

OLIVENHAIN WATER STORAGE PROJECT LOAN  
GUARANTEE

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OCTOBER 21, 1997.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 134]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 134) to authorize the Secretary of the Interior to provide a loan guarantee to the Olivenhain Water Storage Project, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend 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. OLIVENHAIN WATER STORAGE PROJECT LOAN GUARANTEE.**

(a) **LOAN GUARANTEE.**—The Secretary of the Interior may guarantee a loan made to either the Olivenhain Municipal Water District (in this Act referred to as the “District”) or to a nongovernmental developer selected by the District, for building and financing the Olivenhain Water Storage Project in northern San Diego County, California. The amount of a loan guaranteed under this subsection may not exceed \$70,000,000.

(b) **INTEREST RATE.**—Any loan guaranteed under subsection (a) shall bear interest at a rate agreed upon by the borrower and lender.

(c) **OBLIGATION OF UNITED STATES.**—Any loan guarantee under this section shall constitute an obligation, in accordance with the terms and conditions of such guarantee, of the United States Government, and the full faith and credit of the United States is hereby pledged to full performance of the obligation.

(d) **SECURITY.**—

- (1) RESERVE FUND AND COMMITMENT OF DISTRICT REVENUES.—To ensure the repayment of any loan guaranteed under this section and as a condition of providing the guarantee, the Secretary of the Interior shall require that—
- (A) the borrower establish and maintain, with a trustee designated by the Secretary, a reserve fund in the amount of 115 percent of the next year's principal and interest payments on the loan;
  - (B) the District agree to use its revenues to make all payments required under the terms of the loan prior to any payment by the United States under the guarantee, and to make those payments through the trustee designated under subparagraph (A); and
  - (C) the trustee designated under subparagraph (A) agree to use all amounts received for repayment of the loan to repay the loan.
- (2) RESERVE FUND REQUIREMENTS.—The reserve fund under this subsection shall be established under terms that provide that—
- (A) all moneys in the reserve fund shall constitute a trust fund for the repayment of the loan guaranteed under subsection (a); and
  - (B) the reserve fund shall be administered in accordance with and pursuant to provisions agreed upon by the borrower and lender for the loan guaranteed under subsection (a).
- (3) PAYMENT OF LOAN AMOUNTS.—Proceeds from the loan guaranteed under subsection (a) shall—
- (A) be deposited directly with the trustee designated by the Secretary of the Interior under paragraph (1)(A); and
  - (B) be disbursed by the trustee consistent with the terms of the loan.
- (4) QUALIFICATIONS OF TRUSTEE.—Any trustee designated by the Secretary of the Interior under paragraph (1) must, at a minimum—
- (A) be a trust company or a bank having the powers of a trust company;
  - (B) have a combined capital and surplus of at least \$100,000,000; and
  - (C) be otherwise subject to supervision or examination by a Federal agency.

#### PURPOSE OF THE BILL

The purpose of H.R. 134 is to authorize the Secretary of the Interior to provide a loan guarantee to the Olivenhain Water Storage Project.

#### BACKGROUND AND NEED FOR LEGISLATION

The Olivenhain Water Storage Project is located in a relatively unpopulated portion of San Diego County situated approximately one mile southwest of the city limits of Escondido. The project consists of an open, raw water storage reservoir with a capacity between 4,000 acre-feet (AF) and 24,000 AF, a roller-compacted concrete dam, an 82 million gallons-per-day water treatment plant, a raw water pipeline connecting the reservoir to the San Diego County Water Authority, a flow control station, a treated water line, a pump station, the installation of new above-ground electrical power poles to provide electric service to the pump station, four staging areas for construction activities, and the improvement of an existing unpaved access road.

The lead agency for purposes of environmental review is the Olivenhain Municipal Water District. The project's environmental review process has spanned more than 10 years. Throughout this period, the project has evolved with a number of alternatives analyzed and, ultimately, rejected in favor of the preferred alternative.

Since the lands in the project area include those owned by the Water District and the Bureau of Land Management (BLM), a joint Environmental Impact Report and Environmental Assessment (EIR/EA) was completed for the project pursuant to the California Environmental Quality Act and the National Environmental Policy Act, respectively. The Final EIR/EA evaluated the environmental

impacts of a reservoir ranging in size from 6,000 AF to 24,000 AF. The 6,000 AF reservoir has been further downsized to 4,000 AF, the minimum size necessary to meet the emergency storage needs of the Water District through the year 2030. The larger reservoir would also provide emergency storage to meet an existing regional need. The larger reservoir would not be constructed unless neighboring water districts agree to participate financially in the larger reservoir.

