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SENATE

{ REPORT
106-486

RECLAMATION REFORM REFUND ACT OF 1999

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 1697]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1697) to authorize the Secretary of the Interior to refund certain collections received pursuant to the Reclamation Reform Act of 1982, 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 out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This title may be cited as the “Reclamation Reform Refund Act of 2000”.

SEC. 2. REFUND OF CERTAIN AMOUNTS RECEIVED UNDER RECLAMATION REFORM ACT OF 1982.

(a) REFUND REQUIRED.—Subject to the availability of appropriations, the Secretary of the Interior is authorized and directed to refund fully amounts received by the United States as payments for charges assessed by the Secretary before January 1, 1994, for failure to file or properly file certain certification or reporting forms pursuant to sections 206 and 224(c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ff, 390ww(c)) prior to the receipt of irrigation water. Such refunds shall be made regardless of whether such payments were required by the United States, were made pursuant to a compromise or settlement (whether court approved or otherwise), or were otherwise received by the United States. Any refund issued pursuant to this subsection shall include the amount of associated interest assessed by the Secretary and paid to the United States pursuant to section 224(i) of that Act (43 U.S.C. 390ww(ii)).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as necessary.

PURPOSE OF THE MEASURE

The purpose of S. 1697 is to authorize the Secretary of the Interior to refund certain charges assessed by the Bureau of Reclama-

tion, before January 1, 1994, for failure to file certain reporting forms prior to the receipt of irrigation water.

BACKGROUND AND NEED

From 1987 to 1994, the Bureau of Reclamation assessed penalties against landholders who received Project water without filing the necessary forms required by the Reclamation Reform Act of 1982. The Solicitor of the Department of the Interior opined that the receipt of Project water by an ineligible party was tantamount to a common law conversion of that water. The Solicitor noted that the traditional remedy for conversion is either (i) the return of the property to the rightful owner or (ii) the payment to the owner of the fair value of the property. Because improperly delivered Project water cannot be recovered, the Solicitor concluded that an ineligible recipient of Project water should be required to pay the Bureau the fair value of the water—which the Solicitor determined to be the “full cost” rate payable under the Reclamation law by certain lessees.

On the strength of the Solicitor’s opinion, the Bureau then asserted that a landowner filing incomplete or incorrect certification/reporting forms was ineligible to receive Project water and must therefore pay a “full cost penalty” on all water received before the correct forms were filed. The Bureau insisted on collecting those full cost penalties for even minor, technical errors in filed forms, including, some allege, defects which resulted from faulty advice given by Bureau personnel. Because the Bureau had no means of directly enforcing full cost penalties against individual water users, the penalties were levied against the districts that delivered water to the allegedly ineligible water users. Millions of dollars in full cost penalties were assessed by the Bureau from 1988 through 1994.

Two districts that paid full cost penalties separately filed suits against the United States. Ultimately, the Court of Federal Claims determined that the Bureau had no authority to assess full cost penalties and the Bureau was ordered to issue a refund to the plaintiff district *Orange Cove Irrigation District v. United States*, 28 Fed.Cl.790 (1993). The second lawsuit was settled by the district involved when it received a similar refund. Many other districts applied for refunds or appealed the imposition of full cost penalties before paying.

In 1995, the Bureau promulgated a new regulation to provide for the assessment of an “administrative fee” for minor certification and reporting form violations. By adopting that new regulation, the Bureau impliedly acknowledge the failure of its full cost penalty strategy. Thereafter, the Bureau proposed settlement of most pending full cost penalty claims based on the payment by the affected districts of administrative fees.

However, the Solicitor advised the Bureau that it did not have the legal authority to make refunds of amounts previously paid by the districts as full cost penalties. As a result, although the Bureau has recognized that full cost penalties for minor certification and reporting form violations are inappropriate—and a court has determined them to be illegal—nearly 100 Bureau contractors westwide cannot receive refunds of amounts paid to the Bureau for such penalties.

Recognizing the dilemma of owing money but not having the authority to pay it, the Department of the Interior, through the Bureau of Reclamation, sent legislation to Congress and requested that it be introduced. The legislation authorizes the Secretary of the Interior to refund to landholders payments made in excess of \$260 (the administrative fee). Reclamation estimates this legislation would affect landholders in 77 water districts in the states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, and Wyoming.

