

Calendar No. 49

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 110-23

WALLOWA LAKE DAM REHABILITATION AND WATER MANAGEMENT ACT OF 2007

FEBRUARY 16, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 264]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 264) to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Wallowa Lake Dam Rehabilitation and Water Management Act of 2007”.

SEC. 2. DEFINITIONS.

In this Act:

(1) ASSOCIATED DITCH COMPANIES, INCORPORATED.—The term “Associated Ditch Companies, Incorporated” means the nonprofit corporation established under the laws of the State of Oregon that operates Wallowa Lake Dam.

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

(3) WALLOWA LAKE DAM REHABILITATION PROGRAM.—The term “Wallowa Lake Dam Rehabilitation Program” means the program for the rehabilitation of the Wallowa Lake Dam in Oregon, as contained in the engineering document entitled, “Phase I Dam Assessment and Preliminary Engineering Design”, dated December 2002, and on file with the Bureau of Reclamation.

SEC. 3. AUTHORIZATION TO PARTICIPATE IN PROGRAM.

(a) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may provide grants to, or enter into cooperative or other agreements with, tribal, State, and local governmental entities and the Associated Ditch Companies, Incorporated, to plan, design, and construct facilities needed to implement the Wallowa Lake Dam Rehabilitation Program.

(b) **CONDITIONS.**—As a condition of providing funds under subsection (a), the Secretary shall ensure that—

(1) the Wallowa Lake Dam Rehabilitation Program and any activities under this Act meet the standards of the dam safety program of the State of Oregon;

(2) the Associated Ditch Companies, Incorporated, agrees to assume liability for any work performed, or supervised, with Federal funds provided to Associated Ditch Companies, Incorporated, under this Act; and

(3) 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 with Federal funds provided under this Act, regardless of whether the damages arose during or after the rehabilitation or construction.

(c) **COST SHARING.**—

(1) **IN GENERAL.**—The Federal share of the costs of activities authorized under this Act shall not exceed 50 percent.

(2) **EXCLUSIONS FROM FEDERAL SHARE.**—There shall not be credited against the Federal share of the costs of activities authorized under this Act—

(A) any expenditure by the Bonneville Power Administration in the Wallowa River watershed; and

(B) expenditures made by individual agricultural producers in any Federal commodity or conservation program.

(d) **COMPLIANCE WITH STATE LAW.**—In carrying out this Act, the Secretary shall comply with applicable Oregon State water law.

(e) **PROHIBITION ON HOLDING TITLE.**—The Federal Government shall not hold title to any facility rehabilitated or constructed under this Act.

(f) **PROHIBITION ON OPERATION AND MAINTENANCE.**—The Federal Government shall not be responsible for the operation and maintenance of any facility constructed or rehabilitated under this Act.

SEC. 4. RELATIONSHIP TO OTHER LAW.

Activities funded under this Act shall not be considered a supplemental or additional benefit under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary to pay the Federal share of the costs of activities authorized under this Act \$6,000,000.

SEC. 6. TERMINATION OF AUTHORITY.

The authority of the Secretary to carry out any provisions of this Act shall terminate 10 years after the date of enactment of this Act.

PURPOSE

The purpose of S. 264 is to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon.

BACKGROUND AND NEED

Wallowa Lake Dam is a privately owned dam constructed in 1918 and raised in 1929. It is owned and operated by the Associated Ditch Companies, Inc. (ADC). Dam safety deficiencies have been identified by the U.S. Army Corps of Engineers and the Oregon Water Resources Department, causing the reservoir to be held below full pool elevation since 1996. ADC, in conjunction with the Grande Ronde Model Watershed Council, the Bureau of Reclamation, and other local, State, and Federal agencies developed the Wallowa Lake Dam Rehabilitation and Water Management Program to address dam safety deficiencies and to tie correction of those deficiencies to larger environmental issues in the Wallowa River Basin.

S. 264 authorizes the Secretary of the Interior, acting through the Commissioner of Reclamation, to participate in the Wallowa Lake Dam Rehabilitation Program in cooperation with ADC. The Wallowa Lake Dam Rehabilitation Program, as described in the

February 2001 Vision Statement, focuses on planning, designing, and constructing recommended improvements to Wallowa Lake Dam. When this phase is completed, ADC will be able to raise pool levels and work closely with the Oregon State Parks Department to assess the impact on nearby park facilities.

