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NORTH UNIT IRRIGATION DISTRICT ACT OF 2007

FEBRUARY 16, 2007.—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 S. 266]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 266) to provide for the modification of and amendatory repayment contract between the Secretary of the Interior and the North Unit Irrigation District, 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. 266 is to provide for the modification of an amendatory repayment contract between the Secretary of the Interior and the North Unit Irrigation District, and for other purposes.

BACKGROUND AND NEED

Created in 1916, the North Unit Irrigation District (District) provides water necessary to irrigate approximately 59,000 acres of land in central Oregon. Approximately 900 farms and ranches receive irrigation water from the District for farming and ranching. The District receives water from the Deschutes Project, a Bureau of Reclamation (Reclamation) project and the Crooked River pumping plant, a private project constructed by the District. In the mid-1950's, the United States and the District renegotiated the District's repayment contract. Public Law 83-573 approved the renegotiated repayment contract. The renegotiated contract limits the amount of water that the District can receive from a Reclamation project to the water necessary to irrigate 49,818 acres of land. Because Congress approved the renegotiated contract, any changes to that contract must also be approved by Congress.

S. 266 would amend the Contract between the United States and the District in order to address several issues that were not contemplated when the contract was approved 50 years ago. S. 266 would amend the repayment contract to allow the District to participate in a conserved water project, which would allow the District to provide water from the Deschutes Project to irrigators who are presently irrigating roughly 9,000 acres of land with water from the Crooked River pumping plant. Under the current repayment contract, adding these 9,000 acres would exceed the cap of irrigated lands that may receive Deschutes Project water. Adding the 9,000 acres will allow the District to use less Crooked River water and leave more water in that river. Reclamation believes that leaving more water in Crooked River and the District's participation in State conserved water projects will benefit fish and wildlife in both the Crooked and Deschutes River. Amending the repayment contract from a variable to a fixed term will also result in financial benefits to the United States.

LEGISLATIVE HISTORY

S. 266 was introduced on January 11, 2007 by Senator Smith for himself and Senator Wyden and referred to the Committee on Energy and Natural Resources. At its business meeting on January 31, 2007, the Committee ordered S. 266 favorably reported.

During the 109th Congress, the Committee considered similar legislation, S. 2502, introduced by Senator Smith on April 4, 2006. Senator Wyden was a co-sponsor. The Subcommittee on Water and Power held a hearing on S. 2502 on June 28, 2006. S. Hrg. 109-677. No further action occurred on S. 2502 prior to the sine die adjournment of the 109th Congress. A companion measure, Section 5 of H.R. 5079, was considered by the House of Representatives under suspension of the rules and passed by a voice vote on September 25, 2006.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business meeting on January 31, 2007, by a voice vote of a quorum present, recommends that the Senate pass S. 266.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 amends the Act of August 10, 1954 (68 Stat. 679, chapter 663) by adding some abbreviated references to section 1 of the Act, and then adding two new sections. The first added section ("Sec. 3. Additional Terms") sets forth, as described, specific amendments or terms to be added to the Contract between the United States and the North Unit Irrigation District. The second added section ("Sec. 4. Future Authority to Renegotiate") authorizes the Secretary of the Interior (acting through the Commissioner of Reclamation) to renegotiate terms of the Contract under certain conditions.

COST AND BUDGETARY CONSIDERATIONS

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

S. 266—North Unit Irrigation District Act of 2007

S. 266 would amend certain provisions of a contract between the Department of the Interior and Oregon's North Unit Irrigation District. CBO estimates that enacting this bill would have no significant impact on the federal budget.

S. 266 would amend the North Unit's Irrigation District repayment contract with the Department of the Interior. Under current law, payments under that contract will be completed within the next 35 to 45 years. S. 266 would amend the terms of the district's contract with the department by setting a fixed annual payment and requiring the district's total obligation to be paid to the department by 2044. CBO estimates that enacting S. 266 would increase offsetting receipts by less than \$100,000 a year. (Such collections are a credit against direct spending.) Enacting this bill would not affect revenues.

S. 266 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The bill would authorize the Secretary of the Interior to modify a repayment contract with the North Unit Irrigation District. Other modifications to the contract would increase the number of acres eligible for irrigation and allow the district to use conserved water to support wildlife. Those modifications would generally benefit the district, and any costs they might incur would be incurred voluntarily.