LEGISLATIVE HISTORY

S. 1697 was introduced by Senator Smith of Oregon on October 6, 1999 at the request of the Administration. The Subcommittee on Water and Power held a hearing on October 20, 1999. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 1697, as amended, favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a unanimous vice vote with a quorum present, recommends that the Senate pass S. 1697, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1697, the Committee adopted an amendment in the nature of a substitute. The amendment extended relief to water districts that paid the full cost penalties but have already settled with the Bureau of Reclamation. The amendment also deletes the \$260 administrative fee and authorizes such sums as necessary rather than the \$1,000,000 total authorization in the bill as introduced.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 25, 2000.

Hon. FRANK H. MURKOWSKI,
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 S. 1697, the Reclamation Reform Refund Act of 2000.

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

Sincerely,

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

Enclosure.

S. 1697—Reclamation Reform Refund Act of 2000

S. 1697 would authorize the appropriation of such sums as necessary to refund certain payments made by water districts to the Bureau of Reclamation (bureau) before January 1, 1994. Until that time, the bureau charged the full cost of irrigation water, rather than the reduced rate, to those water districts whose customers failed to file the appropriate forms, as required by the Reclamation Reform Act of 1982. Currently, the bureau assesses a \$260 fee for failure to file such forms.

The bill would authorize and direct the bureau to fully refund the difference between the full cost rate and the reduced rate for providing irrigation water to certain districts with customers who did not complete the bureau's required paperwork prior to January 1, 1994. In addition, about 80 districts have already settled with the bureau and paid the fee required for failure to file the appropriate forms. Under the bill, those districts would also be eligible for a refund. Based on information from the bureau, CBO estimates that about 160 districts would receive payments of about \$1 million in 2001, subject to the availability of appropriated funds.

S. 1697 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act and would benefit some water districts by directing the Secretary of the Interior to refund certain penalties collected from them.

On August 18, 2000, CBO transmitted a cost estimate for H.R. 4847, the Reclamation Reform Refund Act of 2000, as ordered reported by the House Committee on Resources on July 26, 2000. H.R. 4847 and S. 1697 have different criteria for determining which districts would be eligible for a refund, but both bills would cost about \$1 million to implement.

The CBO staff contact for this estimate is Lisa Cash Driskill. This estimate was 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 S. 1697. 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. 1697, as ordered reported.

EXECUTIVE COMMUNICATIONS

On, October 22, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1697. These reports had not been received at the time the report on S. 1697 was filed. When the reports become available, the Chairman will request that they

be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Commissioner of the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF ELUID MARTINEZ, COMMISSIONER, BUREAU
OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 1697, a bill to authorize the Secretary of the Interior to refund certain collections. The Bureau of Reclamation (Reclamation) appreciates Subcommittee Chairman Gordon Smith's introduction of this bill at the Administration's request.

Background

Sections 206 and 224(c) of the Reclamation Reform Act of 1982 require certain landholders, including owners and lessees, to file with their respective water districts on an annual basis certification and reporting forms disclosing their landholdings. These forms are the basis upon which water districts and Reclamation determine the eligibility of landholders to receive Reclamation irrigation water and assess the proper charges for the water. From 1987 through 1994, certain landholders failed to file the appropriate forms in a timely manner. In response, Reclamation charged those who failed to file the forms full cost for the water delivered.

In 1993, Reclamation reviewed its policy and determined that use of an administrative fee could be established through a rulemaking process to address those who failed to file forms. In 1995, Reclamation issued regulations charging a \$260 administrative fee for anyone not filing the appropriate forms in a timely basis. That policy is in effect today, but it can not be applied retroactively.

Reclamation has addressed those who failed to file the forms and did not pay the full cost assessment by charging the \$260 administrative fee. Reclamation would like to be able to reimburse those who paid the full cost charge by refunding all but \$260.

Legislation

S. 1697 authorizes the Secretary of the Interior to refund to landholders payments made in excess of \$260. Reclamation estimates that the legislation will affect approximately 75 water districts in the states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah and Wyoming.

The Administration strongly supports this bill.

Thank you for holding this hearing. I appreciate the opportunity to present the Administration's views.

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 S. 1697, as ordered reported.

