118TH CONGRESS
2d Session } HOUSE OF REPRESENTATIVES { REPORT
118–734

URBAN CANAL MODERNIZATION ACT

NOVEMBER 14, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 6107]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6107) to amend the Omnibus Public Land Management Act of 2009 to authorize certain extraordinary operation and maintenance work for urban canals of concern, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Urban Canal Modernization Act".

SEC. 2. EXTRAORDINARY OPERATION AND MAINTENANCE WORK PERFORMED BY THE SECRETARY OF THE INTERIOR.

(a) DEFINITIONS.—Section 9601 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 510) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), (6), (7), and (1), respectively;

(2) by moving paragraph (1) (as so redesignated) to appear before paragraph (2) (as so redesignated);

(3) in paragraph (3) (as so redesignated), by striking "et seq.)" and inserting "et seq.))";

(4) in paragraph (4) (as so redesignated), by striking "mean" and inserting "means"; and

(5) by adding at the end the following:

"(8) URBAN CANAL OF CONCERN.—The term 'urban canal of concern' means a transferred works or segment of a transferred works that is classified as an urban canal reach, the failure of which the Secretary determines would result in loss of life in the vicinity of the failed transferred works or segment of transferred works with an estimated at-risk population of more than 100 individuals.".

(b) EXTRAORDINARY MAINTENANCE AND OPERATION WORK ON URBAN CANAL OF CONCERNS.—Section 9603 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 510b) is amended by adding at the end the following:

"(e) EXTRAORDINARY OPERATION AND MAINTENANCE WORK ON URBAN CANALS OF CONCERN.—

"(1) IN GENERAL.—The Secretary or the transferred works operating entity shall carry out any extraordinary operation and maintenance work on an urban canal of concern that the transferred works operating entity, with the concurrence of the Secretary, determines to be necessary.

"(2) FUNDING.—In the case of extraordinary operation and maintenance work on an urban canal of concern authorized under paragraph (1), or if the Secretary determines that a project facility inspected and maintained pursuant to the guidelines and criteria set forth in section 9602(a) requires extraordinary operation and maintenance work pursuant to paragraph (1), the Secretary shall provide Federal funds on a nonreimbursable basis sufficient to cover 35 percent of the portion of total cost of the extraordinary operation and maintenance work allocable to the transferred works operating entity that is needed to carry out the extraordinary operation and maintenance work on the urban canal of concern, with the remaining share of any additional Federal funds advanced by the Secretary for the extraordinary operation and maintenance work to be repaid under subsection (b).".

PURPOSE OF THE LEGISLATION

The purpose of H.R. 6107 is to amend the Omnibus Public Land Management Act of 2009 to authorize certain extraordinary operation and maintenance work for urban canals of concern.

BACKGROUND AND NEED FOR LEGISLATION

Established in 1902, the Bureau of Reclamation (Reclamation) provides water for agricultural, municipal, and industrial purposes throughout the western United States. Reclamation projects also provide energy produced by hydropower facilities and maintain ecosystems that support fish and wildlife, hunting, fishing, and other recreation, as well as rural economies.[1]

Reclamation has asset management responsibility for a diverse portfolio of water and power related constructed assets, with many facilities which are well over 100 years old.[2] Reclamation generally operates under a beneficiary-pays model in which federal funds are repaid by the project beneficiaries, such as irrigation districts and municipalities. To address its aging infrastructure needs, Congress authorized Reclamation to fund extraordinary maintenance work and execute contracts for extended repayment of the reimbursable costs.[3] In 2020, Congress expanded these authorities by establishing the Aging Infrastructure Account, requiring an annual application process and a Congressional reporting requirement on Major Rehabilitation and Replacement long-term capital and repair work, categorization of repair work, and regular reporting of information related to Reclamation's investments in infrastructure.[4] The latest report was published on March 2023.[5] Importantly, these authorities do not include extended repayment of annual, routine operation, maintenance, and replacement costs.

[1] Statement of Commissioner Touton, U.S. Bureau of Reclamation, Before the Natural Resources Committee Subcommittee on Water, Wildlife, and Fisheries U.S. House of Representatives on the President's Fiscal Year 2024 Budget, May 23, 2023. https://www.doi.gov/ocl/bor-budget-4.

[2] "Infrastructure Asset Management Program" U.S. Bureau of Reclamation. https://www.usbr.gov/assetmanagement/iam.html.

[3] Section 9603 of the Omnibus Lands Act of 2009 (P.L. 111–11).

[4] John D. Dingell, Jr. Conservation, Management, and Recreation Act, P.L. 116–9, Sections 8601–8303 (Reclamation Transparency Act).

