6) and carrying out the measures described in such paragraph."; and

(4) in subsection 202(b)(4) delete "units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5)" and insert in lieu thereof "units authorized to be constructed or the program pursuant to paragraphs (1), (2), (3), (4), (5), and (6).".

PURPOSE OF THE MEASURE

The purpose of S. 523 is to enlarge the authorized activities under title II of the Colorado River Basin Salinity Control Act to include a program of salinity control in addition to the presently authorized projects and to increase the current ceiling by \$75 million.

BACKGROUND AND NEED

Background: The Colorado River is one of the most heavily regulated and used water resources in the world. The combination of Interstate Compacts, treaties, decrees, State and Federal statutes, administrative decisions, and regulations that control the allocation and use of the Colorado are generically referred to as the "Law of the River." The Colorado rises in the mountains of Colorado and flows about 1,400 miles to the Gulf of California in Mexico, dropping 12,000 feet in that journey. Along the way, the river drains seven States and is fed by tributaries in all States except California. As late as the early 1900's there was commercial navigation on the river.

The unregulated flow of the River varies widely, from a high of 24 million acre feet in 1924 to a low of 5.5 million acre feet in 1977, measured at Lee Ferry. In 1905, the Colorado broke through a cut below the international boundary and for 16 months flowed through the Imperial Valley and enlarged the Salton Sea. The flood was a major impetus to the eventual construction of Hoover Dam and the All-American Canal.

The rapid development of Colorado River water in California around the turn of the century generated increasing concern among the other Basin States, especially in the Upper Basin, that California would claim the entire River before the other States were prepared to take what they each considered their fair share. Under the Western appropriation theory, priority in time grants priority of right. That concern resulted in the negotiation of an Interstate Compact, and was justified when the Supreme Court held in 1922 that priority of appropriations controlled over State lines (*Wyoming v. Colorado*, 259 U.S. 419). Congress consented to the negotiations in 1921 and then to the resulting 1922 Compact in the Boulder Canyon Project Act of 1928 (45 Stat. 1057). The Compact appor-

tioned the flow of the Colorado and its tributaries between the Upper Basin States (Wyoming, Colorado, Utah, and New Mexico) and the Lower Basin States (California, Arizona, and Nevada) and set the boundary at Lee Ferry in Arizona (about one mile below the Paria River and 17 miles below Glen Canyon Dam). Each Basin was apportioned 7.5 million acre feet (maf) and the Lower Basin was permitted an additional 1 maf.

The Boulder Canyon Project Act, in section 19, authorized the seven States to enter into negotiations, consistent with the Compact, for the development and use of the Colorado. The Upper Basin States negotiated a Compact in 1948 which was consented to by Congress in 1949 (63 Stat. 31). The Lower Basin States were unable to reach an agreement, and eventually Arizona initiated litigation before the Supreme Court which resulted in a decision in 1963 (*Arizona v. California*, 376 U.S. 340) holding, in part, that in the absence of a negotiated agreement between the three Lower Basin States, Congress had apportioned the waters of the main-stream of the Colorado in the Lower Basin among the three States under the Boulder Canyon Project Act.

Among the other significant elements of the Law of the River are the Mexican Treaty of 1944, which guaranteed delivery of 1.5 maf to Mexico, and the history of salinity concerns with that delivery, leading to the Colorado River Basin Salinity Control Act in 1974 (88 Stat. 266).

Status of the Salinity Control Program. The 1944 Mexico Treaty obligates the United States to provide 1.5 maf of water to Mexico, but does not address quality. Mexico filed a formal protest in the 1960's when salinity increased sharply, primarily as a result of drainage from Wellton-Mohawk Irrigation and Drainage District compounded by reductions in flows from the closure and filling of Glen Canyon dam. Several minutes to the Treaty were negotiated, the final one being Minute 242. The most important provision requires that the average annual salinity of the Colorado delivered upstream from Morelos Dam (Mexico's principal diversion dam) would not exceed the average salinity of the water arriving at Imperial Dam by more than 115 parts per million, plus or minus 30 ppm. To secure Basin States support for the Minute, the United States agreed that the Basin States would not bear the cost of fulfilling any agreement with Mexico and that the United States would recognize replacement of (1) the water lost to the desalting plant reject stream and (2) any bypassed WMIDD irrigation drainage as a national obligation.

