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SMALL WATERSHED REHABILITATION ACT OF 1999

SEPTEMBER 12, 2000.—Ordered to be printed

Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 1762]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 1762), to amend the Watershed Protection and Flood Prevention Act to authorize the Secretary of Agriculture to provide cost share assistance for the rehabilitation of structural measures constructed as part of water resource projects previously funded by the Secretary under such Act or related laws, having considered the same, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE, NEED AND BACKGROUND

Under current law, the Secretary of Agriculture, acting through the Natural Resources Conservation Service (NRCS), is authorized to provide technical and financial assistance to local organizations in planning and carrying out small watershed projects for flood protection, agricultural water management, recreation, municipal and industrial water supply, and wildlife enhancement. This authorization comes from the Watershed Protection and Flood Prevention Act of 1954 (PL-566), the small watershed program.

Beginning in 1948, the U.S. Department of Agriculture began the construction of floodwater retention dams in upland areas of small

watersheds throughout the country. Eleven pilot projects were built in as many states under authority of the Flood Control Act of 1944. PL-566 small watershed projects now account for a majority of the approximately 10,500 dams that were constructed since 1948.

Generally, these structures, most earthen dams, were engineered for a useful lifespan of 50 years. Some dams have already exceeded that lifespan. Several hundred of these dams have been in place for more than 45 years and thousands are older than 30 years. Thus, spillway, slide gates and stems have deteriorated. Although properly designed and maintained, sediment basins in many of the impoundments have filled in providing less water storage, especially during storm events.

Local sponsors are critical to the successful operation of the small watershed program. They secure land rights and easements for the projects. NRCS provides the technical and financial assistance for the actual construction. Once completed, the local sponsors assume full responsibility for maintenance and operation of the structures.

Some dams do not meet current state dam safety regulations, as these regulations have changed over the years. USDA does not have the authority to rehabilitate these structures, and sponsoring organizations do not have the funds for the necessary renovation work.

The Small Watershed Rehabilitation Act of 1999 authorizes a new 10-year program to rehabilitate aging floodwater retention projects. \$60 million is authorized to be appropriated in each of the fiscal years 2000 through 2009. In addition, the Secretary of Agriculture, in cooperation with appropriate state agencies, is required to use \$5 million of the total appropriation during fiscal years 2000 and 2001 to assess the rehabilitation needs in states where these dams and small watershed projects are located. The Secretary may provide 65 percent of the total rehabilitation costs, but may not provide more than 100 percent of actual construction cost.

The Secretary may require that zoning or development regulations are in place prior to entering into an agreement with a local organization so that the rehabilitation work will not become obsolete by subsequent development in the project area. The Committee expects that the Secretary will not enter such agreements if any zoning or development regulatory matters might jeopardize the effectiveness and full societal benefits of the investment.

The Secretary, acting through NRCS, may provide required technical assistance for planning, designing and implementing the rehabilitation project, but financial assistance may not be used for operation and maintenance activities. The Committee intends that the cost of technical assistance provided by NRCS for planning, designing, and implementing the rehabilitation project will not be included as a part of the total rehabilitation cost of the project for purposes of calculating the amount of federal funds that may be made available to the eligible local organization, under the cost share formula. Funding for NRCS technical assistance is to come from funds appropriated under this Act.

The local organization may apply for this assistance if an application has also been made to the state agency having jurisdiction over the project of the Governor of the State. The Secretary shall request that the state dam safety officer or equivalent state official

be involved in the application process if state permits or other approval is required.

The Secretary shall establish an approval process that provides for a proper administration of funds, recognizing that applications will be made throughout a fiscal year and approvals may be limited by fund availability. This process will be in writing and made known to local organizations and states.

To ensure the wise use of funds, the Committee intends that rehabilitation projects are conducted in the most cost-effective means possible considering economic, social, and environmental aspects of the project. A formal benefit-cost analysis is not required. However, all benefits and costs (both numeric and descriptive) should be included in project documentation and be available for adequate public review prior to final approval. The Secretary shall maintain a database to track the benefits of the rehabilitation projects. The database would serve as a guide for future approval of projects, including evaluation of the costs and environmental and conservation benefits. Local organizations must provide to the Secretary, within 90 days after the project completion, a status report of the rehabilitation effort.

II. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides the legislation may be cited as “The Small Watershed Rehabilitation Act of 1999”.

Section 2. Rehabilitation of water resources structures measures constructed under certain Department of Agriculture Programs

This section amends the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.) by adding a new section:

Section 14. Rehabilitation of structural measures near, at, or past their evaluated life expectancy

Subsection (a) Definitions

This subsection defines terms used in the bill.

Paragraph (a)(1). This paragraph defines “rehabilitation” to mean all work necessary to extend the service life of the structural measure, where applicable, and meet applicable safety and performance standards. This may include prolonging the useful life of the structure beyond its original life expectancy, correcting damage or deterioration of the structure, upgrading the structural measure to meet changed land use conditions or safety needs within the watershed, or decommissioning the structure including removal or breaching. Completion of a project occurs once all structural measures for each individual dam, regardless of the number of dams covered by a project, are finished and the project is sufficient to permit renegotiation of any agreement entered into between the Secretary and the local organization. The Committee envisions the project deemed complete when the appropriate safety agency has given final written approval.

Paragraph (a)(2). This paragraph defines “covered water resource project” to mean works of improvement under PL-566, PL 78-534, the pilot watershed program authorized in the Department of Agri-

culture Appropriation Act of 1954; and the resource conservation and development program.

Paragraph (a)(3). This paragraph defines “eligible local organization” to mean the local organization or appropriate state agency responsible for the operation and maintenance of the structural measures.

Paragraph (a)(4). This paragraph defines “structural measure” as a dam that was constructed as part of a covered water resource project.

Subsection (b) Cost Share Assistance for Rehabilitation.

Paragraph (b)(1). This paragraph authorizes the Secretary of Agriculture to provide assistance to cover part of the total costs of rehabilitating structural measures. These costs may include land acquisition, easements, and rights-of-way, rehabilitation project administration, technical assistance, and contracting and construction costs. The local organization is responsible for securing all land rights necessary for the project.

Paragraph (b)(2). This paragraph specifies federal funding equal to 65 percent of the total rehabilitation costs but not to exceed 100 percent of the actual construction costs. The local organization is responsible for the costs of water, mineral and other resource rights and all required permits. The Committee recognizes that in addition to the cost outlay for actual construction operations, other costs will be incurred, and that the total cost of a rehabilitation project will be greater than the cost of construction alone. These additional costs may include, but are not limited to, cost of surveys, project design, permit acquisition, easements, and environmental assessments, which may be contributed in kind by the local authority. The Committee intends that the Federal contribution is to be 65 percent of the total costs of a project. However, the Federal funds allocated to a rehabilitation project shall not be greater than the outlay for actual construction operations alone.

Paragraph (b)(3). This paragraph authorizes the Secretary, working with the local organization, to ensure that the local organization acquires proper zoning and other development regulations are secured before entering into a rehabilitation agreement with the sponsoring organization.

The Committee recognizes that decommissioning and dam removal may be highly beneficial and cost effective options. The Committee intends that rehabilitation plans and their implementation be such that they provide for the attainment of the full range of societal benefits, including the protection of environmental resources and conservation.

Subsection (c). This subsection authorizes the Natural Resources Conservation Service to provide technical assistance in all phases of the rehabilitation project if the assistance is requested by the local organization.

Subsection (d). Prohibited Use.

Paragraph (d)(1). This paragraph prohibits assistance from being used for operation or maintenance activities. These operating and maintenance activities will remain the responsibility of the local organization.

Paragraph (d)(2). This paragraph authorizes the Secretary to renegotiate the original agreement for the project regarding responsi-

bility for operation and maintenance when the rehabilitation is completed.

Subsection (e). This subsection requires an appropriate state agency or the Governor of the state to approve the local organization's application for assistance for technical and financial assistance. The Secretary also is required to involve the state dam safety officer or equivalent state official in the application process if state permits are required for the rehabilitation project. The rehabilitation project must meet standards established by the Secretary, and the NRCS may assist in preparing applications if the local organization requests.

Subsection (f). This subsection requires the Secretary to ensure the rehabilitation project is performed in the most cost-effective manner that accomplishes the objective. Since the projects are generally required for public health or safety concerns, no benefit-cost analysis will be conducted and no benefit-cost analysis greater than one will be required. Appropriate documentation is required to ensure the wise use of funds.

