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SENATE

{ REPORT
115-101

TO REINSTATE AND EXTEND THE DEADLINE FOR COMMENCEMENT OF
CONSTRUCTION OF A HYDROELECTRIC PROJECT INVOLVING CLARK
CANYON DAM

JUNE 8, 2017.—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. 491]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 491) to reinstate and extend the deadline for commencement of construction of a hydroelectric project involving Clark Canyon Dam, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

The amendment is as follows:

1. Strike all after the enacting clause and insert the following:

SECTION 1. EXTENSION OF TIME FOR A FEDERAL ENERGY REGULATORY COMMISSION PROJECT INVOLVING CLARK CANYON DAM.

(a) IN GENERAL.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 12429, the Federal Energy Regulatory Commission (referred to in this section as the “Commission”) may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of, and the procedures of the Commission under, that section, extend the time period during which the licensee is required to commence construction of the project for not more than 6 years from the date of the expiration of the extension originally issued by the Commission.

(b) REINSTATEMENT OF EXPIRED LICENSE.—

(1) IN GENERAL.—If the period required for the commencement of construction of the project described in subsection (a) has expired prior to the date of enactment of this Act, the Commission may reinstate the license effective as of that date of expiration.

(2) EXTENSION.—If the Commission reinstates the license under paragraph (1), the first extension authorized under subsection (a) shall take effect on the date of that expiration.

PURPOSE

The purpose of S. 491 is to reinstate and extend the deadline for commencement of construction of a hydroelectric project involving Clark Canyon Dam.

BACKGROUND AND NEED

Clark Canyon Dam Project was licensed as Federal Energy Regulatory Commission (FERC) Project No. 12429 in 2009, and subsequently received the maximum two-year extension in 2011. Section 13 of the Federal Power Act provides that, if construction does not timely commence, FERC must terminate the license. After project construction did not commence by the extended deadline (August 25, 2013), the license was terminated by FERC order in 2015. Legislation is required to reinstate the terminated license and extend the construction commencement deadline.

LEGISLATIVE HISTORY

Senators Daines, Crapo, Risch, and Tester introduced S. 491 on March 2, 2017.

In the 114th Congress, Senator Daines, Crapo, Risch, and Tester introduced a similar measure, S. 1103, on April 27, 2015. The Committee on Energy and Natural Resources conducted a hearing on S. 1103 on May 19, 2015. The Committee on Energy and Natural Resources met in open business session on July 30, 2015 and ordered S. 1103 favorably reported (S. Rept. 114–132).

The measure was also included in S. 2012, the Energy Policy Modernization Act of 2016, an original bill that was reported by the Committee on Energy and Natural Resources on July 30, 2015 and passed by the Senate, as amended, on April 26, 2016.

Representatives Zinke, Labrador, and Simpson introduced companion language, H.R. 2080, in the House of Representatives on April 28, 2015.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 491 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on March 30, 2017, by a majority voice vote of a quorum present, recommended that the Senate pass S. 491, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 491, the committee adopted an amendment in the nature of a substitute to provide FERC with the discretion to extend the project's license and to start the congressionally authorized extension from the expiration date of the FERC's license extension instead of the date of the Act's enactment. The amendment is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes FERC, at the request of the licensee for the project and after reasonable notice, and in accordance with FERC procedures, to extend the time period during which the licensee is required to commence the construction of project works to a six-year period, beginning on the expiration date of FERC's license extension. This section also authorizes FERC to reinstate the license if the license has expired prior to the date of enactment of this Act. If so reinstated, the reinstated license is to be effective as of the date of the expiration of the previous extension.

COST AND BUDGETARY CONSIDERATIONS

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

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CBO estimates that implementing S. 491 would have no net effect on the federal budget. The bill would authorize the Federal Energy Regulatory Commission (FERC) to reinstate the license and extend the deadline for beginning construction of a hydroelectric project (number 12429) at Clark Canyon Dam in Montana. The proposed extension could have a minor effect on FERC's workload; however, because FERC recovers 100 percent of its costs through user fees, any change in that agency's costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges, resulting in no net change in federal spending.

Enacting S. 491 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 491 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 491 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 CBO staff contact for this estimate is Megan Carroll. The estimate was 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. 491.

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. 491, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 491, as 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

Because S. 491 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The written testimony provided by FERC at the hearing before the Energy and Natural Resources Committee on May 19, 2015, follows:

FEDERAL ENERGY
REGULATORY COMMISSION,
May 18, 2015.

Re S. 1103 and S. 1104.

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

DEAR CHAIRMAN MURKOWSKI: This letter is in response to a request from your staff for my views on S. 1103 and S. 1104. S. 1103 would require the Federal Energy Regulatory Commission to reinstate the license for the proposed 4.7-megawatt Clark Canyon Dam Hydroelectric Project No. 12429, to be located at Reclamation's Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana. The bill also would require the Commission to extend the commencement of construction deadline for the project for a three-year period. S. 1104 would authorize the Commission to extend, for six years, the commencement of construction deadline for the proposed 15-megawatt Gibson Dam Hydroelectric Project No. 12478, to be located at the U.S. Department of the Interior, Bureau of Reclamation's (Reclamation) Gibson Dam, on the Sun River, in Lewis and Clark and Teton Counties, Montana.

The Commission issued an original license for the Clark Canyon Dam Project on August 26, 2009. The license required that commencement of project construction begin by the maximum allowable two-year deadline, August 25, 2011. At the licensee's request, the Commission extended the deadline for two years (i.e., until August 25, 2013), which is the maximum allowable by section 13 of the Federal Power Act. The licensee was not able to commence construction by that date and, as required by section 13, the Commission terminated the license, by order dated March 19, 2015. The Commission explained that the licensee could file a new license application and that Commission staff would work with the licensee to determine whether portions of the Commission's regulation could be waived to make the new license proceeding as expeditious as possible.

The Commission issued an original license for the Gibson Dam Project on January 12, 2012. The license provided that the company was required to commence project construction within two years of the date of the license, which again is the maximum period permitted by the Federal Power Act. The Commission subsequently granted the maximum allowable two-year extension of the commencement of construction deadline. Accordingly, the deadline for the commencement of construction is now January 12, 2016. Sec-

tion 13 of the Federal Power Act provides that, if construction does not timely commence, the Commission must terminate the license. It is my understanding that the licensee is encountering difficulty obtaining lands, subject to a U.S. Fish and Wildlife conservation easement, that are needed for construction of the project's primary transmission line, such that the licensee believes that it may not be able to commence project construction by the statutory deadline.

The last several Commission Chairmen and I have taken the position of not opposing legislation that would extend the commencement of construction deadline no further than 10 years from the date that the license in question was issued. Where proposed extensions would run beyond that time, there has been a sense that the public interest is better served by releasing the site for other public uses. Because S. 1103 and S. 1104 provide for commencement of construction deadlines that do not exceed 10 years from the dates that the respective licenses were issued, I do not oppose these bills.

If I can be of further assistance to you on this or any other Commission matter, please let me know.

Sincerely,

NORMAN C. BAY,
Chairman.

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 S. 491, as ordered reported.

