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SENATE

{ REPORT
{ 110-375

SAN GABRIEL BASIN RESTORATION FUND ACT

JUNE 16, 2008.—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 H.R. 123]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 123) to authorize appropriations for the San Gabriel Basin Restoration Fund, 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. 123 is to authorize appropriations for the San Gabriel Basin Restoration Fund.

BACKGROUND AND NEED

The San Gabriel Basin supplies drinking water to 1.4 million people in eastern Los Angeles County, California. Volatile organic compounds, including suspected carcinogens, were discovered in the groundwater basin in 1979. Efforts to remove these compounds were moving forward under the federal Superfund program until 1997 when perchlorate was found in groundwater. This greatly complicated the cleanup process because different treatment methods were required. The perchlorate discovery closed a number of wells, cutting off the entire water supply for one water district and restricting water production for other producers. Faced with these problems, water producers and the San Gabriel Basin Water Quality Authority (WQA) began joint efforts to solve the immediate water supply problems and create a comprehensive solution. That effort led to establishment of the San Gabriel Basin Restoration Fund (Restoration Fund), originally authorized in 2000 as the San Gabriel Basin Water Quality Initiative (Public Law 106-554).

The Restoration Fund's authorized appropriations ceiling was established at \$85,000,000 in total for groundwater cleanup in the San Gabriel Basin and the Central Basin in Southern California. Specifically, up to \$75,000,000 was dedicated to the WQA to address contamination in the San Gabriel Basin, and up to \$10,000,000 for the Central Basin Municipal Water District (CBMWD) to address contamination in the Central Basin. Use of the Restoration Fund is restricted to (1) construction of groundwater treatment facilities and (2) operation and maintenance of facilities for no more than 10 years. The WQA is required to provide a 35% non-federal cost share on any federal funds obligated for the cleanup. While the initial authorizing legislation directed the Secretary of the Army to administer the Restoration Fund, Congress in 2002 began appropriating the Restoration Fund to the Bureau of Reclamation to administer (Public Law 107-66). According to information supplied to the Committee by the Bureau of Reclamation, as of November 2007, CBMWD has received the full \$10,000,000 originally authorized in P.L. 106-554, while the WQA has not yet received the full \$75,000,000 originally authorized. Therefore, all funds currently left under the current authorization ceiling of \$85,000,000 should be directed solely to the WQA.

LEGISLATIVE HISTORY

H.R. 123 was introduced in the House of Representatives by Representative David Dreier (CA) on January 4, 2007, and referred to the Committee on Natural Resources. Representatives Lucille Roybal-Allard, Adam Schiff, Grace Napolitano, Linda Sanchez, and Hilda Solis are co-sponsors. Under suspension of the rules, H.R. 123 passed the House of Representatives on December 11, 2007. The bill was received in the Senate and referred to the Committee on Environment and Public Works. On April 10, 2008, the bill was discharged, and referred to the Committee on Energy and Natural Resources. The Water and Power Subcommittee held a hearing on H.R. 123 on April 24, 2008. At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered H.R. 123 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 7, 2008, by voice vote of a quorum present, recommends that the Senate pass H.R. 123.

SECTION-BY-SECTION ANALYSIS

Section 1 amends the provision in P.L. 106-554 which established the San Gabriel Restoration Fund, by increasing the appropriations ceiling for the Restoration Fund from \$85,000,000 to \$146,200,000. Of this amount, section 1 sets aside a total of \$21,200,000 for the CBMWD, which provides it an additional \$11,200,000. The set-aside for CBMWD has the effect of reserving the balance of new authorized appropriations (\$50,000,000) for the WQA. Section 1 also declares that both the WQA and CBMWD will be responsible for providing a 35% non-federal cost share of any funds they receive pursuant to H.R. 123.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 123—An act to authorize appropriations for the San Gabriel Basin Restoration Fund

Summary: H.R. 123 would authorize the appropriation of additional amounts to the San Gabriel Basin Restoration Fund and would make the use of those funds contingent on the provision of matching funds by local entities in the state of California. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 123 would cost \$50 million over the 2009–2013 period. Enacting H.R. 123 would not affect direct spending or revenues.

H.R. 123 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: The estimated budgetary impact of H.R. 123 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—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	12	12	12	12	13
Estimated Outlays	10	10	10	10	10

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the beginning of fiscal year 2009 and that the necessary amounts will be appropriated for each year.