The CBO staff contacts for this estimate are Julie Middleton (for federal costs), and Lisa Ramirez-Branum (for the state and local impact). The 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. 266. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant responsibilities on private individuals and business.

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. 266.

EXECUTIVE COMMUNICATIONS

Because S. 266 is similar to legislation considered during the 109th Congress, the Committee did not request Executive Agency views. The testimony provided by the Bureau of Reclamation on S. 2502 at the Subcommittee hearing in the 109th Congress follows:

STATEMENT OF WILLIAM E. RINNE, ACTING COMMISSIONER,
BUREAU OF RECLAMATION

Madam Chairwoman and members of the Subcommittee, I am William Rinne, Acting Commissioner of the Bureau of Reclamation. Thank you for the opportunity to testify on S. 2502. The Department supports S. 2502.

The North Unit Irrigation District receives water from the Bureau of Reclamation's Deschutes Project and the District's privately developed Crooked River pumping plant in Oregon. Over 900 small farm and ranch families in Oregon's Deschutes Basin rely upon the District for the delivery of irrigation water. Since the District's formation a century ago, these families have shifted from dryland wheat to alfalfa hay, grass seed, garlic seed, and carrot seed, as well as raising cattle, sheep, horses, and other livestock.

In the mid-1950s, Reclamation and the District renegotiated the District's repayment contract in accordance with section 7, subsection (a), of the Reclamation Project Act of 1939. Pursuant to the Act of August 10, 1954, Congress approved the contract along with an authorization for the construction of Haystack Dam and regulating reservoir. The contract established the maximum irrigable acreage that can receive Reclamation project water at 49,818 acres.

S. 2502 will resolve several limitations in the District's contract, enabling the District to more efficiently manage its water supplies. Because Congress approved the District's contract, changes to the contract which are beyond the scope of the Contracting Officer's authority must also be approved to Congress.

Oregon law requires irrigation districts that participate in a publicly financed "conserved water project" to dedicate a portion of conserved water resulting from the project to instream flows for fish, wildlife or other purposes (ORS 537.455 et seq.). The District has self-financed over \$8 million in conservation activities, and would like to consider participation in a publicly financed program. Unfortunately, the underlying Project authorization and the District's contract do not allow it to dedicate water to instream uses. S. 2502 amends the District's contract so the District can comply with State law if it chooses to participate in a conserved water project.

A related change to the District's contract would allow the District to deliver Deschutes Project water to families who are irrigating approximately 9,000 acres of land in the District with non-project water diverted by the District's Crooked River pumping plant. All of these lands are within the District's present boundary, have been irrigated for decades, and have appurtenant water rights issued by the State, but they exceed the current contract's ceiling of approximately 49,818 acres. Using Deschutes Project water on these lands will allow the District to divert less Crooked River water and leave more water instream.

S. 2502 will benefit fish and wildlife by enabling the District to use less water from the Crooked River, and participate in State conserved water projects that return a portion of the conserved water to the Deschutes River. The United States would also realize financial benefits in the form of accelerated repayment of Project construction costs through the annual participation of an additional 9,000 acres in Project repayment. The District's current contract is based on a variable repayment plan, which means that rather than paying fixed annual installments, the District's annual payments vary based on factors such as crop production. Thus it is difficult or impossible to predict when the District would pay out its contract if this bill is not enacted. This legislation not only increases the number of acres in Project repayment, but also requires the District to pay its remaining obligation of \$6,649,371 in fixed annual installments.

The Administration also supports the language that this bill inserts at the end of the bill, in section 4 to be inserted into the underlying act. This provision gives the Secretary the authority to renegotiate this contract upon mutually agreeable terms without having to have Congress approve of changes agreed upon between the District and the Secretary. This provision reflects the general rule that repayment contracts do not require Congressional approval.

The legislation is specific to the District; it would not affect any other district in the Deschutes Project, their patrons, or any others in Oregon. The District will continue to comply with all applicable state and federal laws including the Reclamation Reform Act of 1982.

On behalf of the Department, I would like to compliment the District on its proactive approach to addressing the water management issues it is facing, as well as obtaining the support of other interested parties in the local community. We are pleased to support this legislation.

