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BONNEVILLE UNIT CLEAN HYDROPOWER FACILITATION ACT

OCTOBER 21, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2008]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2008) to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project, having considered the same, report favorably thereon with an amendment and recommend 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 "Bonneville Unit Clean Hydropower Facilitation Act".

SEC. 2. DIAMOND FORK SYSTEM DEFINED.

For the purposes of this Act, the term "Diamond Fork System" means the facilities described in chapter 4 of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit.

SEC. 3. COST ALLOCATIONS.

Notwithstanding any other provision of law, in order to facilitate hydropower development on the Diamond Fork System, the amount of reimbursable costs allocated to project power in Chapter 6 of the Power Appendix in the October 2004 Supplement to the 1988 Bonneville Unit Definite Plan Report, with regard to power development within the Diamond Fork System, shall be considered final costs as well as costs in excess of the total maximum repayment obligation as defined in section 211 of the Central Utah Project Completion Act of 1992 (Public Law 102–575), and shall be subject to the same terms and conditions.

SEC. 4. NO PURCHASE OR MARKET OBLIGATION; NO COSTS ASSIGNED TO POWER.

Nothing in this Act shall obligate the Western Area Power Administration to purchase or market any of the power produced by the Diamond Fork power plant and

none of the costs associated with development of transmission facilities to transmit power from the Diamond Fork power plant shall be assigned to power for the purpose of Colorado River Storage Project ratemaking.

SEC. 5. PROHIBITION ON TAX-EXEMPT FINANCING.

No facility for the generation or transmission of hydroelectric power on the Diamond Fork System may be financed or refinanced, in whole or in part, with proceeds of any obligation—

(1) the interest on which is exempt from the tax imposed under chapter 1 of the Internal Revenue Code of 1986, or

(2) with respect to which credit is allowable under subpart I or J of part IV of subchapter A of chapter 1 of such Code.

SEC. 6. REPORTING REQUIREMENT.

If, 24 months after the date of the enactment of this Act, hydropower production on the Diamond Fork System has not commenced, the Secretary of the Interior shall submit a report to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate stating this fact, the reasons such production has not yet commenced, and a detailed timeline for future hydropower production.

PURPOSE OF THE BILL

The purpose of H.R. 2008 is to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project.

BACKGROUND AND NEED FOR LEGISLATION

Under current law, the costs of constructing Bureau of Reclamation projects that serve multiple purposes are allocated among the project purposes and participants. Some project purposes are reimbursable, including irrigation, hydroelectric power production, and municipal and industrial water use. The reimbursable costs of Bureau of Reclamation projects are borne by the project beneficiaries and are paid based on contracts into which the beneficiaries enter. Depending on the type of project use, however, the beneficiaries may pay substantially different portions of the project cost.

Water users repay the capital cost of a project based on whether the water is used for municipal and industrial purposes (M&I) or instead used for irrigating agricultural lands. M&I contractors are responsible for repaying the cost of a project that is allocated to them plus interest that accrues during the repayment period. Irrigators repay their allocated share of a project cost without interest. The irrigators' repayment, however, is typically subsidized by hydroelectric power production under a feature of current law called "ability to pay," also referred to as "irrigation assistance."

Hydroelectric power beneficiaries must repay their share of the construction costs of a project, with interest, over a set repayment period by recovering those costs through electricity rates. They also pay any amount of the irrigators' costs of a project that irrigators do not have the ability to pay. Any of the subsidized costs of a project shifted to hydroelectric power beneficiaries under irrigation assistance are paid over the repayment period, but without interest.

The Diamond Fork System is a completed feature of the Bonneville Unit and is located in Utah County, Utah. It has the capacity to generate up to 50 megawatts of hydroelectric power. The Colorado River Storage Project Act of 1956 authorized power as a project purpose and required that project costs be allocated for repayment by power generation. These projects costs have increased

over the decades of construction of the Bonneville Unit and now make hydroelectric power generation at two plants on the Diamond Fork System financially unfeasible. Under current law, approximately $161 million would be allocated to power beneficiaries if they install turbines at the two plants.

H.R. 2008 would declare as final the allocation of $161 million to hydroelectric power generation on the Diamond Fork System and would defer those costs indefinitely in accordance with section 211 of the Central Utah Project Completion Act of 1992. The effect of this deferment is that any power developed on the Diamond Fork System would not be burdened with the $161 million of debt or with any other reallocation of costs once the Bonneville Unit is substantially complete. Enacting the legislation would help facilitate the development of 50 megawatts of clean hydroelectric power while generating revenue for the government for the use of its water facilities.

