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PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM EXTENSION ACT

OCTOBER 24, 2019.—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. 990]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 990) to authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program First Increment Extension for threatened and endangered species in the Central and Lower Platte River Basin, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 990 is to authorize the Secretary of the Interior (Secretary) to continue the cooperative effort among the Federal and non-Federal entities through the implementation of the Platte River Recovery Implementation Program First Increment Extension for threatened and endangered species in the Central and Lower Platte River Basin.

BACKGROUND AND NEED

The Platte River Recovery and Implementation Program (PRRIP or Program) is a partnership between the Department of the Interior (DOI) and the states of Colorado, Nebraska, and Wyoming aimed at recovering endangered species and complying with the Endangered Species Act within the Central and Lower Platte basin. DOI entered into a cooperative agreement with these states in 1997, and in 2006 the Bureau of Reclamation (Reclamation) released a Final Programmatic Environmental Impact Statement, the

Fish and Wildlife Service issued a final Biological Opinion, and the Record of Decision was signed for the Program.

PRRIP targets four listed species through land, water, and adaptive management goals. The four target species include the endangered whooping crane, interior least tern, and pallid sturgeon, and the threatened piping plover. The water plan's objective is to increase flows in the central Platte River area through incentive-based water projects in order to maintain habitat for the target species. The land plan's goals are to protect, and where appropriate, restore critical habitat. The adaptive management plan's goals are to improve production, avoid adverse impacts, and improve survival of the various listed species.

Congress authorized the first increment of PRRIP in 2008 (section 515 of the Consolidated Natural Resources Act of 2008, Public Law 110-229). During the first increment, progress toward endangered species compliance included development of operation depletion plans for each state, an integrated monitoring and research plan, over 12,000 acres of habitat lands acquired and under management, and 90,000 acre-feet (AF) per year of secure water supplies.

PRRIP is currently set to expire in 2020 and legislation is needed to extend the program to allow further progress toward long-term objectives, including development and acquisition of 120,000 AF per year of total water assets for the program, an additional 1,500 acres of complex habitat to the current land inventory, and continuation of the adaptive management program to better understand the science and ecology of target species. S. 990 extends the program by an additional 13 years, through 2033.

LEGISLATIVE HISTORY

S. 990 was introduced by Senators Barrasso, Gardner, Fischer, Bennet, and Enzi on April 4, 2019. The Subcommittee on Water and Power held a hearing on the measure on June 26, 2019.

Identical companion legislation, H.R. 3237, was introduced in the House of Representatives by Representative Neguse on June 12, 2019. The Subcommittee on Water, Oceans and Wildlife held a hearing on the bill on June 24, 2019.

The Senate Committee on Energy and Natural Resources met in open business session on September 25, 2019, and ordered S. 990 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 25, 2019, by a majority voice vote of a quorum present, recommends that the Senate pass S. 990.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 sets forth the short title.

Sec. 2. Purpose

Section 2 states the purpose.

Sec. 3. Definitions

Section 3 defines key terms.

Sec. 4. Platte River Recover Implementation Program

Subsection (a) authorizes the Secretary to participate in PRRIP and carry out implementation-related projects and activities, including entering into contracts and agreements, acquiring interests in land, water, and facilities from willing sellers, and accepting or providing grants.

Subsection (b) requires the states to contribute not less than 50 percent of the total contributions needed to implement the program. The subsection specifies that the states' non-Federal contributions are to be comprised of an additional \$28 million, and additional credit, as determined by the Secretary, for contributions of land and water. The subsection also allows in-kind goods and services to provide a portion of the Federal or non-Federal shares, if approved by the Program's Governance Committee.

Subsection (c) authorizes the modification or amendment of the Program before completion of the First Increment Extension if the Secretary and states determine a modification or amendment is consistent with the purposes of PRRIP.

Subsection (d)(1) states that no action taken pursuant to section 4 shall, with respect to acreage limitations provisions of Reclamation laws, be used to: (A) determine whether a water district has repaid the construction costs of project facilities; (B) reinstate acreage limitations on a district that has repaid its construction obligations; or (C) increase a district's construction repayment obligation.

Subsection (d)(2) states that section 4 does not create Federal water rights or require water rights to be granted to Federal entities.

Subsection (e) authorizes an additional \$78 million in appropriations above the \$157.1 million authorized in 2008 and specifies that those funds are non-reimbursable Federal expenditures. The subsection further directs any fund balance to be adjusted for inflation annually and specifies that any unexpended funds may be retained and carried over for future use, including from the First Increment to the First Increment Extension.

Subsection (f) terminates the Secretary's authority to implement the First Increment Extension on September 30, 2033.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the internet at www.cbo.gov.

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. 990. 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. 990, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 990, as ordered 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 Department of the Interior at the June 26, 2019, hearing on S. 990 follows:

STATEMENT OF KIEL WEAVER, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Chairman McCally, Ranking Member Cortez Masto, and Members of the Subcommittee, I am Kiel Weaver, Principal Deputy Assistant Secretary for Water and Science with the U.S. Department of the Interior (“Department”). Thank you for the opportunity to provide the views of the Department on several water related pieces of legislation. I will address each of these individually.

S. 990—the Platte River Recovery Implementation Program Extension Act

The Department’s participation, collaboration with the States of Colorado, Wyoming, and Nebraska, in the Platte River Recover Implementation Program (Program) was authorized under Sec. 515 of the Consolidated Natural Resources Act of 2008 (P.L. 110–229.) S. 990, sponsored by Senator John Barrasso (R–WY), would reauthorize the Department’s continued participation, allowing for an extension of the Program for thirteen years from January 1, 2020 through December 31, 2032.

During the first thirteen years of the Program (referred to as the “First Increment”) eight of ten milestones have been achieved, with two remaining. One remaining milestone is the Program’s Water Action Plan, which is to provide 50,000 acre-feet of water for shortage reduction to U.S. Fish and Wildlife Service target flows in the central Platte River. The other remaining milestone is the completion of the Nebraska New Depletions Plan, which is a responsibility of the state of Nebraska. The Program has allowed existing water and power related projects with a federal nexus within the Platte River basin, including Reclamation’s projects on the North and South Platte Rivers, to continue to operate as they have historically while providing an avenue for new water development projects to be developed in compliance with the Endangered Species Act through more efficient, streamlined consultations. The Program has implemented five Water Action Plan projects which provide approximately 14,000 acre-feet of water on

an annual basis and has acquired an interest in approximately 12,600 acres of habitat for threatened and endangered species. In addition, the Program has implemented an Integrated Monitoring and Research Plan and Adaptive Management Plan to monitor target species, Central Platte River habitat conditions, and the effects of Program management actions on the species.

The Program has been successful, providing an avenue for different parties and competing interests to find collaborative solutions to improving habitat conditions for the target species while allowing water use and development within the Platte River basin to continue. If the Program is not reauthorized, regulatory certainty for water and power users within the Platte River basin could be lost, which would jeopardize the continued operation of Reclamation projects in the basin and have detrimental effects on the delivery of water and power to Reclamation customers.

The Platte River Recovery Implementation Program is important to providing continued ESA compliance for the operation of Reclamation projects in the Platte River basin. The Department is supportive and urges reauthorization.

Conclusion

Again, thank you for the opportunity to testify. The Department looks forward to working closely with this Committee on these bills. I would be happy to answer any questions.

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 S. 990 as ordered reported.

