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KLAMATH BASIN EMERGENCY OPERATION AND MAINTENANCE REFUND ACT OF 2001

SEPTEMBER 17, 2002.—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. 2828]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2828) to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, and for other purposes, 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. 2828 is to authorize the Secretary of the Interior to refund amounts collected from Klamath Project irrigation and drainage districts, as well as from certain individuals, for operation and maintenance of the Project's irrigation works for water year 2001.

BACKGROUND AND NEED

The U.S. Bureau of Reclamation Klamath Project lies within three counties along the Oregon and California border; Klamath County in southern Oregon, and Modoc and Siskiyou Counties in northern California. Authorized in 1905 for irrigation, the Klamath Project serves approximately 1,400 farms and provides irrigation water to approximately 220,000 acres in an otherwise arid area.

In 1988, the U.S. Fish and Wildlife Service listed the Shortnose and Lost River sucker fish as "endangered" under the Endangered Species Act (ESA). In 1992, a biological opinion was issued on the

effect of annual Klamath Project operations on the endangered fish. That opinion established a requirement that the annual minimum lake level be maintained at 4,139 feet above sea level in at least 6 out of every 10 years.

In 1996, the Bureau of Reclamation agreed to meet certain minimum instream flows below Iron Gate Dam, a non-federal facility on the Klamath River, to protect habitat for anadromous fish. In 1997, Southern Oregon and Northern California Coastal Coho salmon were listed under the ESA as "threatened" species. A 1999 biological opinion from the National Marine Fisheries Service concluded that Klamath Project operations that year would affect, but not likely jeopardize, coho salmon.

Following a declaration of severe drought for the Klamath Basin in 2001, two new biological opinions from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service were issued on April 5 and April 6, 2001. The opinions stated that the Bureau of Reclamation's operation of the Klamath Project for the year would jeopardize the continued existence of the endangered sucker fish and threatened coho salmon, and would harm but not jeopardize the continued existence of bald eagles who also rely on Project water. The opinions also called for the minimum elevation in upper Klamath Lake to be maintained at 4,140 feet above sea level at the end of September, and increased flows in the Klamath River.

On April 6, 2001, the Bureau of Reclamation released the Klamath Project 2001 Operations Plan, stating that based on the requirements of the biological opinions and extreme drought conditions, only limited deliveries of Project water would be made for irrigation. Only a small area (Langell Valley and Bonanza) received water from Clear Lake and Gerber Reservoirs. Additional minor relief was also provided on July 24, 2001, when the Department of the Interior announced it would release about 70,000 to 75,000 acre-feet of water from Upper Klamath Lake to assist farmers in the Klamath Project area.

Despite the non-delivery of water to most Klamath Basin farmers, they were still responsible for 2001 operations and maintenance expenses for the Project. Based on the unique circumstances affecting the Klamath Project in 2001, H.R. 2828 authorizes the Secretary of the Interior to make refunds to qualified Klamath Project entities and individual contractors for amounts assessed to them for operation and maintenance of the Klamath Project for 2001. It also enables the Secretary of the Interior to waive additional operation and maintenance payments due for 2001 for certain irrigation districts which contracted with the Bureau of Reclamation for water from the Klamath Project.

LEGISLATIVE HISTORY

H.R. 2828 was introduced by Representative Walden on August 2, 2001 and passed by the House of Representatives on November 13, 2001. An identical bill, S. 1824, was introduced by Senators Smith and Wyden on December 13, 2001. The Subcommittee on Water and Power held a hearing on H.R. 2828 and S. 1824 on June 6, 2002. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources ordered H.R. 2828 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass H.R. 2828, as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the "Klamath Basin Emergency Operation and Maintenance Refund Act of 2001".

Section 2 defines the term "qualified Klamath Project entity" which is used in the Act.

Section 3, subsection (a) authorizes the Secretary of the Interior to pay each qualified Klamath Project entity an amount equal to the amount that entity assessed its members or other persons for the operation and maintenance of Klamath Project works in 2001.

Subsection (b) requires each qualified entity, as a condition of payment, to (1) provide the Secretary with documentation concerning the total amount assessed; and (2) execute a binding agreement under which the payments under this Act will be distributed to the members or other persons assessed operation and maintenance fees in 2001.

Subsection (c) authorizes the Secretary to waive any remaining 2001 operation and maintenance fees for Klamath Project reserved works.