The Committee recognizes while a strict cost-benefit analysis is not required, the objectives of each rehabilitation project must be accomplished in the most cost-effective manner and that expects full consideration shall be given by the Secretary, working through the Natural Resources Conservation Service, to a full range of options that may be equally or more cost-effective with fewer environmental costs than the rehabilitation of existing structures. These options include, but are not limited to, dam decommissioning, dam removal, wetland restoration, voluntary buy-outs of at-risk structures, and coordinated watershed planning and management processes. Further, the Committee expects that the planning and implementation of each rehabilitation project be conducted with the full consultation of the local authorities and other interested parties taking into account local conditions and concerns. The Committee recognizes the demonstrated utility of wetland restoration in achieving flood control and environmental resources and conservation objectives.

Subsection (g). This subsection requires the Secretary to establish a system for approving rehabilitation requests that is equitable to all local organizations, recognizing that requests will be received throughout a fiscal year and will be approved subject to the availability of funds. The approval process must be in writing and made known to all eligible applicants.

Subsection (h). This subsection authorizes appropriations of \$60 million in each of the fiscal years 2000 through 2009 for technical and financial assistance.

Subsection (i). This subsection requires the use of \$5 million in fiscal years 2000 and 2001 of any funds appropriated for the Secretary to assess the rehabilitation needs in all states where such small watershed projects are located.

Subsection (j). This subsection requires the Secretary to track the benefits of the rehabilitation projects and to report annually to Congress. Local organizations are required to report to the Secretary on the status of the rehabilitation project within 90 days after completion of the project.

III. COMMITTEE VOTE

COMMITTEE VOTE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the votes of the Committee in its consideration of the bill:

The Committee met in open session on Tuesday, June 20, 2000 and, in the presence of a quorum, ordered that the bill be favorably reported by a voice vote.

IV. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following evaluation is made concerning the regulatory impact of enacting this legislation:

There are over 10,000 watershed projects in the small watershed program. This legislation allows sponsors of these projects to seek financial and technical assistance to rehabilitate these projects. While local sponsors would have to contribute 35 percent of the cost of the project, these costs would be voluntary and rehabilitation should have a positive economic benefit for individuals, consumers and businesses in the watershed and surrounding area. There is a possible adverse impact on the personal privacy of individuals affected by this legislation where easements and right-of-ways may need to be secured or modified. However, most previous easements for existing projects have been donated. The Committee does not anticipate a significant increase in paperwork or reporting requirements due to this bill.

V. BUDGETARY IMPACT OF THE BILL

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 27, 2000.

Hon. RICHARD G. LUGAR,
*Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1762, the Small Watershed Rehabilitation Act of 1999.

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

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 1762—Small Watershed Rehabilitation Act of 1999

Summary: Local watershed project sponsors, assisted by the Natural Resources Conservation Service (NRCS), have constructed over 10,000 watershed projects under the Small Watershed Program. S.

1762 would authorize the Secretary of Agriculture, acting through the NRCS, to assist local project sponsors in rehabilitating those projects. The bill would authorize the appropriation of \$60 million a year over the 2000–2009 period for financial and technical assistance to eligible local organizations for planning, designing, and implementing watershed rehabilitation projects. S. 1762 would require the Secretary to assess the need for watershed rehabilitation in all states in which eligible water projects exist, establish a process for approving requests for assistance, monitor the benefits of rehabilitation efforts, and submit an annual report to the Congress on the status of such efforts.

Based on information from the NRCS, CBO estimates that implementing S. 1762 would cost \$270 million over the 2000–2005 period, assuming appropriation of the amounts specified in the bill. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 1762 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local governments would probably incur some costs to match the grants authorized by this bill, but these costs would be voluntary.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 1762 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Authorization level	60	60	60	60	60	60
Estimated outlays	0	2	69	72	67	60

Basis of Estimate: For this estimate, CBO assumes that S. 1762 will be enacted during fiscal year 2000 and that funding will be provided as authorized by the bill. Estimates of outlays are based on historical spending patterns for similar programs. To date, no funds have been appropriated to NRCS for activities authorized under S. 1762.

Pay-as-you-go Considerations: None.

