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SENATE

{ REPORT
114-352

ARKANSAS VALLEY CONDUIT, COLORADO MODIFICATIONS

SEPTEMBER 15, 2016.—Ordered to be printed

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

R E P O R T

[To accompany S. 2616]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2616) to modify certain cost-sharing and revenue provisions relating to the Arkansas Valley Conduit, Colorado, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 2616 is to modify certain cost-sharing and revenue provisions relating to the Arkansas Valley Conduit, Colorado.

BACKGROUND AND NEED

The Fryingpan-Arkansas Project was first authorized in 1962 to furnish irrigation water, municipal and industrial water, and electric power, and to control floods in the Arkansas River Valley in Southeastern Colorado. The last component of this project, the Arkansas Valley Conduit, is a 130-mile pipeline which would deliver water from the Pueblo Reservoir to more than 40 communities in Colorado. Currently, revenue generated by existing Fryingpan-Arkansas project facilities is used for debt repayment associated with construction of related facilities. Congress enacted legislation as part of the Omnibus Public Lands Act of 2009 to require the water users to pay 35 percent of the reimbursable cost of the conduit. In addition, the 2009 law credited the “miscellaneous revenues” that the Project receives for the use of its excess storage capacity and exchange contracts towards the water users’ repayment obligation.

The cost of constructing the conduit still remained subject to appropriation.

The Arkansas Valley Conduit is needed to supply clean drinking water to communities that currently must use groundwater that contains high levels of radium and uranium. S. 2616 is needed, first, to authorize the Secretary of the Interior to spend the miscellaneous revenues from the Project's excess storage capacity to construct the Arkansas Valley Conduit without further appropriation. In addition, it is needed to permit the Secretary to the use of the miscellaneous revenues to repay funds borrowed from the State of Colorado by the water users to help construct the conduit.

LEGISLATIVE HISTORY

S. 2616 was introduced by Senator Gardner on March 2, 2016. The Subcommittee on Water and Power held a hearing on S. 2616 on May 17, 2016.

The Committee on Energy and Natural Resources met in open business session on July 13, 2016, and ordered S. 2616 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on July 13, 2016, by a majority voice vote of a quorum present, recommends that the Senate pass S. 2616.

SECTION-BY-SECTION ANALYSIS

Section 1. Arkansas Valley Conduit, Colorado

Section 1(a) amends Public Law 87-590 to modify the water users' repayment obligation such that it will be 35 percent of the funds appropriated for construction in order to conform to the amendment made by subsection (b), which permits the use of non-appropriated funds to construct the conduit.

Subsection (b) directs that all revenue derived from contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using project facilities shall be available to the Secretary without further appropriation. The funds shall be used to pay for the construction of the Arkansas Valley Conduit; for the payment to the Southeastern Colorado Water Conservancy District to repay the principal and interest on loans obtained by the District toward construction of the Arkansas Valley Conduit; and be credited toward repayment of the funds appropriated for the Arkansas Valley Conduit, plus interest. The Secretary is further directed to enter into one or more agreements with the District that specify the distribution of funds.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 6, 2016.

Hon. LISA MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2616, a bill to modify certain cost-sharing and revenue provisions relating to the Arkansas Valley Conduit, Colorado.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 2616—A bill to modify certain cost-sharing and revenue provisions relating to the Arkansas Valley Conduit, Colorado

Summary: S. 2616 aims to facilitate the construction of the Arkansas Valley Conduit (AVC), a component of the Fryingpan-Arkansas Project designed to deliver potable water to six rural counties in Colorado. Based on information from the Bureau of Reclamation (BOR), the Southeastern Colorado Water Conservancy District, and Colorado state agencies, CBO estimates that enacting S. 2616 would increase direct spending by \$60 million over the 2017–2026 period and by \$108 million after 2026. Because the legislation would affect direct spending, pay-as-you-go procedures apply. Enacting S. 2616 would not affect revenues. The new funding and financing activities authorized in S. 2616 could lead to a reduction in the need for appropriated funds to complete the AVC.

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

S. 2616 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 effect of S. 2616 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	Fiscal year, in millions of dollars											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
INCREASES IN DIRECT SPENDING												
Use of Borrowed Funds for AVC Construction:												
Estimated Budget Authority	0	0	5	5	5	5	5	5	5	5	15	40
Estimated Outlays	0	0	5	5	5	5	5	5	5	5	15	40
Spending of Project Receipts:												
Estimated Budget Authority	0	0	0	0	0	4	4	4	4	4	0	20
Estimated Outlays	0	0	0	0	0	4	4	4	4	4	0	20
Total Changes:												
Estimated Budget Authority	0	0	5	5	5	9	9	9	9	9	15	60
Estimated Outlays	0	0	5	5	5	9	9	9	9	9	15	60

Note: Components may not sum to totals because of rounding; AVC = Arkansas Valley Conduit.