H.R. 123 would increase—from \$85 million to \$146.2 million—the total amount authorized to be appropriated to the San Gabriel Basin Restoration Fund. Under current law, the Secretary of the Interior, working in coordination with municipalities, is authorized to use amounts in that fund to help design and construct water quality projects in the San Gabriel River Basin in California and to reimburse those facilities' operation and maintenance costs.

Based on historical spending patterns from the fund and assuming appropriation of the necessary amounts, CBO estimates that implementing the legislation would cost \$50 million over the 2009–2013 period, with additional spending of \$11 million occurring in later years.

Intergovernmental and private-sector impact: H.R. 123 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Assuming appropriation of the authorized amounts, the San Gabriel Basin Water Quality Authority and the Central Basin Municipal Water District would receive an additional \$50 million over the five-year period for water restoration activities. That funding would be contingent on the provision of matching funds by those entities, but they would incur those costs voluntarily.

Previous CBO estimate: On December 11, 2007, CBO transmitted a cost estimate for H.R. 123 as ordered reported by the House Committee on Natural Resources on November 15, 2007.

The two versions of the legislation would authorize the same total amount of funding for the San Gabriel Basin Restoration Fund, and our estimates of discretionary spending are the same. The House version would allow the Secretary of the Interior to invest unspent balances in the fund, which would increase direct spending by an estimated \$3 million over the 2008–2013 period.

Estimate prepared by: Federal costs: Tyler Kruzich; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, 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. 123. 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. 123, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 123, 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 April 24, 2008 on H.R. 123 follows:

STATEMENT OF ROBERT W. JOHNSON, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, I am Robert Johnson, Commissioner of the Bureau of Reclamation. I am pleased to be here today to give the Department's views on H.R. 123, a proposal to increase the ceiling on funds authorized to be appropriated to the San Gabriel Basin Restoration Fund. The Administration does not support H.R. 123.

Groundwater contamination was first detected in the San Gabriel Valley in 1979. Following this discovery, the U.S. Environmental Protection Agency designated major portions of the region's groundwater as Superfund sites. Between 1990 and 1997, EPA identified Potentially Responsible Parties at the site who then engaged in negotiations with local water agencies and began initial design work on an EPA-developed basin-wide plan to set cleanup priorities. After reaching a detailed agreement with seven local water agencies in March 2002, design work was completed and construction work began. Construction of the

four planned groundwater extraction and treatment facilities was largely completed in 2006.

As part of this effort to clean up the groundwater contamination in the San Gabriel Basin and prevent the contamination from spreading into the adjacent Central Basin, the San Gabriel Basin Restoration Fund (Fund) was established in 2001 by P.L. 106-554. Originally established as a Defense Department account and subsequently transferred to the Interior Department, this interest-bearing account reimburses the San Gabriel Basin Water Quality Authority (WQA) and the Central Basin Municipal Water District (District) for designing and constructing facilities that help with groundwater cleanup efforts in the Basin. The Fund is also authorized to reimburse the WQA and District for operating and maintaining these facilities for up to 10 years. A 35 percent non-Federal share is required for projects. This cost-share can be met by credits given to the WQA for expenditures used for water quality projects that have already been built in the San Gabriel Basin, in lieu of depositing the required 35 percent non-Federal share for these projects into the Fund. To date, the entire non-Federal share has been met by credits that have been certified by Reclamation.

In Fiscal Year 2001, Congress appropriated \$23 million for deposit into the Fund. The Energy and Water Appropriations Act for Fiscal Year 2002 (P.L. 107-66), transferred administrative responsibility for the fund from the Secretary of the Army to the Secretary of the Interior, and appropriated an additional \$12 million. Appropriations in fiscal years 2003-2008 brought the total deposits to the Fund to \$71.71 million. In addition, the Fund has accumulated over \$2.8 million in interest.

Reclamation has executed six grant agreements under the Restoration Fund authority. One grant agreement is with the Central Basin Municipal Water District, covering design, construction, operation, and maintenance of their facility, up to the \$10 million ceiling established by the legislation for this component. The other five agreements are with the WQA. Four cover the design and construction of specific facilities, and the fifth agreement covers operation and maintenance of those four facilities.