LEGISLATIVE HISTORY

S. 264 was introduced on January 11, 2007 by Senator Smith for himself and Senator Wyden and referred to the Committee on Energy and Natural Resources. At its business meeting on January 31, 2007, the Committee on Energy and Natural Resources ordered S. 264 favorably reported with an amendment in the nature of a substitute.

During the 109th Congress, the Committee considered similar legislation, S. 231, introduced by Senator Smith on February 1, 2005. Senator Wyden was a co-sponsor. At the business meeting on February 9, 2005, the Committee ordered S. 231 favorably reported. S. Rept. 109–30. S. 231 passed the Senate, by unanimous consent, on July 26, 2005. No further action occurred on S. 231 prior to the sine die adjournment of the 109th Congress. A measure similar to the amended version of S. 264, section 3 of H.R. 5079, was considered by the House of Representatives under suspension of the rules and passed by a voice vote on September 25, 2006.

The Committee also considered similar legislation in the 108th Congress, S. 1355, introduced by Senator Smith on June 26, 2003. Senator Wyden was a co-sponsor. The Subcommittee on Water and Power held a hearing on S. 1355 on October 15, 2003. S. Hrg. 108–271. The Committee ordered the bill favorably reported with amendments on March 10, 2004. S. Rept. 108–250. S. 1355 passed by the Senate, by unanimous consent, on September 15, 2004.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on January 31, 2007, by voice vote of a quorum present, recommends that the Senate pass S. 264, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 264, the Committee adopted an amendment in the nature of a substitute. The amendment addresses concerns that were raised by the Administration in previous testimony and conforms the text of the bill to the text of section 3 of H.R. 5079 which passed the House of Representatives during the 109th Congress. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 defines key terms used in the bill.

Section 3(a) authorizes the Secretary to provide grants or enter into cooperative or other agreements with tribal, State, and local governmental entities and the ADC, to plan, design, and construct facilities needed to implement the Wallowa Lake Dam Rehabilitation Program.

The Committee recognizes that this bill, by authorizing the Bureau of Reclamation to provide grant money for the rehabilitation of the Wallowa provides a unique, cost-effective means of enhancing flood control protection for downstream communities, and assisting with re-establishing a fishery for the Nez Perce Tribe. Rehabilitation of the dam will also provide for additional water storage.

With the ability to fill the lake to a higher elevation, the water rights holders, pursuant to a Wallowa Valley Water Management Plan have agreed to make an additional 4,300 acre-feet of water available each year, in accordance with State water law. This will help the Nez Perce Tribe, which shares management responsibility with the Federal Government of certain fish resources, restore sockeye and coho salmon passage at the dam, and provide for a downstream water exchange. It will also aid in resolving issues related to Federally-listed salmon runs. The Committee notes that these circumstances are unique and the Committee does not intend this legislation to set precedent for Federal assistance to private projects.

Section 3(b) requires the Secretary, as a condition of providing funds, to ensure that (1) the program meet the standards of the dam safety program in the State of Oregon; (2) ADC assumes liability for work performed or supervised with funds provided to it under this Act; and (3) the United States shall not be liable for damages arising out of any act, omission, or occurrence, relating to a facility rehabilitated or constructed under this Act.

Section 3(c) limits the Federal share of the cost of activities authorized in this Act to 50 percent; and excludes certain expenditures from being credited against the Federal cost share.

Section 3(d) requires the Secretary to comply with Oregon State water law.

Section 3(e) prohibits the Federal Government from holding title to any facility rehabilitated or constructed under this Act.

Section 3(f) provides that the Federal Government is not responsible for the operation and maintenance of any facility constructed or rehabilitated under this Act.

Section 4 states that activities funded under this Act shall not be considered a supplemental or additional benefit under Federal reclamation law.

Section 5 authorizes \$6 million in appropriations for the Federal cost share.

Section 6 sunsets the authority provided by the Act after 10 years.

COST AND BUDGETARY CONSIDERATIONS

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

S. 264—Wallowa Lake Dam Rehabilitation and Water Management Act of 2007

Summary: S. 264 would authorize the appropriation of \$6 million for the Bureau of Reclamation's contribution to the rehabilitation of the Wallowa Lake Dam. Implementing S. 264 would cost \$6 million over the 2008–2012 period. Enacting the legislation would not affect direct spending or revenues.