Intergovernmental and Private-Sector Impact: S. 1762 contains no intergovernmental or private-sector mandates as defined in UMRA. State and local governments would probably incur some costs to match the grants authorized by this bill, but these costs would be voluntary. The bill would require recipients to fund at least 35 percent of the total costs of assisted projects.

Previous CBO Estimate: On November 3, 1999, CBO transmitted a cost estimate for H.R. 728, the Small Watershed Rehabilitation Amendments of 1999, as ordered reported by the House Committee on Agriculture on October 27, 1999. That legislation is nearly identical to S. 1762, and the cost estimates are the same.

On April 17, 2000, CBO transmitted a cost estimate for H.R. 728 as ordered reported by the House Committee on Transportation and Infrastructure on November 18, 1999. The version approved by the Transportation and Infrastructure Committee also would authorize \$60 million a year for the NRCS, but in addition, it would

authorize the appropriation of \$30 million in 2001 for federal assistance by the Army Corps of Engineers.

Estimate Prepared by: Federal Costs: Rachel Applebaum; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Sarah Sitarek.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made in the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

WATERSHED PROTECTION AND FLOOD PREVENTION ACT

SEC. 13. DATA.

The Secretary shall collect and maintain data on a national and State by State basis concerning—

(1) expenditures for the individual flood control and conservation measures for which assistance is provided under this Act; and

(2) the expected flood control or environmental (including soil erosion) benefits that will result from the implementation of such measures

* * * * *

SEC. 14. REHABILITATION OF STRUCTURAL MEASURES NEAR, AT, OR PAST THEIR EVALUATED LIFE EXPECTANCY.

(a) DEFINITIONS.—*For purposes of this section:*

(1) REHABILITATION.—*The term “rehabilitation”, with respect to a structural measure constructed as part of a covered water resource project, means the completion of all work necessary to extend the service life of the structural measure and meet applicable safety and performance standards. This may include (A) protecting the integrity of the structural measure, or prolonging the useful life of the structural measure, beyond the original evaluated life expectancy, (B) correcting damage to the structural measure from a catastrophic event, (C) correcting the deterioration of structural components that are deteriorating at an abnormal rate, (D) upgrading the structural measure to meet changed land use conditions in the watershed served by the structural measure or changed safety criteria applicable to the structural measure, or (E) decommissioning the structural measure, including removal or breaching.*

(2) COVERED WATER RESOURCE PROJECT.—*The term “covered water resource project” means a work of improvement carried out under any of the following:*

(A) *This Act.*

(B) *Section 13 of the Act of December 22, 1944 (Public Law 78–534; 58 Stat. 905).*

(C) *The pilot watershed program authorized under the heading “Flood Prevention” of the Department of Agriculture Appropriation Act, 1954 (Public Law 156; 67 Stat. 214).*

(D) Subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 et seq.; commonly known as the Resource Conservation and Development Program).

(3) *ELIGIBLE LOCAL ORGANIZATION.*—The term “eligible local organization” means a local organization or appropriate State agency responsible for the operation and maintenance of structural measures constructed as part of a covered water resource project.

(4) *STRUCTURAL MEASURE.*—The term “structural measure” means a physical improvement that impounds water, commonly known as a dam, which was constructed as part of a covered water resource project.

(b) *COST SHARE ASSISTANCE FOR REHABILITATION.*—

(1) *ASSISTANCE AUTHORIZED.*—The Secretary may provide financial assistance to an eligible local organization to cover a portion of the total costs incurred for the rehabilitation of structural measures originally constructed as part of a covered water resource project. The total costs of rehabilitation include the costs associated with all components of the rehabilitation project, including acquisition of land, easements, and rights-of-ways, rehabilitation project administration, the provision of technical assistance, contracting, and construction costs, except that the local organization shall be responsible for securing all land, easements, or rights-of-ways necessary for the project.

(2) *AMOUNT OF ASSISTANCE; LIMITATIONS.*—The amount of Federal funds that may be made available under this subsection to an eligible local organization for construction of a particular rehabilitation project shall be equal to 65 percent of the total rehabilitation costs, but not to exceed 100 percent of actual construction costs incurred in the rehabilitation. However, the local organization shall be responsible for the costs of water, mineral, and other resource rights and all Federal, State, and local permits.

