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FONTENELLE RESERVOIR

SEPTEMBER 9, 2015.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1305]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1305) to amend the Colorado River Storage Project Act to authorize the use of the active capacity of the Fontenelle Reservoir, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORITY TO MAKE ENTIRE ACTIVE CAPACITY OF FONTENELLE RESERVOIR AVAILABLE FOR USE.

(a) **IN GENERAL.**—The Secretary of the Interior, in cooperation with the State of Wyoming, may amend the Definite Plan Report for the Seedskafee Project authorized under the first section of the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620), to provide for the study, design, planning, and construction activities that will enable the use of all active storage capacity (as may be defined or limited by legal, hydrologic, structural, engineering, economic, and environmental considerations) of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of Fontenelle Dam to allow the active storage capacity of Fontenelle Reservoir to be used for those purposes for which the Seedskafee Project was authorized.

(b) **COOPERATIVE AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretary of the Interior may enter into any contract, grant, cooperative agreement, or other agreement that is necessary to carry out subsection (a).

(2) **STATE OF WYOMING.**—

(A) **IN GENERAL.**—The Secretary of the Interior shall enter into a cooperative agreement with the State of Wyoming to work in cooperation and collaboratively with the State of Wyoming for planning, design, related preconstruction activities, and construction of any modification of the Fontenelle Dam under subsection (a).

(B) REQUIREMENTS.—The cooperative agreement under subparagraph (A) shall, at a minimum, specify the responsibilities of the Secretary of the Interior and the State of Wyoming with respect to—

(i) completing the planning and final design of the modification of the Fontenelle Dam under subsection (a);

(ii) any environmental and cultural resource compliance activities required for the modification of the Fontenelle Dam under subsection (a) including compliance with—

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(II) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(III) subdivision 2 of division A of subtitle III of title 54, United States Code; and

(iii) the construction of the modification of the Fontenelle Dam under subsection (a).

(c) FUNDING BY STATE OF WYOMING.—Pursuant to the Act of March 4, 1921 (41 Stat. 1404, chapter 161; 43 U.S.C. 395), and as a condition of providing any additional storage under subsection (a), the State of Wyoming shall provide to the Secretary of the Interior funds for any work carried out under subsection (a).

(d) OTHER CONTRACTING AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Interior may enter into contracts with the State of Wyoming, on such terms and conditions as the Secretary of the Interior and the State of Wyoming may agree, for division of any additional active capacity made available under subsection (a).

(2) TERMS AND CONDITIONS.—Unless otherwise agreed to by the Secretary of the Interior and the State of Wyoming, a contract entered into under paragraph (1) shall be subject to the terms and conditions of Bureau of Reclamation Contract No. 14-16 06-400-2474 and Bureau of Reclamation Contract No. 14-06-400-6193.

SEC. 2. SAVINGS PROVISIONS.

Unless expressly provided in this Act, nothing in this Act modifies, conflicts with, preempts, or otherwise affects—

(1) the Act of December 31, 1928 (43 U.S.C. 617 et seq.) (commonly known as the “Boulder Canyon Project Act”);

(2) the Colorado River Compact of 1922, as approved by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000);

(3) the Act of July 19, 1940 (43 U.S.C. 618 et seq.) (commonly known as the “Boulder Canyon Project Adjustment Act”);

(4) the Treaty between the United States of America and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, and supplementary protocol signed November 14, 1944, signed at Washington February 3, 1944 (59 Stat. 1219);

(5) the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31);

(6) the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.);

(7) the Colorado River Basin Project Act (Public Law 90-537; 82 Stat. 885); or

(8) any State of Wyoming or other State water law.

2. Amend the title so as to read: “A bill to authorize the Secretary of the Interior to amend the Definite Plan Report for the Seedskadee Project to enable the use of the active capacity of the Fontenelle Reservoir.”.

PURPOSE

The purpose of S. 1305 is to amend the Colorado River Storage Project Act to authorize the use of the active capacity of the Fontenelle Reservoir.

BACKGROUND AND NEED

Fontenelle Reservoir is a principal feature of the Seedskadee Project, one of the initial projects authorized under the Colorado River Storage Project Act of 1956. Authorized uses of Fontenelle

Reservoir storage water include irrigation, fish and wildlife, recreation, and domestic, industrial and municipal stock watering, as primary purposes, with power generation specified as the only secondary purpose.

Currently, the State of Wyoming has the right to perpetually market 120,000 acre-feet of the original 190,250 acre-feet active capacity from the reservoir. However, in order to increase the use of water storage and supplies from the reservoir, infrastructure improvements must be made to prevent erosion. This bill would provide authority for the Secretary to enter into an agreement with the State of Wyoming to complete this work.

S. 1305 would authorize the Secretary of the Interior to enter into an agreement with the State of Wyoming to place riprap around the reservoir, on the condition that the State pay for the entire project, including the study, design, planning, and construction of the project.

LEGISLATIVE HISTORY

S. 1305 was introduced by Senator Barrasso on May 12, 2015. Companion legislation, H.R. 2273, was introduced by Representative Lummis in the House of Representatives on the same day. The Subcommittee on Water and Power held a legislative hearing on S. 1305 on June 18, 2015.