S. 264 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: For this estimate, CBO assumes that this bill will be enacted near the end of 2007, that \$2 million will be provided each year over the 2008–2010 period, and that outlays will follow the historical spending pattern for similar activities. Appropriation of the authorized amount would result in discretionary spending of \$6 million over the 2008–2011 period. The estimated budgetary impact of S. 264 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—				
	2008	2009	2010	2011	2012
CHANGES TO SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	2	2	2	0	0
Estimated Outlays	1	2	2	1	0

Intergovernmental and private-sector impact: S. 264 contains no intergovernmental or private-sector mandates as defined in the UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Peter H. Fontaine, 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. 264. 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. 264.

EXECUTIVE COMMUNICATIONS

Because S. 264 is similar to legislation considered during the 109th and 108th Congresses, the Committee did not request Executive Agency views. The testimony provided by the Bureau of Reclamation at the Subcommittee hearing on S. 1355 in the 108th Congress follows:

STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee I am John Keys, Commissioner of the Bureau of Reclamation. I appreciate the opportunity to present the Department's views on S. 1355, a bill that would authorize Reclamation

to participate in implementation of the Wallowa Lake Dam Rehabilitation Program and Wallowa Valley Water Management Plan in Oregon. Reclamation believes the Wallowa Lake Dam Rehabilitation Program and Wallowa Valley Water Management Plan are potentially worthwhile, with numerous benefits. While we believe there may be merit to this proposed project, the Department does not support S. 1355, as currently drafted.

Wallowa Lake Dam is a privately-owned dam constructed in 1918 and raised in 1929, and is owned and operated by the Associated Ditch Companies, Inc. (ADC). Dam safety deficiencies have been identified by the United States Army Corps of Engineers and Oregon Water Resources Department. ADC, in conjunction with the Grande Ronde Model Watershed, Reclamation, and other local, state, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation Program to address dam safety deficiencies and developed the Wallowa Valley Water Management Plan to tie correction of those deficiencies to larger environmental issues in the Wallowa River Basin. The Dam Rehabilitation Program and Water Management Plan is a six year proposal with an estimated total cost of \$38,800,000. S. 1355 sets out an 80/20 cost share for these efforts, under which the Federal government would pay \$32 million funded through the Bureau of Reclamation.

While the programs developed by the ACD and the Model Watershed provide a concept, they do not meet Federal standards established in the Principals and Guidelines for planning water development programs. Furthermore, the project may affect species listed under the Endangered Species Act (ESA). Should Reclamation be authorized to fund this project, a funding decision may constitute a major Federal action subject to consultation under Section 7 of the ESA. It would also require environmental analysis in compliance with the National Environmental Policy Act (NEPA). The bill, as currently drafted, does not provide for Reclamation's participation in the planning stages of the dam rehabilitation aspects of the project and separates dam rehabilitation from implementation of the water management plan. Consequently, it would be difficult for Reclamation to meet the environmental compliance requirements for the ESA and NEPA. Until adequate planning can be completed, the Administration cannot support funding this project.

The proposed bill would authorize Reclamation to provide funding to the ADC for dam rehabilitation activities, [nit] however, it does not provide administrative authority to transfer those funds. The legislation would need revision to provide Reclamation authority to issue grants. We would be pleased to work with the Committee in developing appropriate language.

Finally, we are concerned that Reclamation's participation in this program would adversely impact ongoing projects and operations. S. 1355 would authorize the use of Reclamation funds for a non-Federal purpose. Reclama-

tion funds are limited and are targeted to perform essential functions at our projects, such as security, operations and maintenance (O&M), resource management, dam safety, and construction. In addition, despite the very high Federal cost share for the project under S. 1355, there is no provision for repayment by project beneficiaries in accordance with Reclamation law. Funding for this project was not included in the President's budget, and we can not support activities which detract from high priority work on current Bureau of Reclamation facilities. The Department cannot, therefore, support S. 1355.

Thank you again for the opportunity to provide the Administration's position on S. 1355. I would be happy to answer any questions you might have.

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 S. 264 as ordered reported.