(3) *RELATION TO LAND USE AND DEVELOPMENT REGULATIONS.*—As a condition on entering into an agreement to provide financial assistance under this subsection, the Secretary, working in concert with the eligible local organization, may require that proper zoning or other developmental regulations are in place in the watershed in which the structural measures to be rehabilitated under the agreement are located so that—

(A) the completed rehabilitation project is not quickly rendered inadequate by additional development; and

(B) society can realize the full benefits of the rehabilitation investment.

(c) *TECHNICAL ASSISTANCE FOR WATERSHED PROJECT REHABILITATION.*—The Secretary, acting through the Natural Resources Conservation Service, may provide technical assistance in planning, designing, and implementing rehabilitation projects should an eligible local organization request such assistance. Such assistance may consist of specialists in such fields as engineering, geology, soils, agronomy, biology, hydraulics, hydrology, economics, water quality, and contract administration.

(d) *PROHIBITED USE.*—

(1) *PERFORMANCE OF OPERATION AND MAINTENANCE.*—Rehabilitation assistance provided under this section may not be

used to perform operation and maintenance activities specified in the agreement for the covered water resource project entered into between the Secretary and the eligible local organization responsible for the works of improvement. Such operation and maintenance activities shall remain the responsibility of the local organization, as provided in the project work plan.

(2) RENEGOTIATION.—Notwithstanding paragraph (1), as part of the provision of financial assistance under subsection (b), the Secretary may renegotiate the original agreement for the covered water resource project entered into between the Secretary and the eligible local organization regarding responsibility for the operation and maintenance of the project when the rehabilitation is finished.

(e) APPLICATION FOR REHABILITATION ASSISTANCE.—An eligible local organization may apply to the Secretary for technical and financial assistance under this section if the application has also been submitted to and approved by the State agency having supervisory responsibility over the covered water resource project at issue or, if there is no State agency having such responsibility, by the Governor of the State. The Secretary shall request the State dam safety officer (or equivalent State official) to be involved in the application process if State permits or approvals are required. The rehabilitation of structural measures shall meet standards established by the Secretary and address other dam safety issues. At the request of the eligible local organization, personnel of the Natural Resources Conservation Service of the Department of Agriculture may assist in preparing applications for assistance.

(f) JUSTIFICATION FOR REHABILITATION ASSISTANCE.—In order to qualify for technical or financial assistance under this authority, the Secretary shall require the rehabilitation project to be performed in the most cost-effective manner that accomplishes the rehabilitation objective. Since the requirements for accomplishing the rehabilitation are generally for public health and safety reasons, in many instances being mandated by other State or Federal laws, no benefit-cost analysis will be conducted and no benefit-cost ratio greater than one will be required. The benefits of and the requirements for the rehabilitation project shall be documented to ensure the wise and responsible use of Federal funds.

(g) RANKING OF REQUESTS FOR REHABILITATION ASSISTANCE.—The Secretary shall establish such system of approving rehabilitation requests, recognizing that such requests will be received throughout the fiscal year and subject to the availability of funds to carry out this section, as is necessary for proper administration by the Department of Agriculture and equitable for all eligible local organizations. The approval process shall be in writing, and made known to all eligible local organizations and appropriate State agencies.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$60,000,000 for each of the fiscal years 2000 through 2009 to provide financial and technical assistance under this section.

(i) ASSESSMENT OF REHABILITATION NEEDS.—Of the amount appropriated pursuant to subsection (h) for fiscal years 2000 and 2001, \$5,000,000 shall be used by the Secretary, in concert with the responsible State agencies, to conduct an assessment of the rehabili-

tation needs of covered water resource projects in all States in which such projects are located.

(j) RECORDKEEPING AND REPORTS.—

(1) SECRETARY.—The Secretary shall maintain a data base to track the benefits derived from rehabilitation projects supported under this section and the expenditures made under this section. On the basis of such data and the reports submitted under paragraph (2), the Secretary shall prepare and submit to Congress an annual report providing the status of activities conducted under this section.

(2) GRANT RECIPIENTS.—Not later than 90 days after the completion of a specific rehabilitation project for which assistance is provided under this section, the eligible local organization that received the assistance shall make a report to the Secretary giving the status of any rehabilitation effort undertaken using financial assistance provided under this section.