The dam and reservoir would be located in the easternmost portion of the Water District's service area. The parcel consists of the 756-acre Elfin Forest Recreational Reserve, of which 279 acres is owned by the District and 477 acres is owned by the BLM and leased to the Water District.

The Bureau of Reclamation has traditionally funded the construction of reclamation projects, with the reimbursable costs being repaid by the project beneficiaries. In addition, Reclamation has provided loans and grants under the provisions of the Small Reclamation Projects Act of 1956. H.R. 134 reduces the federal exposure from that of the traditional direct financing party to that of a guarantor. This bill would foster a viable, private-public partnership to meet a pressing infrastructure need at a time when the federal government is moving away from its role as direct lender and grant provider.

The Committee approved this bill as a demonstration of new financing mechanisms that can leverage and maximize federal funds as we move to balance the federal budget. This loan guarantee would reduce the cost of interest on the project to the customers and encourage private sector funding of needed water infrastructure. The guaranteed loan will bear interest at the rate agreed upon by the borrower and the lender. Any guarantee issued pursuant to the legislation would constitute an obligation, in accordance with the terms of such guarantee, of the United States government, and H.R. 134 further stipulates that the full faith and credit of the United States is pledged to the full performance of the obligation.

In authorizing the Secretary of the Interior to make this loan guarantee, the Committee anticipates that the Secretary will exercise sufficient oversight concerning the terms and conditions of the loan, and the creditworthiness of the borrower, to ensure that the taxpayers of the United States are protected. This oversight will supplement the safeguards to protect the financial interests of the United States that are contained in the legislation, including: the requirement that a reserve fund be established; the requirement that a trustee oversee the reserve fund; and the requirement that the District agree to use its revenues to make all payments required under the terms of the loan prior to any payment by the United States under the guarantee.

#### COMMITTEE ACTION

H.R. 134 was introduced on January 7, 1997, by Congressman Randy "Duke" Cunningham (R-CA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On June 24, 1997, the Subcommittee held a legislative hearing on H.R. 134, where the Administration opposed the legislation. The Olivenhain Municipal Water Dis-

trict testified in support of the bill. On July 29, 1997, the Subcommittee met to mark up H.R. 134. An amendment in the nature of a substitute was offered by Congressman John Doolittle (R-CA) to address issues raised by the Administration about the federal risks which would be incurred. The amendment requires the borrower to establish a reserve fund; commits Olivenhain Municipal Water District revenues for default payments; requires the Secretary to designate a trustee to maintain the reserve fund; stipulates that the reserve fund will constitute a trust fund for the repayment of the guaranteed loan; and requires that should the borrower default on the loan, the district is required to make payments to the trustee before any payment is made by the United States. The amendment in the nature of a substitute was adopted by voice vote. The bill was then ordered favorably reported to the Full Committee by voice vote. On September 17, 1997, the Full Resources Committee met to consider H.R. 134. The bill, as amended by the Subcommittee, was ordered favorably reported to the House of Representatives by voice vote, in the presence of a quorum.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 134.

#### COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 134. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 134 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The bill does authorize the Secretary of the Interior to provide a loan guarantee.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 134.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 134 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 29, 1997.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 134, a bill to authorize the Secretary of the Interior to provide a loan guarantee to the Olivenhain Water Storage Project, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gary Brown.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 134—A bill to authorize the Secretary of the Interior to provide a loan guarantee to the Olivenhain Water Storage Project, and for other purposes*

Summary: H.R. 134 would authorize the Secretary of the Interior to provide a loan guarantee for the Olivenhain Water Storage Project (the project). CBO estimates that providing the loan guarantee would cost about \$7 million in fiscal year 1998, assuming appropriation of the necessary amount. Enacting H.R. 134 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply to the bill. The bill contains no private-sector or intergovernmental mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) and would not impose any costs on state, local, or tribal governments.