With that understanding, Congress enacted the Colorado River Basin Salinity Control Act in 1974. Title I addressed the Mexican obligation by authorizing the Yuma Desalting Plant, the WMIDD irrigation drainage reduction program, concrete lining of the Coachella Canal in California (allowing the United States to use the conserved water to replace drainage water bypassed to Mexico), and a well field in Arizona known as the Protective and Regulatory Pumping Unit. Title II authorized the investigation and construction of salinity control projects to protect the quality of water delivered to the Lower Basin. In 1984 the Act was amended to provide for the Department of Agriculture to participate in salinity control

and also to direct the Bureau of Land Management to take actions to reduce salinity from BLM lands.

The Inspector General of the Department of the Interior issued an audit report in March 1993 on the Salinity control program and made several recommendations. Among the recommendations was that BLM become more aggressive in its actions, especially since they seemed to be the most cost effective. The report noted that BLM estimated that its lands contributed about 700,000 tons of salt annually and that measures to control this salt loading would be in the range of \$35–\$60 per ton, but that plans were designed only to remove 50,000 tons annually by the year 2010. The estimate for Grand Valley project, by comparison, is \$147–\$386 per ton.

S. 523—Salinity Program. This legislation would authorize \$75 million for a program of salinity control by the Bureau of Reclamation above Imperial Dam. The legislation adds to the existing title II program by providing the Bureau with the flexibility to tailor programs in the most cost-effective manner rather than having to come to Congress for a new authorization for each project. The legislation in some respects mirrors the flexibility provided USDA in 1984 and reflects the recommendations made by the Inspector General in his 1993 report on the Salinity Control program. The Administration has requested \$6 million in its fiscal year 1996 budget request for this new program and has also stated in the budget justification its support for a \$75 million increase in the present ceiling to fund activities under title II. This new program is in addition to other activities by the Department, such as long-term contracts undertaken with non-federally financed facilities that would normally be undertaken with operation and maintenance appropriations. This new program is directed at capital improvements not operations.

LEGISLATIVE HISTORY

S. 523 was introduced on March 9, 1995 by Senator Bennett for himself and Senators Brown, Campbell, Hatch, and Kyl. A virtually identical measure, S. 2319 had been introduced during the last Congress by Senator Bennett and others on July 20, 1994. A hearing was held on that measure on August 4, 1994 and the Committee considered and favorably reported the measure, with technical amendments, on September 21, 1994. In this Congress, a companion measure, H.R. 930, has been introduced in the House. At the business meeting on March 29, 1995, the Committee on Energy and Natural Resources ordered S. 523, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business meeting on March 29, 1995, by a unanimous vote of a quorum present recommends that the Senate pass S. 523, if amended as described herein.

The rollcall vote on reporting the measure was 20 yeas, 0 nays as follows:

YEAS

NAYS

Mr. Murkowski
 Mr. Hatfield ¹
 Mr. Domenici
 Mr. Nickles ¹
 Mr. Craig
 Mr. Campbell ¹
 Mr. Thomas ¹
 Mr. Kyl ¹
 Mr. Grams
 Mr. Jeffords ¹
 Mr. Burns ¹
 Mr. Johnston
 Mr. Bumpers
 Mr. Ford
 Mr. Bradley
 Mr. Bingaman
 Mr. Akaka
 Mr. Wellstone ¹
 Mr. Heflin ¹
 Mr. Dorgan

¹ Indicates vote by proxy.

COMMITTEE AMENDMENTS

The Committee adopted a substitute amendment to conform the text of S. 523 to the text of S. 2319 as reported by the Committee during the last Congress. The changes are mainly stylistic but also includes a conforming change to the underlying statute that was not included in S. 523 but which had been included in S. 2319. No substantive changes were made.