COMMITTEE ACTION

H.R. 2008 was introduced on April 21, 2009, by Rep. Jim Matheson (D–UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On May 14, 2009, the Subcommittee held a hearing on the bill.

On September 10, 2009, the Subcommittee was discharged from further consideration of H.R. 2008 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Grace Napolitano (D–CA) offered an amendment in the nature of a substitute to the bill, which adds an explicit definition of the Diamond Fork System, prohibits the use of tax-exempt financing to construct hydroelectric power facilities, and requires the Administration to report to the Congress on hydroelectric power development on the system 24 months after the date of enactment of the legislation. The amendment in the nature of a substitute was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Bonneville Unit Clean Hydropower Facilitation Act."

Section 2. Diamond Fork System defined

Section 2 defines the Diamond Fork System as the facilities described in chapter 4 of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit.

Section 3. Cost allocations

Section 3 declares the reimbursable costs allocated to project power on the Diamond Fork System as final, as well as in excess of the total maximum repayment obligation as defined in section 211 of the Central Utah Project Completion Act of 1992 (Public Law 102–575).

Section 4. No purchase or market obligation; no costs assigned to power

Section 4 allows the Western Area Power Administration to decline to purchase power that is developed on the Diamond Fork System. Section 4 also clarifies that none of the costs of transmission development on the Diamond Fork System will be assigned to power for the purpose of Colorado River Storage Project ratemaking.

Section 5. Prohibition on tax-exempt financing

Section 5 prohibits entities from using tax-exempt financing to fund any portion of the development of hydroelectric power or transmission on the Diamond Fork System.

Section 6. Reporting requirement

Section 6 requires the Secretary of the Interior to report on the status of hydroelectric power development on the Diamond Fork System if, after 24 months, hydroelectric power production has not commenced.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. 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 authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2008—Bonneville Unit Clean Hydropower Facilitation Act

Summary: H.R. 2008 would reduce the amounts that developers of hydropower resources at the Diamond Fork project in Utah would have to pay to the U.S. Treasury for certain reimbursable expenses. (Reimbursable expenses are the portion of a project's costs that are repaid to the federal government by other entities.) Under current law, a sponsor of this project would have to pay about $5.3 million annually for a period of 50 years following the start of electricity production. H.R. 2008 would effectively eliminate that obligation. Instead, sponsors would be required to pay certain annual fees, which are estimated to total about $400,000 a year, adjusted for inflation, beginning in 2015.

CBO expects that enactment of H.R. 2008 would lead to the development of hydropower facilities by a nonfederal entity within a few years, sooner than expected under current law. In addition, CBO estimates that the government would receive payments from the hydropower developer of about $2 million over the 2010–2019 period.

H.R. 2008 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 costs of this legislation fall within budget function 300 (natural resources and environment). CBO estimates that enacting this bill would increase offsetting receipts (a credit against direct spending) by $400,000 a year over the 2015–2019 period, or a total collection of $2 million.

Basis of Estimate: Based on information from the Bureau of Reclamation, CBO expects that the federal government is unlikely—under current law—to develop the hydropower resources of the Diamond Fork project for at least the next 10 years. Although there are no formal development proposals currently being considered by the bureau, two nonfederal entities—the Central Utah Water Conservancy District and the Strawberry Water Users' Association—have expressed interest in developing those resources since at least 1995. Whether one of those entities or another nonfederal developer will propose a hydroelectric project at Diamond Fork under current law over the next decade is unclear. Among the issues that have delayed development of the site is a requirement to pay the Treasury for the federal government's power-related investments in the water project. According to the bureau, such payments would begin after the hydroelectric facilities go into service and would average $5.3 million a year for 50 years.

CBO expects that eliminating the required annual payment to the Treasury would encourage nonfederal entities to pursue development of the hydropower resources at Diamond Fork. Assuming that H.R. 2008 is enacted near the end of 2009, we expect that the Bureau of Reclamation would receive a proposal to develop the hydroelectric resources within a year or two and that such a project could be completed by 2015. In that case, the government would collect annual fees from the project developer totaling about $400,000 a year (adjusted for inflation) for the life of the project.

Intergovernmental and private-sector impact: H.R. 2008 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO Estimate: On June 22, 2009, CBO transmitted a cost estimate for H.R. 2008 as introduced in the House of Representatives on April 21, 2009. While the two versions of the bill are similar, in the cost estimate for the introduced bill, the Joint Committee on Taxation estimated that the use of tax-exempt financing to develop the Diamond Fork project would result in a loss of $9 million in federal revenues over the 2010–2019 period. The version of H.R. 2008 that was ordered reported by the House Committee on Natural Resources would prohibit the use of tax-exempt financing to develop this project.

Estimate Prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate Approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 2489 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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