The Committee on Energy and Natural Resources met in open business session on July 30, 2015, and ordered S. 1305 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on July 30, 2015, by a majority voice vote of a quorum present, recommended that the Senate pass S. 1305, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 1305, the Committee adopted an amendment in the nature of a substitute and an amendment to the title.

The substitute amendment modifies section 1 to remove language that would have amended the Colorado River Storage Project Act to include a new section 17 in order to provide the authority under the bill to expand the Fontenelle Reservoir's capacity.

The title amendment strikes the title for S. 1305 as introduced and inserts "A bill to authorize the Secretary of the Interior to amend the Definite Plan Report for the Seedskadee Project to enable the use of the active capacity of the Fontenelle Reservoir.

SECTION-BY-SECTION ANALYSIS

Section 1(a) authorizes the Secretary of the Interior to work with the State of Wyoming through cooperative agreements to enable the use of all active storage capacity of the Fontenelle Dam and Reservoir. *Section 1(b)* outlines the minimally required components of the agreements, including that the State of Wyoming shall be responsible for all funding of activities carried out under this act.

Section 2 includes savings provisions specifying that nothing in this act modifies, conflicts with, preempts, or otherwise affects the Boulder Canyon Project Act, the Colorado River Compact of 1922; the Boulder Canyon Project Adjustment Act; the Treaty between the U.S. and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande; the Upper Colorado River Basin Compact; the Colorado River Storage Project Act; the Colorado River Basin Project Act; or any State of Wyoming or other State water law.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1305—A bill to amend the Colorado River Storage Project Act to authorize the use of the active capacity of the Fontenelle Reservoir

S. 1305 would authorize the Bureau of Reclamation (BOR) to plan and construct a project to expand water storage at Fontenelle Dam and Reservoir in southwestern Wyoming. Based on information from the BOR, CBO estimates that implementing the legislation would have an insignificant net cost. Because implementing S. 1305 would affect direct spending, pay-as-you-go procedures apply. Enacting S. 1305 would not affect revenues.

Under current law, the amount of water storage available to the State of Wyoming at the reservoir is the difference between full capacity and the lowest water level that allows all of the authorized purposes of the Fontenelle project to be performed. Under the bill, the BOR would coordinate with the State of Wyoming to design and construct modifications to Fontenelle Dam and Reservoir to allow the project to operate at a lower water level, thus expanding the amount of storage available to the state. S. 1305 also would require the state to contribute 100 percent of the costs to design and construct the project. (Those contributions would be recorded in the budget as offsetting receipts and would subsequently be spent without further appropriation.)

S. 1305 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit the State of Wyoming. Any costs incurred by state agencies related to the federal water project would be incurred voluntarily as conditions of receiving federal assistance.

The CBO staff contacts for this estimate are Aurora Swanson (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, 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 the bill.

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 the bill, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

The bill, 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 June 18, 2015, Water and Power Subcommittee hearing on S. 1305 follows:

STATEMENT OF DIONNE THOMPSON, DEPUTY COMMISSIONER
FOR EXTERNAL AND INTERGOVERNMENTAL AFFAIRS, BU-
REAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 1305, which would amend the Colorado River Storage Project Act (Public Law 84-485). The amendment authorizes Reclamation to increase the active capacity and, as a result, the amount of water developed by Fontenelle Reservoir in Wyoming. With the concerns described below appropriately noted, the Department does not oppose S. 1305 in its current form.

Fontenelle Reservoir is part of the Seedskaadee Project, a participating project under P.L. 84-485. The dam and reservoir are located in the Upper Green River Basin in southwestern Wyoming about 50 miles from Rock Springs. Fontenelle Dam is an embankment dam standing 139 feet high with a crest length of over a mile (5,421 feet). Fontenelle Reservoir has a total capacity of 345,360 acre-feet and is operated for municipal and industrial water use, power production, flood control, and fish and wildlife—in support of the Seedskaadee National Wildlife Refuge. Recreation facilities at Fontenelle Reservoir are managed by the Bureau of Land Management under an agreement with Reclamation.

The intent of S. 1305 is to increase the yield of Fontenelle Reservoir, further developing the State of Wyoming's allocation of Colorado River water under the Colorado River Compact. To understand how S. 1305 would increase the water available to Wyoming, it is important to review some basic engineering features associated with Fontenelle Dam.

In general, the active capacity of a reservoir is the space between the highest elevation at which water can be stored and the lowest elevation from which water can be released so as to allow operation for all authorized pur-

poses. Power is an authorized purpose of the Seedska-dee Project. The lowest elevation at which Fontenelle Power-plant can be safely operated is approximately 40 feet above the bottom elevation of the inlet to the powerplant, and is referred to as "minimum power pool elevation."

