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### BUREAU OF RECLAMATION SITE SECURITY COSTS ACT OF 2007

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APRIL 10, 2008.—Ordered to be printed

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

### R E P O R T

[To accompany H.R.1662]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1662) to authorize the Secretary of the Interior to seek limited reimbursement for site security activities, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

#### PURPOSE OF THE MEASURE

The purpose of H.R. 1662 is to amend the Reclamation Safety of Dams Act of 1978 to authorize improvements for the security of dams and other facilities.

#### BACKGROUND AND NEED

In the aftermath of the terrorist attacks on September 11, 2001, the Bureau of Reclamation embarked on a program of site security measures at multi-purpose federal dams. These measures involved both facility fortifications and increased use of guards and patrols. Since implemented, there has been an ongoing issue related to whether Reclamation or the beneficiaries of Reclamation projects should pay for site security measures.

Reclamation distinguishes security-related capital costs for facility fortifications from operation & maintenance (O&M) costs associated with increased guards and patrols. Since implementing its enhanced site security measures, Reclamation has treated its capital investments as nonreimbursable since the fortifications are responding to risks not anticipated when the projects were authorized and constructed. With respect to security-related O&M costs,

Reclamation initially classified these costs as non-reimbursable to allow water and power customers time to plan for increased costs in their budgets. Now, however, Reclamation views these costs as fully reimbursable based on project cost allocations.

Notwithstanding Reclamation's position, Congress subsequently intervened and limited Reclamation's ability to seek reimbursement for security-related O&M costs. In FY 2005, Congress instructed Reclamation not to begin the reimbursement process. In FY 2006, at Congress' request, Reclamation limited reimbursement to approximately 50% of overall O&M costs. In its FY 2007 budget request, Reclamation proposed reimbursement of \$18.9 million by water and power customers of security-related O&M costs. H.R. 1662 would resolve the issue of repayment for site security costs by expressly allocating specific costs for reimbursement while classifying other costs as non-reimbursable.

#### LEGISLATIVE HISTORY

H.R. 1662 was introduced on March 23, 2007 by Representative Grace Napolitano and referred to the Committee on Natural Resources. Representatives Jim Costa, Barbara Cubin, Trent Franks, Raúl Grijalva, Doc Hastings, Wally Herger, Cathy McMorris Rodgers, George Radanovich, and Rick Renzi are co-sponsors. Under suspension of the rules, H.R. 1662 passed the House of Representatives on December 4, 2007, and was referred to the Committee on Energy and Natural Resources in the Senate.

A companion measure, S. 1258, was introduced by Senator Cantwell on May 1, 2007, and referred to the Committee on Energy and Natural Resources. Senators Hatch, Wyden, Allard, and Smith are co-sponsors. The Subcommittee on Water and Power held a hearing on S. 1258 on July 26, 2007. (S. Hrg. 110-152.) At its business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered H.R. 1662 favorably reported.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by voice vote of a quorum present, recommends that the Senate pass H.R. 1662.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title of the Act.

*Section 2* provides that the capital costs for physical fortifications to address security needs at Bureau of Reclamation facilities shall be non-reimbursable.

*Section 3(a)* limits the Secretary of the Interior to allocating \$18,900,000 annually (indexed for inflation) as site security-related reimbursable operation and maintenance costs under Reclamation law.

*Section 3(b)* specifies how reimbursable site security costs allocated as part of the Central Valley Project of California shall be collected by the Secretary.

*Section 4(a)* authorizes the Secretary to develop policies and procedures to provide for payment of reimbursable site security costs.

*Section 4(b)* directs the Secretary, upon identifying the need for a site security measure, to provide project beneficiaries with writ-

ten notice of the need and requirements associated with the measure.

*Section 4(c)* requires the Secretary to consult with project beneficiaries regarding project-specific site security measures.

*Section 4(d)* requires the Secretary to consider cost containment measures recommended by project beneficiaries.

*Section 4(e)* requires the Secretary to report annually to Congress on current and future site security actions.

*Section 5* specifies that the level of project-specific Reclamation security costs that existed prior to September 11, 2001, shall remain reimbursable.

#### COST AND BUDGETARY CONSIDERATIONS

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

##### *H.R. 1662—Bureau of Reclamation Site Security Costs Act of 2007*

Since the terrorist attacks of September 11, 2001, the Bureau of Reclamation has enhanced security at its dams and associated facilities. The costs of those security measures fall into two general categories: capital costs, including improvements to physical infrastructure, and operation and maintenance (O&M) costs, such as increasing the number of guards and patrols at the dams and facilities. Under current law, entities that purchase water and hydroelectric power associated with the operation of those dams and facilities must reimburse the bureau for a portion of its O&M costs.

H.R. 1662 would limit the total amount of security-related O&M costs that such entities would pay to \$18.9 million a year, adjusted annually for inflation. The bureau expects to charge the entities no more than that amount, adjusted for inflation, over the next 10 years under current law. Thus, CBO estimates that enacting the legislation would have no significant impact on the budget.

H.R. 1662 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Tyler Kruzich. This estimate was approved by Teresa Gullo, 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 H.R. 1662. 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 H.R. 1662, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

H.R. 1662, as 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 Bureau of Reclamation at the Subcommittee hearing on July 26, 2007 on companion measure, S. 1258 follows:

STATEMENT OF LARRY TODD, DEPUTY COMMISSIONER, POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. I am pleased to be here today to present the Department of the Interior's views on S. 1258, legislation to amend the Reclamation Safety of Dams Act and redirect reimbursable costs for dam safety activities. The Department opposes S. 1258, as introduced.