Subsection (d) authorizes the Secretary to pay individuals receiving water from the Klamath Project under contracts entered into pursuant to the Warren Act (43 U.S.C. 523–525), an amount equal to amounts collected for operation and maintenance costs for 2001. The Secretary is also authorized to waive any remaining 2001 charges.

Section 4 authorizes appropriations to cover the amounts not paid by qualified Klamath Project entities for operation and maintenance of the reserved works for 2001 and directs that cost incurred by the Bureau of Reclamation in implementing the Act shall be nonreimbursable.

Section 5 directs that activities or funding pursuant to the Act shall not be considered a supplemental or additional benefit under the Reclamation laws.

COST AND BUDGETARY CONSIDERATION

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 6, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2828, the Klamath Basin Emergency Operation and Maintenance Refund Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2828—Klamath Basin Emergency Operation and Maintenance Refund Act of 2001

Summary: H.R. 2828 would authorize the Secretary of the Interior to refund fees assessed by the Bureau of Reclamation on Klamath Basin irrigation and drainage districts for certain operation and maintenance costs for calendar year 2001. Subject to appropriation of the necessary funds, the Secretary would also be authorized to pay for 2001 operations and maintenance costs of water projects managed by water districts in the basin. Finally, the act would authorize the Secretary to waive any remaining fees for 2001 that have not yet been paid. These refunds and waivers also would apply to individuals in the basin who have water contracts with the bureau.

CBO estimates that implementing H.R. 2828 would cost about $2 million in 2003, assuming appropriation of the necessary funds. In addition, the bureau would be authorized to refund fees collected for certain operations and maintenance costs which would increase direct spending by less than $150,000; therefore, pay-as-you-go procedures would apply.

H.R. 2828 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. 2828 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—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Estimated authorization level	2	0	0	0	0
Estimated outlays	2	0	0	0	0

[1] Enacting H.R. 2828 also would cause a negligible increase in direct spending in 2002.

Basis of estimate

H.R. 2828 would require the Bureau of Reclamation to refund fees association with the operation and maintenance of water projects run by the bureau (these are known as reserved works) and those run by local water districts (these are known as transferred works) in the Klamath Basin. Based on information from the bureau, CBO estimates that implementing H.R. 2828 would increase direct spending by less than $150,000 in 2003. In addition, we estimate the legislation would cost about $2 million in 2003, assuming the appropriation of the necessary funds.

Reserved works

The bureau pays for the operation and maintenance of certain structures used for flood control, storage, and drainage that have

not been transferred to districts. Under current law, the bureau bills Klamath Basin and other water users for those operation and maintenance costs. H.R. 2828 would authorize the Secretary of the Interior to refund fees paid to the bureau for operations and maintenance of reserved works in 2001. CBO estimates these refunds would increase direct spending by about $150,000 in 2003.

Transferred works

The bureau has transferred some structures used for flood control, storage, and drainage to local irrigation and drainage districts. Following transfer the districts are responsible for operation and maintenance costs. Under H.R. 2828, the Secretary of the Interior would be authorized to reimburse districts with transferred works for their 2001 operation and maintenance expenses from appropriated funds if they meet certain criteria. Based on information from the bureau, CBO estimates reimbursing the Klamath Irrigation District and other eligible districts would cost about $2 million.

Pay-as-you-go consideration: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enactment of H.R. 2882 would increase direct spending by about $150,000 in 2002.

Intergovernmental and private-sector impact: H.R. 2828 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 November 13, 2001, CBO prepared a cost estimate for H.R. 2828 as ordered reported by the House Committee on Resources on November 7, 2001. The two versions of this legislation are identical, but CBO has slightly revised its estimate of the cost of this legislation.

Based on updated information from the bureau on the actual cost of operating and maintaining reserved works in 2001, CBO increased its estimate of direct spending under the legislation from $100,000 to about $150,000. In addition, based on the actual operation and maintenance costs of transferred works for 2001, CBO increased its estimate of the cost of reimbursing related fees from $1.5 million to $2 million, subject to appropriation of the necessary amounts.

Estimate prepared by: Federal costs: Julie Middleton; impact on state, local, and tribal governments: Marjorie Miller; impact on the private sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, 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 H.R. 2828. 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. 2828.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendation relating to H.R. 2828 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 27, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your request for the views of the Department of the Interior on S. 1824 and H.R. 2828, concerning refunds of amounts collected from Klamath Project irrigation and drainage districts for operation and maintenance of the Project's transferred and reserved works for water year 2001. This confirms testimony of Mark Limbaugh, Director of External and Intergovernmental Affairs for the Bureau of Reclamation (Reclamation) before the Subcommittee on Water and Power on June 6. The bills also authorize the Secretary of the Interior to waive requirements that the districts pay additional operation and maintenance (O&M) charges for the remainder of 2001. Our comments will address both bills.