In order to protect the upstream face of a dam from erosion caused by wave action, large stones that are resistant to erosion and wave action are placed on the upstream side of the dam. These stones are referred to as "riprap". In keeping with engineering practices, Fontenelle Dam includes riprap protection on the upstream face of the embankment. Because the dam would not be operated with any frequency below the lowest power production elevation, original construction and subsequent modifications did not include placing riprap on the upstream face of dam below minimum power pool elevation.

For some years, the State of Wyoming has expressed interest in placing riprap below the minimum power pool elevation, and this project has come to be known as the "Riprap Project." By doing so, it would be possible to operate the reservoir within a greater range of elevations—increasing the operating range and yield of the reservoir. S. 1305 would authorize the Department to undertake the "study, planning, design and construction activities" necessary to consider and implement the Riprap Project (a lowering of the elevation of the riprap).

In considering the Riprap Project, Reclamation has had concerns, and we appreciate the chance to review this legislation as it was drafted over the past several months. We are pleased to note that each of these concerns appears to be addressed in the introduced language of S. 1305.

S. 1305 amends P.L. 84-485 to authorize consideration and implementation of the Riprap Project. In doing so, it grounds the Riprap Project on the statute that originally authorized the Seedska-dee Project. S. 1305 relies upon the authority of the Contributed Funds Act (Act of March 4, 1921) as the means for the State of Wyoming to provide the funding to consider and undertake the Riprap Project. With this arrangement, Reclamation believes that the Riprap Project can be implemented without any request for new appropriations, and with no foreseeable impact to Reclamation's already constrained budget.

It is unlikely that the Riprap Project will adversely affect other states dependent on the Colorado River or Mexico beyond what they would face when the Upper Basin States make full utilization of their apportionments, considering their apportionments and required releases from the Upper Basin to the Lower Basin under current operational guidelines that implement key provisions of the Law of the River including the Colorado River Compact. Having said that, if S. 1305 becomes law, it will be important to conduct additional analysis to ensure that other interests are protected. S. 1305 includes the following elements that should provide some assurance of no adverse impacts to other water uses.

First, S. 1305 appears to create robust sideboards to prevent the Riprap Project from conflicting with law, compacts, and treaties. This protects against Wyoming expanding its entitlement to Colorado River water. In Section 2, S. 1305 provides reassurance that it will not modify, conflict with, preempt, or otherwise affect any applicable federal statutes or decrees, including, but not limited to:

- Boulder Canyon Project Act
- Colorado River Compact of 1922
- Boulder Canyon Project Adjustment Act
- Treaty between the United States of America and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande
- Upper Colorado River Basin Compact
- Colorado River Storage Project Act (P.L. 84-485), other than as indicated in Section 1 of S. 1305
- Colorado River Basin Project Act (Public Law 90-537; 82 Stat. 885)
- Any State of Wyoming or other State water law

Second, S. 1305 amends P.L. 84-485 to authorize the planning, design, and construction of the Riprap Project. The bill's stated purposes include "making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively." P.L. 84-485 sets a clear boundary around the Riprap Project; it cannot permit Wyoming to expand its entitlements under the Colorado River Compact and the Upper Colorado River Basin Compact.

Another important element of S. 1305 is the definition of active storage capacity. Although active capacity can generally be understood as the difference between the upper and lower elevations at which a reservoir may be operated, the elevation of both the upper and lower limit may also be defined by considerations beyond engineering. Other considerations often limit the degree to which a reservoir may be drained. These considerations include issues of law, hydrology, economics, and environment. S. 1305 acknowledges these limitations; in the bill "active storage capacity" is "defined or limited by legal, hydrologic, structural, engineering, economic, and environmental considerations."

Environmental compliance concerns also are addressed under S. 1305. The bill requires compliance under the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act.

While S. 1305 is clearly written to integrate with existing law, regulations and contracts, there are some questions associated with operation and design that may limit the scope of the Riprap Project. Reclamation has not studied the operation of Fontenelle Dam at the lower elevations proposed under the Riprap Project. The original planning and design for the facility did not include oper-

ations at such low levels. Operation at lower levels could raise the following issues that should be explored by the study to be authorized by this Act:

- **Water Delivery Requirements**—At lower reservoir elevations, the rate at which the reservoir can be drained is slowed (because of the reduced hydraulic head). Without the study and planning that would be conducted pursuant to this bill, Reclamation does not know whether water can be delivered at such rates as would be necessary.

- **Instream Flows**—Under current operations and agreements, Reclamation is required to deliver 5,000 acre-feet to the Seedska-dee National Wildlife Refuge for fish and wildlife purposes on an annual basis. As noted above, without additional study Reclamation does not know whether it will be able to meet these flow requirements at lower reservoir levels.

- **Power Generation**—Operating the reservoir at lower elevations will affect powerplant operations. There would be periods when the powerplant cannot be operated efficiently and when the powerplant cannot be operated at all. The result will be impacts on Reclamation's ability to generate and deliver power under P.L. 84-485. There is a potential for impacts to irrigators and municipalities that use Colorado River Storage Project power as well as to the members of the Colorado River Energy Distributors Association, which rely upon and purchase the power.

That concludes my statement. I am pleased to answer questions at the appropriate time.

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 as ordered reported.