[5] March 2023 Asset Management Report, https://www.usbr.gov/infrastructure/mrr/docs/asset-management-report-to-congress2023.pdf.

Reclamation owns over 8,000 miles of canals which are operated and maintained in partnership with irrigation and water districts.[6] Reclamation's canals were originally constructed through relatively unpopulated areas in the western United States. Today, some of Reclamation's canals are subject to the spread of urban development and could pose a potential risk to populated areas in the event of a failure. According to Reclamation, approximately 880 miles of canals are identified as crossing through or in the vicinity of a populated area.[7] H.R. 6107, as amended, makes changes to the Aging Infrastructure authorities by providing a 35 percent federal cost share for the extraordinary maintenance of urban canals of concern.

Committee Action

H.R. 6107 was introduced on October 26, 2023, by Rep. Michael Simpson (R–ID). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Wildlife and Fisheries. On November 14, 2023, the Subcommittee on Water, Wildlife and Fisheries held a hearing on the bill. On September 19, 2024, the Committee on Natural Resources met to consider the bill. The Subcommittee on Water, Wildlife and Fisheries was discharged from further consideration of H.R. 6107 by unanimous consent. Chairman Bruce Westerman (R–AR) offered an amendment designated Westerman #1. The amendment was agreed to by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

Hearings

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Wildlife and Fisheries held on November 14, 2023.

Section-by-Section Analysis

Section 1. Short title

Establishes the short title of this bill as the "Urban Canal Modernization Act".

Section 2. Extraordinary operation and maintenance work performed by the Secretary of the Interior

Amends the Omnibus Public Land Management Act of 2009 (43 U.S.C. 510) to allow for a 35 percent non reimbursable cost share for extraordinary operation and maintenance work on an urban canal of concern. The bill, as amended, defines an urban canal of concern as "a transferred works or segment of a transferred works that is classified as an urban canal reach, the failure of which the Secretary determines would result in loss of life in the vicinity of

[6] "Water Conveyance Program" U.S. Bureau of Reclamation. https://www.usbr.gov/assetmanagement/Conveyance.html.

[7] Statement for the Record, Bureau of Reclamation on H.R. 6107. https://docs.house.gov/meetings/II/II13/20231114/116531/HHRG09118-II130920231114-SD013.pdf.

the failed transferred works or segment of transferred works with an estimated at-risk population of more than 100 individuals."

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Omnibus Public Land Management Act of 2009 to authorize certain extraordinary operation and maintenance work for urban canals of concern.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee, if such estimate is not publicly available on the Congressional Budget Office website.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

* * * * * * *

Subtitle G—Aging Infrastructure

SEC. 9601. DEFINITIONS

In this subtitle:

⟦(7)⟧ *(1)* EXTRAORDINARY OPERATION AND MAINTENANCE WORK.—The term "extraordinary operation and maintenance work" means major, nonrecurring maintenance to Reclamation-owned or operated facilities, or facility components, that is—

(A) intended to ensure the continued safe, dependable, and reliable delivery of authorized project benefits; and

(B) greater than 10 percent of the contractor's or the transferred works operating entity's annual operation and maintenance budget for the facility, or greater than $100,000.

⟦(1)⟧ *(2)* INSPECTION.—The term "inspection" means an inspection of a project facility carried out by the Secretary—

(A) to assess and determine the general condition of the project facility; and

(B) to estimate the value of property, and the size of the population, that would be at risk if the project facility fails, is breached, or otherwise allows flooding to occur.

⟦(2)⟧ *(3)* PROJECT FACILITY.—The term "project facility" means any part or incidental feature of a project, excluding high- and significant-hazard dams, constructed under the 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.)⟧ *et seq.))*.

⟦(3)⟧ *(4)* RESERVED WORKS.—The term "reserved works" ⟦mean⟧ *means* any project facility at which the Secretary carries out the operation and maintenance of the project facility.

[(4)] *(5)* SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Commissioner of Reclamation.

[(5)] *(6)* TRANSFERRED WORKS.—The term "transferred works" means a project facility, the operation and maintenance of which is carried out by a non-Federal entity, under the provisions of a formal operation and maintenance transfer contract.

[(6)] *(7)* TRANSFERRED WORKS OPERATING ENTITY.—The term "transferred works operating entity" means the organization which is contractually responsible for operation and maintenance of transferred works.

(8) URBAN CANAL OF CONCERN.—The term "urban canal of concern" means a transferred works or segment of a transferred works that is classified as an urban canal reach, the failure of which the Secretary determines would result in loss of life in the vicinity of the failed transferred works or segment of transferred works with an estimated at-risk population of more than 100 individuals.