As much as the Department can sympathize with the unfortunate plight of the water supply contract holders in the Klamath Project, we do have some concerns about the long-term policy and cost ramifications these bills may unintentionally set.

The troublesome series of events that occurred last year in the Klamath Basin were a reminder of the cyclical nature of droughts in the West and the increasing demands for a finite amount of water. The financial difficulties suffered by the irrigators, their families, and the community as a whole is something Reclamation has worked hard to counter. The Department responded quickly last year and continues to play an integral role in finding workable long-term solutions for that region.

In March 2002, the President established the Klamath River Basin Federal Working Group, which is chaired by Interior Secretary Norton and includes Commerce Secretary Evans, Agriculture Secretary Veneman and CEQ Chairman Connaughton. The Working Group has since undertaken immediate and long-term actions to address the complex economic and natural resource issues in the basin. For instance, the Working Group announced $1.6 million from the Department of Agriculture (USDA) to accelerate assistance for water management and water quality actions on Forest Service land. The Department accelerated the construction schedule on screening of the A canal, and anticipates finishing construction in April 2003. Reclamation announced two significant restoration projects that will add water to a water bank. These projects involved partnerships with The Nature Conservancy and The Rangeland Trust. The Administration is considering additional water quality and water quantity measures and is considering reprogramming of Reclamation funds to accelerate water conserva-

tion and habitat restoration projects in the Klamath River Basin. Also, the USDA provided $20 million to help affected farming families.

In addition to these Administration efforts, the region's congressional delegation, including Senator Gordon Smith and Congressman Greg Walden, were instrumental in passing a potent conservation title in the Farm Bill, also strongly supported by the Administration, which included $50 million specifically for Klamath farmers and ranchers to pursue conservation measures. The Klamath community may also be able to qualify for some of the large funding increases for the Environmental Quality Incentives Program (EQIP), Wetlands Reserve Program (WRP), and Conservation Reserve Program (CRP) authorized in the Farm Bill.

While we all hope that this situation will never repeat itself, cyclical drought conditions pose a considerable challenge in the arid West, where we must manage water for endangered species, fulfill our trust responsibilities to Native Americans, and meet the needs of irrigators and other water users. Although what happened in the Klamath Basin was an extraordinary example of drought and Endangered Species Act (ESA) conditions hampering water deliveries for contract customers, this is not the first example, nor will it be the last. Over the years, there have been countless examples of when contractors were unable to get their full contract allotment of water due to drought or environmental demands. Nonetheless, O&M costs were incurred and the contractors paid their share.

Regardless of how much water is delivered, maintenance of facilities must continue if they are to remain functional. As Reclamation enters the dawn of its second century, it is important that we not shed the tenets of our success from our first 100 years. The fundamental principles of Reclamation have always included fulfilling our contractual commitments and delivering water to our contractors in the arid West. The corresponding contractual commitment of the water users to help maintain this infrastructure, in good times and bad, is essential to the success of the program.

The Department recognizes the hardships experienced by Klamath area residents. It is also keenly aware of the severe drought conditions playing out across the West. Reclamation also recognizes it will have additional water management challenges in the future. I have no doubt that the Administration and Congress will act with the same passion with other affected parties, where appropriate, as they did with Klamath customers. What we must not do is give cause to those persistent critics of Reclamation programs that allege the beneficiaries of our programs do not pay their fair share, even in the most difficult of times. That is why the Department has some serious concerns about the long-term policy and cost ramifications that these bills may unintentionally set. For example, applying the logic of these bills to all such situations could cost Federal taxpayers many millions of dollars per year in lost O&M payments. Every year there are water contractors who do not receive the full amount of water for which they have contracted, due to drought, ESA concerns, or over-allocation of scarce water. Nevertheless, if those contractors want to ensure future deliveries, they must help maintain the facilities that make those deliveries possible.

The Department values its working relationship with our Klamath Project customers and is committed to working through the

complex issues all of us face in that region. Reclamation stands ready to work with Senator Smith and other members of this Subcommittee to find a mutually acceptable solution for the Klamath Project customers.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN W. KEYS III.

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 Act H.R. 2828, as ordered reported.

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