Basis of estimate: For this estimate, CBO assumes that S. 2616 will be enacted near the end of 2016. S. 2616 would authorize the BOR to effectively obtain and repay a construction loan for part or all of the AVC that would be arranged by the Southeastern Colorado Water Conservancy District (the district), the nonfederal sponsor for the AVC. The bill also would authorize the BOR to spend certain receipts from the sale of excess capacity for water storage at the Fryingpan-Arkansas Project to construct the AVC.

Based on an analysis of information from the BOR about project costs and scheduling plans for constructing the AVC, and assuming the new funding and financing authorities provided in the bill are used, CBO estimates that planning and designing of the project would be completed in 2018 and that construction would be completed 20 years later, in 2038.

In 2011, the BOR estimated that completing construction of the AVC would cost \$400 million. In the last few years \$21 million was appropriated to begin design and construction work on the project. S. 2616 would not change the total cost of completing the AVC, however, it would change how those funds are provided by the Congress and it would reduce the portion of total project costs that would be reimbursed by the local water district.

Under current law, any funds to complete the AVC will be provided in annual appropriation acts. S. 2616 aims to facilitate the construction of the AVC by authorizing a combination of funding sources, including permitting the BOR to spend roughly \$68 million of receipts from the sale of excess water storage capacity over the 2022–2038 period and authorizing the BOR to obtain a loan (through the district) from the state of Colorado to finance about \$100 million of the project costs over the next 20 years. Net federal costs to construct the AVC over the next several decades would increase under the bill because the Southeastern Colorado Water Conservancy District would be responsible for repaying a smaller portion of project costs. Furthermore interest costs of the construction loan provided by Colorado would probably be greater than if the U.S. Treasury had borrowed those amounts. Those costs, however, would not be incurred until repayment begins in 2039.

DIRECT SPENDING

Nonfederal Financing of AVC Construction. S. 2616 would effectively authorize the BOR to borrow and repay funds from Colorado state agencies to construct the AVC.¹ Under the bill, the nonfederal financing of construction costs would be arranged through the local water district. Based on information from the BOR, the district, and the state, CBO estimates that the district would obtain financing of \$100 million for constructing the AVC and that the loan would be dispersed in roughly \$5 million increments over the 20-year construction period.² CBO estimates that implementing those

¹Allowing the district to borrow on behalf of the BOR and for the BOR to then use those amounts is considered federal borrowing, a form of mandatory budget authority. Receipt of the borrowed amounts would be considered a means of financing and thus would not be reflected in the budget. However, the budget would record the obligations incurred by using borrowed amounts at the time that such obligations occur. Outlays would be recorded to reflect the timing and pace of capital expenditures to construct the AVC.

²S. 2616 would not limit the amount of financing that the district could obtain from Colorado. If future appropriations for the AVC are lower (or higher) than assumed, the loan could be higher (or lower) than \$100 million and direct spending would be higher (or lower).

provisions would increase direct spending by \$40 million over the 2017–2026 period and \$60 million after 2026.

Spending of Project Receipts. Starting in 2022, S. 2616 would authorize the BOR to spend certain project receipts without further appropriation to construct the AVC. Under current law, those receipts result from excess capacity charges to water users for storage and conveyance services during periods when all available water storage capacity is not needed to meet the authorized purposes of the project. In the last few years, those receipts have totaled about \$4 million each year.

CBO estimates that implementing this provision would increase direct spending by \$20 million over the 2017–2026 period and by \$48 million after 2026.

Nonfederal Cost Share of the AVC. Under current law, the district will be responsible for repaying the federal government 35 percent of AVC construction costs (approximately \$400 million). Under the bill this repayment obligation would remain at 35 percent, but it would not apply to the portion of the project funded through amounts borrowed from Colorado state agencies (about \$100 million), or to the construction costs covered by spending charges for excess water storage capacity (about \$68 million). Repayment of the nonfederal share of the AVC would not begin until construction is complete in 2038, thus no changes in the nonfederal cost share are reflected in this cost estimate that covers the 2017–2026 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

	By fiscal year, in millions of dollars—														2016– 2021	2016– 2026
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026					
NET INCREASE IN THE DEFICIT																
Statutory Pay-As-You-Go Impact	0	0	0	5	5	5	9	9	9	9	9	15	60			

Estimated impact on state, local, and Tribal Governments: S. 2616 contains no intergovernmental mandates as defined in UMRA. The bill would benefit the Southeastern Colorado Water Conservancy District by allowing the district to obtain nonfederal financing to construct a federal water project. Any costs incurred by the district under the agreement with the federal government to secure financing, including cost-sharing contributions, would result from complying with conditions of federal assistance.