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SEC. 9603. EXTRAORDINARY OPERATION AND MAINTENANCE WORK PERFORMED BY THE SECRETARY

(a) IN GENERAL.—The Secretary or the transferred works operating entity may carry out, in accordance with subsection (b) and consistent with existing transfer contracts, any extraordinary operation and maintenance work on a project facility that the Secretary determines to be reasonably required to preserve the structural safety of the project facility.

(b) REIMBURSEMENT OF COSTS ARISING FROM EXTRAORDINARY OPERATION AND MAINTENANCE WORK.—

(1) TREATMENT OF COSTS.—For reserved works, costs incurred by the Secretary in conducting extraordinary operation and maintenance work will be allocated to the authorized reimbursable purposes of the project and shall be repaid within 50 years, with interest, from the year in which work undertaken pursuant to this subtitle is substantially complete.

(2) AUTHORITY OF SECRETARY.—For transferred works, the Secretary is authorized to advance the costs incurred by the transferred works operating entity in conducting extraordinary operation and maintenance work and negotiate appropriate 50-year repayment contracts with project beneficiaries providing for the return of reimbursable costs, with interest, under this subsection: Provided, however, That no contract entered into pursuant to this subtitle shall be deemed to be a new or amended contract for the purposes of section 203(a) of the Reclamation Reform Act of 1982 (43 U.S.C. 390cc(a)).

(3) DETERMINATION OF INTEREST RATE.—The interest rate used for computing interest on work in progress and interest on the unpaid balance of the reimbursable costs of extraordinary operation and maintenance work authorized by this subtitle shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which extraordinary operation and maintenance work is commenced, on the basis of average market yields on outstanding marketable obligations

of the United States with the remaining periods of maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest ⅛ of 1 percent on the unamortized balance of any portion of the loan.

(c) EMERGENCY EXTRAORDINARY OPERATION AND MAINTENANCE WORK.—

(1) IN GENERAL.—The Secretary or the transferred works operating entity shall carry out any emergency extraordinary operation and maintenance work on a project facility that the Secretary determines to be necessary to minimize the risk of imminent harm to public health or safety, or property.

(2) REIMBURSEMENT.—The Secretary may advance funds for emergency extraordinary operation and maintenance work and shall seek reimbursement from the transferred works operating entity or benefitting entity upon receiving a written assurance from the governing body of such entity that it will negotiate a contract pursuant to section 9603 for repayment of costs incurred by the Secretary in undertaking such work.

(3) FUNDING.—If the Secretary determines that a project facility inspected and maintained pursuant to the guidelines and criteria set forth in section 9602(a) requires extraordinary operation and maintenance pursuant to paragraph (1), the Secretary may provide Federal funds on a nonreimbursable basis sufficient to cover 35 percent of the cost of the extraordinary operation and maintenance allocable to the transferred works operating entity, which is needed to minimize the risk of imminent harm. The remaining share of the Federal funds advanced by the Secretary for such work shall be repaid under subsection (b).

(d) AGING INFRASTRUCTURE ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a special account, to be known as the "Aging Infrastructure Account" (referred to in this subsection as the "Account"), to provide funds to, and provide for the extended repayment of the funds by, a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs for the conduct of extraordinary operation and maintenance work at a project facility, which shall consist of—

(A) any amounts that are specifically appropriated to the Account under section 9605; and

(B) any amounts deposited in the Account under paragraph (3)(B).

(2) EXPENDITURES.—Subject to paragraphs (3) and (6), the Secretary may expend amounts in the Account to fund and provide for extended repayment of the funds for eligible projects identified in a report submitted under paragraph (5)(B).

(3) REPAYMENT CONTRACT.—

(A) IN GENERAL.—The Secretary may not expend amounts under paragraph (2) with respect to an eligible project described in that paragraph unless the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs has entered into a contract to repay the amounts under subsection (b)(2).

(B) DEPOSIT OF REPAID FUNDS.—Amounts repaid by a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs receiving funds under a repayment contract entered into under this subsection shall be deposited in the Account and shall be available to the Secretary for expenditure, subject to paragraph (6), in accordance with this subsection, and without further appropriation.

(4) APPLICATION FOR FUNDING.—

(A) IN GENERAL.—Beginning with fiscal year 2022, not less than once per fiscal year, the Secretary shall accept, during an application period established by the Secretary, applications from transferred works operating entities or project beneficiaries responsible for payment of reimbursable costs for funds and extended repayment for eligible projects.