Estimated cost to the Federal Government: H.R. 134 would authorize a guarantee for a loan of up to \$70 million for the project. Based on information provided by the Olivenhain Municipal Water District (the district), CBO assumes that the guarantee would be provided to a private developer (that has not yet been selected) for constructing the project. The district would lease the completed facility from the private developer. The lease payments would be derived from future increases in the district's water service rates and would represent the security for the loan. Assuming appropriation of the necessary amount, CBO estimates that providing the loan guarantee would cost about \$7 million in fiscal year 1998.

The Federal Credit Reform Act of 1990 defines the cost of a loan guarantee as "the net present value \* \* \* [of] estimated payments by the government to cover defaults and delinquencies, interest subsidies, or other payments, and the estimated payments to the government including origination and other fees, penalties and recoveries." This cost is recorded in the year in which the loan is dis-

bursed. Based on the water district's credit history, and assuming a 20-year repayment period for the loan, CBO estimates a subsidy cost of \$7 million in fiscal year 1998. The costs of this legislation fall within budget function 300 (natural resources and environment).

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: The bill contains no private-sector or intergovernmental mandates as defined by UMRA and would impose no costs on state, local, or tribal governments. The municipal water district would have to agree to certain terms and conditions in order to receive the loan guarantee, but such an agreement would be voluntary.

Estimate prepared by: Federal costs: Gary Brown; impact on State, local, and tribal governments: Marjorie Miller.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 134 contains no unfunded mandates.

#### CHANGES IN EXISTING LAW

If enacted, H.R. 134 would make no changes in existing law.

## DISSENTING VIEWS

The bill proposes relief to the Olivenhain Municipal Water District (or to a “nongovernmental developer selected by the District”) in the form of a Federal loan guarantee of up to \$70,000,000 for the purpose of building and financing the Olivenhain Water Storage Project in northern San Diego County, California. According to hearing testimony from project sponsors, the project consists of a dam and reservoir to be used by the water district for emergency water storage.

The purpose of the loan guarantee is to allow the project sponsors to leverage their borrowing power by having the backing of “full faith and credit of the United States.” With the Federal loan guarantee in hand, the Olivenhain Municipal Water District (or the “nongovernmental developer”) expects to receive a substantial discount on their interest rate for borrowing from a commercial credit source.

The bill’s reference to a “nongovernmental developer selected by the District” is apparently intended to allow the District to turn over much of the responsibility for financing and construction of this project to a private contractor.

Federal loan guarantees are not new, but they are not commonly used by the Secretary of the Interior to assist in meeting local infrastructure needs. The Secretary of the Interior currently has authority to make loans and grants under the Small Reclamation Projects Act of 1956 (70 Stat. 1044). However, current Reclamation law does not include general authorization for a loan guarantee program.

A significant objection to H.R. 134, as amended, is that the bill requires essentially nothing from the project sponsors. Obviously the loan guarantee contemplated by H.R. 134 represents a major financial commitment on the part of the United States. Yet the bill sets no standards to be met by the District, requires no information regarding the creditworthiness of the parties, and does not require the Secretary to perform even a cursory review of the feasibility of the proposed project before making a commitment of as much as \$70,000,000 on behalf of the United States. H.R. 134 does not require anybody to meet even the most fundamental standards for reviewing, approving and assisting in the financing of a public infrastructure project. In addition:

The Administration is on record in opposition to the bill, primarily because it does not want the Bureau of Reclamation in the business of making loan guarantees and because there are no provisions for approving the terms of the loan or the underlying project. The Administration also cites the absence of assurances that the District will be able to repay the loan as a reason for its opposition.

Reclamation projects normally have to meet strict requirements of feasibility and have demonstrable benefits as determined by published government guidelines. H.R. 134, however, does not even mention the cost of the project or require a finding of feasibility, nor does it identify the "private developer" for whom a loan might be guaranteed.

The loan guarantee could go to a nongovernmental developer, while loans and grants under the 1956 Small Reclamation Projects Act, for example, can only go to public entities such as water districts.

Loans and loan guarantees from the United States are financial instruments that can be used to facilitate the operations of local government, including the construction of water storage and delivery facilities. They result in financial exposures and as such carry with them risks and obligations that may be called on in the future. Therefore they need to be carefully formulated and used, with the resultant exposures monitored regularly. H.R. 134, as amended, does not meet even these minimum standards to minimize risk to the United States.

GEORGE MILLER.  
PETER DEFAZIO.