Estimated impact on the private sector: S. 2616 contains no private-sector mandates as defined in UMRA.

Increase in long-term net direct spending and deficits: CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

Estimate prepared by: Federal Spending: Aurora Swanson; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate Approved by: H. Samuel Papenfuss, 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. 2616. 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. 2616, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2616, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony received from the Bureau of Reclamation of the U.S. Department of the Interior at the May 17, 2016, Subcommittee on Water and Power hearing on S. 2616 follows:

STATEMENT OF ESTEVAN LOPEZ, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Chairman Lee and members of the Subcommittee, I am Estevan Lopez, Commissioner of the Bureau of Reclamation, in the Department of the Interior. I appreciate the opportunity to testify on S. 2616. The Administration is still reviewing S. 2616 and does not have a position at this time. The Department supports the goal of assisting non-federal sponsors with accessing nonfederal capital for the construction of projects. However, the bill raises some concerns discussed below.

The Arkansas Valley Conduit (AVC) was originally authorized in 1962. However, the beneficiaries' inability to repay construction of the project, along with competing water infrastructure needs across the West have made it difficult to fund large-scale projects like the AVC at the federal or local level. Currently AVC area communities use groundwater to supply most of their drinking water, and that water has been determined to contain high levels of naturally occurring radium and uranium. Twelve water providers have concentrations of these elements in the water supplies that exceed federal Safe Drinking Water Act mandatory standards. As a result, the State has issued enforcement actions requiring these water providers to remove the contaminants or find a better quality water source. In addition, water providers in the lower Arkansas River Basin generally have difficulty meeting non-manda-

tory secondary drinking water standards for salts, sulfate and iron.

Given these circumstances, it is extremely important for these communities to find an alternative water supply that would meet existing and future municipal and industrial potable water demands for citizens in the six southeastern Colorado counties of the Lower Arkansas River Basin: Pueblo, Crowley, Otero, Bent, Prowers, and Kiowa. AVC would serve approximately 53,000 residents (estimated to increase to 74,000 by the year 2070) with an estimated construction cost of \$400 million (2011 dollars). Feasibility level designs are being prepared with an anticipated completion date of September, 2016.

Replacing contaminated groundwater supplies with local surface water from the Arkansas River is problematic because the river downstream of the City of Pueblo contains high levels of selenium, sulfates, uranium, and salts. The AVC, which is an authorized feature of Reclamation's Fryingpan-Arkansas Project (Fry-Ark Project), would address these problems by providing high quality surface water via a least-cost regional system.

The existing Fry-Ark Project Act, as amended in 2009 by Public Law 111-11, authorizes appropriations for construction of the AVC; allows miscellaneous revenues to be used to construct AVC; and, upon completion, provides for miscellaneous revenues to be credited to the actual costs of AVC. P.L. 111-11 also provides a cost sharing plan of 100 percent federal financing and 35 percent non-federal repayment, over a period of 50 years, starting after project completion. In August 2013 a Final Environmental Impact Statement was completed and the Record of Decision was signed in February 2014. Through FY 2016, approximately \$21 million in federal appropriations has been provided for AVC.

Representatives of the Southeastern Colorado Water Conservancy District (District) and the Department and Bureau of Reclamation (Reclamation) began discussions in the summer of 2015 to develop an approach for funding AVC construction while reducing the need for federal appropriations. With an objective of accomplishing sufficient final engineering and design work to allow award of the first construction contract during fiscal year (FY) 2019, the goal is to obtain funding from multiple sources to permit completion of construction in a timely fashion.

The District and the state of Colorado are contemplating a \$100 million loan to finance part of the construction of this project. S. 2616 authorizes and directs Reclamation to provide, without appropriation, miscellaneous revenues to the District so they can, in turn, use those funds to the extent needed, repay a loan or loans from the Colorado Water Conservation Board (CWCB). Under current law, those miscellaneous revenues are controlled by Reclamation, and at the Secretary's discretion, can be used to offset various project costs, finance further construction of the Fryingpan-Arkansas Project (potentially including the

AVC), or deposited to the Reclamation fund to reduce the Federal deficit.

If S. 2616 were enacted:

- The District would remain obligated to repay 35 percent of the federal appropriations made for the AVC, with such repayment to come from the crediting of miscellaneous revenues to the AVC or from District sources if those miscellaneous revenues are insufficient.
- The miscellaneous revenues not needed to repay a loan or loans to the District from the CWCBC or to meet the District's obligation to repay 35 percent of federal appropriations would be available for Reclamation to credit to the repayment of the remaining 65 percent of the AVC's construction costs paid for with federal appropriations.
- The costs of the Ruedi Dam and Reservoir, Fountain Valley Pipeline, and South Outlet Works at Pueblo Dam and Reservoir, plus interest, will be repaid before miscellaneous revenues could be used to pay for AVC costs during construction.