(B) ELIGIBLE PROJECT.—A project eligible for funding and extended repayment under this subsection is a project that—

(i) qualifies as an extraordinary operation and maintenance work under this section;

(ii) is for the major, non-recurring maintenance of a mission-critical asset; and

(iii) is not eligible to be carried out or funded under the repayment provisions of section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)).

(C) GUIDELINES FOR APPLICATIONS.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall issue guidelines describing the information required to be provided in an application for funds and extended repayment under this subsection that require, at a minimum—

(i) a description of the project for which the funds are requested;

(ii) the amount of funds requested;

(iii) the repayment period requested by the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs;

(iv) alternative non-Federal funding options that have been evaluated;

(v) the financial justification for requesting an extended repayment period; and

(vi) the financial records of the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs.

(D) REVIEW BY THE SECRETARY.—The Secretary shall review each application submitted under subparagraph (A)—

(i) to determine whether the project is eligible for funds and an extended repayment period under this subsection;

(ii) to determine if the project has been identified by the Bureau of Reclamation as part of the major rehabilitation and replacement of a project facility; and

(iii) to conduct a financial analysis of—

(I) the project; and

(II) repayment capability of the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs.

(5) REPORT.—Not later than 90 days after the date on which an application period closes under paragraph (4)(A), the Secretary shall submit to the Committees on Energy and Natural Resources and Appropriations of the Senate and the Committees on Natural Resources and Appropriations of the House of Representatives a report that—

(A) describes the results of the Secretary's review of each application under paragraph (4)(D), including a determination of whether the project is eligible;

(B) identifies each project eligible for funds and extended repayment under this subsection;

(C) with respect to each eligible project identified under subparagraph (B), includes—

(i) a description of—

(I) the eligible project;

(II) the anticipated cost and duration of the eligible project;

(III) any remaining engineering or environmental compliance that is required before the eligible project commences;

(IV) any recommendations the Secretary may have concerning the plan or design of the project; and

(V) any conditions the Secretary may require for construction of the project;

(ii) an analysis of—

(I) the repayment period proposed in the application; and

(II) if the Secretary recommends a minimum necessary repayment period that is different than the repayment period proposed in the application, the minimum necessary repayment period recommended by the Secretary; and

(iii) an analysis of alternative non-Federal funding options;

(D) describes the allocation of funds from deposits into the Account under paragraph (3)(B); and

(E) describes the balance of funds in the Account as of the date of the report.

(6) ALTERNATIVE ALLOCATION.—

(A) IN GENERAL.—Appropriations Acts may provide for alternate allocation of amounts reported pursuant to paragraph (5)(D) that are made available under this subsection.

(B) ALLOCATION BY SECRETARY.—

(i) NO ALTERNATE ALLOCATIONS.—If Congress has not enacted legislation establishing alternate allocations by the date on which the Act making full-year appropriations for energy and water development and related agencies for the applicable fiscal year is enacted into law, amounts made available under paragraph (1) shall be allocated by the Secretary.

(ii) INSUFFICIENT ALTERNATE ALLOCATIONS.—If Congress enacts legislation establishing alternate allocations for amounts made available under paragraph (1) that are less than the full amount appropriated under that paragraph, the difference between the amount appropriated and the alternate allocation shall be allocated by the Secretary.

(7) EFFECT OF SUBSECTION.—Nothing in this subsection affects—

(A) any funding provided, or contracts entered into, under subsection (a) before the date of enactment of this subsection; or

(B) the use of funds otherwise made available to the Secretary to carry out subsection (a).

(e) EXTRAORDINARY OPERATION AND MAINTENANCE WORK ON URBAN CANALS OF CONCERN.—

(1) IN GENERAL.—The Secretary or the transferred works operating entity shall carry out any extraordinary operation and maintenance work on an urban canal of concern that the transferred works operating entity, with the concurrence of the Secretary, determines to be necessary.

(2) FUNDING.—In the case of extraordinary operation and maintenance work on an urban canal of concern authorized under paragraph (1), or if the Secretary determines that a project facility inspected and maintained pursuant to the guidelines and criteria set forth in section 9602(a) requires extraordinary operation and maintenance work pursuant to paragraph (1), the Secretary shall provide Federal funds on a nonreimbursable basis sufficient to cover 35 percent of the portion of total cost of the extraordinary operation and maintenance work allocable to the transferred works operating entity that is needed to carry out the extraordinary operation and maintenance work on the urban canal of concern, with the remaining share of any additional Federal funds advanced by the Secretary for the extraordinary operation and maintenance work to be repaid under subsection (b).

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