S. 1258 would make major changes to the process and revenues used by Reclamation to secure its facilities resulting in a loss of receipts to the Treasury. This proposed legislation addresses two components of Reclamation's site security program: 1. capital investment (mainly facility fortification) and 2. operation and maintenance (O&M), which consists mainly of guards and patrol functions. Currently, Reclamation treats security-related capital investment as non-reimbursable costs, and security-related O&M expenses as project costs subject to reimbursement based on project cost allocation. S. 1258 would change this methodology, eliminating the distinction between capital investment and O&M costs so that Reclamation would be required to treat 85% of the capital investment and O&M security costs as non-reimbursable, while the remaining 15% would be recovered from the reimbursable project purposes.

Reclamation understands that the impetus for this legislation is concern over increased security related costs incurred for all Federal facilities after September 11, 2001. However, our agency has been and remains committed to working with our customers and with Congress to ensure fair, consistent and efficient policies related to the treatment of these costs. The Department does not believe that the changes instituted under S. 1258 would be a positive step in this direction.

As explained in reports submitted by Reclamation to Congress in May 2005 and February 2006, Reclamation distinguishes capital costs of security-related fortifications from security-related O&M costs. Since the beginning of increased security levels in fiscal year 2002, Reclamation has treated security-related capital investment as non-reimbursable. From fiscal year 2002 through the end of fiscal year 2007, for example, Reclamation will have funded over

\$66 million in fortification costs, none of which has been passed on to customers.

Treatment of post-9/11 O&M (guard and patrol) costs has been different, however. Early on, when security was increased at Reclamation facilities immediately after 9/11, Reclamation took the position that while these are clearly O&M costs, until a stable budget pattern emerged, and until customers had sufficient time to make the necessary adjustments to their planning and budgets, these costs should be non-reimbursable. Therefore, from FY 2002 through FY 2004, Reclamation's budget proposals called for post-9/11 security-related O&M costs to be treated as nonreimbursable.

However, in its FY 2005 and all subsequent budget proposals, Reclamation returned to the pre-9/11 practice of treating security-related O&M costs as reimbursable by project allocation. Report language which accompanies the FY 2005 Energy and Water Development Appropriation, however, directed Reclamation not to begin reimbursement in FY 2005, and additionally, provide a report to Congress on the delineation of planned reimbursable costs. Later, Congress' FY 2006 appropriations report language limited security-related O&M reimbursement to \$10 million out of total costs of \$20.9 million in FY 2006.

Reclamation's FY 2007 budget proposal anticipated total security-related O&M guard costs of \$20.9 million. Of that amount, \$2 million is allocated to non-reimbursable project purposes and requires appropriations. Reclamation anticipated full reimbursement of the remaining \$18.9 million, of which approximately \$11.6 million is in up-front funding not requiring appropriations, and approximately \$7.3 million would be repaid to the Treasury and requires appropriations. However, because a Continuing Resolution in FY 2007 left unanswered the reimbursement amounts for the current fiscal year, Reclamation has moved to collect \$14.5 million as a mid-point between the \$10 million cap in FY 2006 and the full \$18.9 million we expect to be reimbursable in FY 2008.

Under S. 1258, instead of the \$18.9 million future annual reimbursement Reclamation currently anticipates, Reclamation would instead receive only 15% of roughly \$33.1 million in total security-related O&M guard and fortification costs, or at most, about \$5 million each year depending upon the structure of repayment. This would result in an additional financial burden to the United States of about \$13.9 million per year in reduced reimbursement. Up-front funding would be reduced by approximately \$9.7 million annually and Reclamation would need additional appropriations in order to carry out planned security activities.

Reclamation believes this legislation could bring unintended results for Reclamation water and power customers. While the change to 15% reimbursement of security-related O&M costs would benefit some customers, the change to 15% reimbursement of currently non-reimburs-

able security-related capital costs would work to the detriment of customers in projects where future capital fortification expenditures are planned. Water and power customers of projects whose security fortifications were lower in priority and therefore not completed prior to the bill's enactment would be particularly disadvantaged. Furthermore, Reclamation would be required to collect these costs under multiple repayment contracts that could extend as long as 50 years.

Indeed, what is less certain are the future costs for facility fortifications that Reclamation's water and power customers would absorb as reimbursable. The total cost of internally-approved fortifications for FY 2007 and future years is \$35.4 million (\$78.8 million minus the \$43.4 million that was spent through FY 2006), and this figure does not include potentially significant additional fortification activities still under study. Under S. 1258, 15% of these fortification costs would become reimbursable by customers.

Reclamation has met with its customers frequently in the past several years on this issue, and we understand and share our contractors' desire for stable, predictable security assessments. We recognize that certainty, accountability, and transparency are important in the financing of this program. However, we believe that the site security program is now sufficiently established, and the benefits to contractors is sufficiently clear, so that reimbursable costs for our customers are adequately quantified, fairly allocated and understood in the ratepaying community.

Reclamation is interested in working with the subcommittee to address its customers' concerns in the administration of the security program. However, S. 1258 does not provide a workable solution to address those concerns. Mr. Chairman, this concludes my testimony. I am pleased to answer any questions the subcommittee may 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 H.R. 1662, as ordered reported.