The total estimated cost of the project authorized by the legislation is about \$204 million. Based on this cost estimate, about \$69 million would be allocated for the completion of all five facilities, and about \$135 million would be allocated to fund the operation and maintenance of all five facilities for 10 years, as authorized.

The San Gabriel Basin Restoration Fund is and will continue to be used for important local projects. Reclamation must allocate its scarce budget toward funding already authorized projects within the agency's traditional mission of delivering water and power in an environmentally responsible and cost-efficient manner, with emphasis on the needs of aging infrastructure, the safety of existing facilities and dams, and ongoing environmental restoration ef-

forts. The Administration has not budgeted for the San Gabriel Basin Restoration Fund in any of the preceding fiscal years. The Administration believes that resources should be allocated to achieving priorities within Reclamation's traditional mission area and does not support the \$61.2 million cost ceiling increase proposed in H.R. 123. Reclamation, however, will continue to work with the WQA and the District when possible to advance the goal of groundwater cleanup in the San Gabriel Basin.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 123. I would be happy to answer any questions at this time.

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 H.R. 123 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):

CONSOLIDATED APPROPRIATIONS ACT, 2001

SAN GABRIEL BASIN, CALIFORNIA

Public Law 106-554 (114 Stat. 2763A-222)

SEC. 110. SAN GABRIEL BASIN, CALIFORNIA.

(a) SAN GABRIEL RESTORATION.—

(1) ESTABLISHMENT OF FUND.—There shall be established within the Treasury of the United States an interest-bearing account to be known as the San Gabriel Basin Restoration Fund (in this section referred to as the "Restoration Fund").

(2) ADMINISTRATION OF FUND.—The Restoration Fund shall be administered by the Secretary of the Interior, in cooperation with the San Gabriel Basin Water Quality Authority or its successor agency.

(3) PURPOSES OF FUND.—

(A) IN GENERAL.—Subject to subparagraph (B), the amounts in the Restoration Fund, including interest accrued, shall be utilized by the Secretary—

* * * * *

(B) COST-SHARING LIMITATION.—

(i) IN GENERAL.—The Secretary may not obligate any funds appropriated to the Restoration Fund in a fiscal year until the Secretary has deposited in the Fund an amount provided by non-Federal interests sufficient to ensure that at least 35 percent of any funds obligated by the Secretary are from funds provided to the Secretary by the non-Federal interests.

(ii) NON-FEDERAL RESPONSIBILITY.—The San Gabriel Basin Water Quality Authority shall be responsible for providing the non-Federal amount required by clause (i). The State of California, local government agencies,

and private entities may provide all or any portion of such amount.

(iii) CREDITS TOWARD NON-FEDERAL SHARE.—For purposes of clause (ii), the Secretary shall credit the San Gabriel Basin Water Quality Authority with the value of all prior expenditures by non-Federal interests made after February 11, 1993, that are compatible with the purposes of this section, including—

(I) all expenditures made by non-Federal interests to design and construct water quality projects, including expenditures associated with environmental analyses and public involvement activities that were required to implement the water quality projects in compliance with applicable Federal and State laws; and

(II) all expenditures made by non-Federal interests to acquire lands, easements, rights-of-way, relocations, disposal areas, and water rights that were required to implement a water quality project.

(iv) NON-FEDERAL MATCH.—After \$85,000,000 has cumulatively been appropriated under subsection (d)(1), the remainder of Federal funds appropriated under subsection (d) shall be subject to the following matching requirement:

(I) San Gabriel Basin Water Quality Authority.—The San Gabriel Basin Water Quality Authority shall be responsible for providing a 35 percent non-Federal match for Federal funds made available to the Authority under this Act.

(II) Central Basin Municipal Water District shall be responsible for providing a 35 percent non-Federal match for Federal funds made available to the District under this Act.

(4) INTEREST ON FUNDS IN RESTORATION FUND.—No amounts appropriated above the cumulative amount of \$85,000,000 to the Restoration Fund under subsection (d)(1) shall be invested by the Secretary of the Treasury in interest-bearing securities of the United States.

* * * * *

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Restoration Fund established under subsection (a) ~~[\$85,000,000]~~ \$146,200,000. Such funds shall remain available until expended.

(2) SET-ASIDE.—Of the amounts appropriated under paragraph (1), no more than ~~[\$10,000,000]~~ \$21,200,000 shall be available to carry out the Central Basin Water Quality Project.

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