SECTION-BY-SECTION ANALYSIS

The legislation amends section 202(a) of the Colorado River Basin Salinity Control Act to insert a new paragraph (6) that authorizes a program of salinity control in addition to the specific projects in the existing statute. The legislation also authorizes an additional \$75 million for section 202(a) activities and makes necessary conforming amendments to the Salinity Control Act. The text of the new paragraph (6) is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate. The committee notes that the Administration has requested \$6 million in its fiscal year 1996 budget request for the new program authorized by this legislation.

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. 523.

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. 523.

EXECUTIVE COMMUNICATIONS

On March 14, 1995, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 523. These reports have not been received at the time the report on S. 523 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The Committee notes, however, that the President has specifically requested \$6 million for the new program authorized by this legislation for fiscal year 1996 in his budget request and that the justification documents for the Bureau of Reclamation indicate that the Administration supports the new program, the \$75 million increase in the title II ceiling (which is provided by this legislation), and plans to submit legislation. In testimony before the Committee last Congress, the Commissioner of Reclamation testified that the Administration supported identical legislation, S. 2319, then pending before the Committee.

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. 523, as ordered 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):

PUBLIC LAW 93-320—JUNE 24, 1974, AS AMENDED BY THE ACT OF OCTOBER 30, 1984, PUBLIC LAW 98-569

AN ACT To authorize the construction, operation, and maintenance of certain works in the Colorado River Basin to control the salinity of water delivered to users in the United States and Mexico

* * * * *

SEC. 202(a) * * *

The Secretary is authorized to construct, operate, and maintain [the following salinity control units] *the following salinity control units and salinity control program* as the initial stage of the Colorado River Basin salinity control program[.]:

* * * * *

(6) A basinwide salinity control program that the Secretary, acting through the Bureau of Reclamation, shall implement. The Secretary may carry out the purposes of this paragraph di-

rectly, or may make grants, commitments for grants, or advances of funds to non-Federal entities under such terms and conditions as the Secretary may require. Such program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources that the Secretary considers appropriate. Such program shall provide for the mitigation of incidental fish and wildlife values that are lost as a result of the measures and associated works. The Secretary shall submit a planning report concerning the program established under this paragraph to the appropriate committees of Congress. The Secretary may not expend funds for any implementation measure under the program established under this paragraph before the expiration of a 30-day period beginning on the date on which the Secretary submits such report.

* * * * *
(b) * * *

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(4) In implementing the [units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5)] *units authorized to be constructed or the program pursuant to paragraphs (1), (2), (3), (4), (5), and (6) of subsection (a) of this section the Secretary shall comply with procedural and substantive State water laws.*

* * * * *
SEC. 205(a) * * *

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(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the policy embodied in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816), 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a) (1), (2), and (3) of this title, including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values forgone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof [authorized by section 202(a) (4) and (5)] *authorized by paragraphs (4) through (6) of section 202(a) of this title, including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values forgone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c) of this title, including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values forgone, shall be nonreimbursable. The total costs remaining after these alloca-*

tions shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5), of subsection (a) of this section.

* * * * *

(4)(i) Costs of construction and replacement of such unit or separable feature thereof authorized by **【section 202(a) (4) and (5)】** paragraphs (4) through (6) of section 202(a) of this title, costs of construction of measures to replace incidental fish and wildlife values forgone, when such measures are part of the on-farm measures authorized by section 202(c) of this title or of the units authorized by **【section 202(a) (4) and (5)】** paragraphs (4) through (6) of section 202(a) of this title, and costs of implementation of the on-farm measures authorized by section 202(c) of this title allocated to the upper basin and to the lower basin under subsection (a) (2) of this section shall be repaid as provided in subparagraphs (ii) and (iii), respectively, of this paragraph.

* * * * *

SEC. 208 * * *

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(c) In addition to amounts authorized to be appropriated under subsection (b), there are authorized to be appropriated \$75,000,000 for subsection 202(a), including constructing the works described in paragraph 202(a)(6) and carrying out the measures described in such paragraph.