Under current law, all miscellaneous revenues generated by the Fry-Ark Project are currently devoted to repayment of the investment in the AVC.

S. 2616 directs that miscellaneous revenues be provided to the District. The District envisions that these revenues would be used to repay the monies it would borrow from the CWCBC for about \$100 million in non-federal financing for the construction of the AVC. While we are still undertaking a detailed analysis of the full implications of such a reallocation of federal receipts, the reallocation of federal revenues to a non-federal entity for the benefit of that non-federal entity should be given careful consideration, including budgetary effects.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

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 original bill, as 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):

Public Law 87-590, as amended

* * * * *

(c) No part of the single purpose municipal and industrial water supply works involved in the Fryingpan-Arkansas project shall be constructed by the Secretary in the absence of evidence satisfactory to him that it would be infeasible for the communities involved to construct the works themselves, singly or jointly. In the event it is determined that these works, or any of them, are to be constructed by the Secretary, a contract providing, among other things, for pay-

ment of the actual cost thereof, or in the case of [the Arkansas Valley Conduit, payment in an amount equal to 35 percent of the cost of the conduit that is comprised of revenue generated by payments pursuant to a repayment contract and revenue] *the Arkansas Valley Conduit, for payment in an amount equal to 35 percent of the funds appropriated for the conduit that is comprised of revenue generated by payments pursuant to a repayment contract and of revenue* that may be derived from contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using Fryingpan-Arkansas project facilities, with interest as hereinafter provided, as rapidly as is consistent with the contracting parties' ability to pay, but in any event, within fifty years from the time the works are first available for the delivery of water, and for assumption by the contracting parties of the care, operation, maintenance, and replacement of the works shall be in a condition precedent to construction thereof.

SEC. 2(a)—Contracts to repay the portion of cost of the Fryingpan-Arkansas project * * *

(b) RATES.—

* * * * *

(2) RUEDI DAM AND RESERVOIR, FOUNTAIN VALLEY PIPELINE, AND SOUTH OUTLET WORKS AT PUEBLO DAM AND RESERVOIR.—

(A) IN GENERAL.—Notwithstanding the reclamation laws, [until the date on which the payments for the Arkansas Valley Conduit under paragraph (3) begin], any revenue that may be derived from contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using Fryingpan-Arkansas project facilities shall be credited towards payment of the actual cost of Ruedi Dam and Reservoir, the Fountain Valley Pipeline, and the South Outlet Works at Pueblo Dam and Reservoir [plus interest in an amount determined in accordance with this section] *until those costs, plus interest, have been fully repaid.*

(B) EFFECT.—Nothing in 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.)) prohibits the concurrent crediting of revenue (with interest as provided under this section) towards payment of the Arkansas Valley Conduit as provided under this paragraph.

(3) ARKANSAS VALLEY CONDUIT.—

[(A) USE OF REVENUE.—Notwithstanding the reclamation laws, any revenue derived from contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using Fryingpan-Arkansas project facilities shall be credited towards payment of the actual cost of the Arkansas Valley Conduit plus interest in an amount determined in accordance with this section.]

(A) USE OF REVENUE.—

(i) IN GENERAL.—*Notwithstanding the reclamation laws, all revenue derived from all contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using Fryingpan-Arkansas project fa-*

cilities shall be available to, and used by, the Secretary, without appropriation—

(I) subject to paragraph (2), for the payment of costs associated with the construction of the Arkansas Valley Conduit;

(II) for the payment to the Southeastern Colorado Water Conservancy District, including any enterprise established by the District in accordance with Colorado State law (collectively referred to in this subparagraph as the 'District') of amounts needed for the District to repay the principal and interest on loans obtained by the District from agencies of the State of Colorado for construction of the Arkansas Valley Conduit; and

(III) to be credited towards repayment of the funds appropriated for the Arkansas Valley Conduit, plus interest.

(ii) AGREEMENTS.—The Secretary shall enter into 1 or more agreements with the District that specify the distribution, in amount and timing, of the revenue described in clause (i), as between the uses described in subclauses (I), (II), and (III) of that clause.

(B) ADJUSTMENT OF RATES.—Any rates charged under this section for water for municipal, domestic, or industrial use or for the use of facilities for the storage or delivery of water shall be adjusted to reflect the estimated revenue derived from contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using Fryingpan-Arkansas project facilities.

* * * * *