I am happy to respond to any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 266, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 10, 1954 (68 Stat. 679, ch. 663)

AN ACT To approve an amendatory repayment contract negotiated with the North Unit irrigation district, to authorize construction of Haystack Reservoir on the Deschutes Federal reclamation project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the contract with the North Unit irrigation district (*referred to in this Act as the "District"*) in form substantially similar to that approved by the district directors on July 31, 1953 (*referred to in this Act as the "Con-*

tract”), which has been negotiated by the Secretary of the Interior pursuant to section 7, subsection (a), of the Reclamation Project Act of 1939 (53 Stat. 1187, 1192; 43 U.S.C., 1946 edition, sec. 485), is approved and the Secretary of the Interior is authorized to execute it on behalf of the United States.

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SEC. 3. ADDITIONAL TERMS.

On approval of the District directors and notwithstanding project authorizing legislation to the contrary, the Contract is modified, without further action by the Secretary of the Interior, to include the following modifications:

(1) *In Article 8(a) of the Contract, by deleting “a maximum of 50,000” and inserting “approximately 59,000” after “irrigation service to”.*

(2) *In Article 11(a) of the Contract, by deleting “The classified irrigable lands within the project comprise 49,817.75 irrigable acres, of which 35,773.75 acres are in Class A and 14,044.40 in Class B. These lands and the standards upon which the classification was made are described in the document entitled ‘Land Classification, North Unit, Deschutes Project, 1953’ which is on file in the office of the Regional Director, Bureau of Reclamation, Boise, Idaho, and in the office of the District” and inserting “The classified irrigable land within the project comprises 58,902.8 irrigable acres, all of which are authorized to receive irrigation water pursuant to water rights issued by the State of Oregon and have in the past received water pursuant to such State water rights.”.*

(3) *In Article 11(c) of the Contract, by deleting “, with the approval of the Secretary,” after “District may”, by deleting “the 49,817.75 acre maximum limit on the irrigable area is not exceeded” and inserting “irrigation service is provided to no more than approximately 59,000 acres and no amendment to the District boundary is required” after “time so long as”.*

(4) *In Article 11(d) of the Contract, by inserting “, and may further be used for instream purposes, including fish or wildlife purposes, to the extent that such use is required by Oregon State law in order for the District to engage in, or take advantage of, conserved water projects as authorized by Oregon State law” after “herein provided”.*

(5) *By adding at the end of Article 12(d) the following: “(e) Notwithstanding the above subsections of this Article or Article 13 below, beginning with irrigation season immediately following the date of enactment of the North Unit Irrigation District Act of 2006, the annual installment for each year, for the District, under the Contract, on account of the District’s construction charge obligation, shall be a fixed and equal annual amount payable on June 30 the year following the year for which it is applicable, such that the District’s total construction charge obligation shall be completely paid by June 30, 2044.”.*

(6) *In Article 14(a) of the Contract, by inserting “and for instream purposes, including fish or wildlife purposes, to the extent that such use is required by Oregon State law in order for the District to engage in, or take advantage of, conserved water projects as authorized by Oregon State law,” after “and*

incidental stock and domestic uses”, by inserting “and for instream purposes, as described above,” after “irrigation, stock and domestic uses”, and by inserting “, including natural flow rights out of the Crooked River held by the District” after “irrigation system”.

(7) In Article 290a(of the Contract, by inserting “and for instream purposes, including fish and wildlife purposes, to the extent that such use is required by Oregon State law in order for the District to engage in, or take advantage of, conserved water projects as authorized by Oregon State law” after “provided in article 11”.

(8) In Article 34 of the Contract, by deleting “The District, after the election and upon the execution of this contract, shall promptly secure final decree of the proper State court approving and confirming this contract and decreeing and adjudging it to be a lawful, valid, and binding general obligation of the District. The District shall furnish to the United States certified copies of such decrees and of all pertinent supporting records.” after “for that purpose.”.

SEC. 4. FUTURE AUTHORITY TO RENEGOTIATE.

The Secretary of the Interior (acting through the Commissioner of Reclamation) may in the future renegotiate with the District such terms of the Contract as the District directors determine to be necessary, only upon the written request of the District directors and the consent of the Commissioner of Reclamation.