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TULE RIVER TRIBE WATER DEVELOPMENT ACT

MARCH 2, 2010.—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. 1945]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1945) to require the Secretary of the Interior to conduct a study on the feasibility and suitability of constructing a storage reservoir, outlet works, and a delivery system for the Tule River Indian Tribe of the Tule River Reservation in the State of California to provide a water supply for domestic, municipal, industrial, and agricultural purposes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 1945 is to require the Secretary of the Interior to conduct a study on the feasibility and suitability of constructing a storage reservoir, outlet works, and a delivery system for the Tule River Indian Tribe of the Tule River Reservation in the State of California to provide a water supply for domestic, municipal, industrial, and agricultural purposes.

BACKGROUND AND NEED

The Tule River Reservation is located in central California and includes approximately 58,000 acres. The Tribal members currently rely on springs and groundwater wells for water.

In 1999, the Tule River Indian Tribe, the Tule River Association, and the South Tule Independent Ditch Company began negotiations to resolve the Tribe's reserved water rights claims. These negotiations started even though no litigation to determine the Tribe's water rights had been initiated. In 2007, all of the parties

who had participated in the negotiations except the United States entered into the Tule River Tribe Reserved Water Rights Settlement Agreement. The settlement agreement quantifies the Tribe's reserved water rights and provides for the development of a water supply system that would include a storage reservoir of not more than 5,000 acre-feet of water, the associated outlet works and a water delivery system. The system will serve tribal and non-Indian water users. The parties to the settlement agreement indicate that there is no local opposition to the settlement.

H.R. 1945 authorizes the Bureau of Reclamation to assess the feasibility of constructing the water system described in the settlement agreement. A similar attempt to obtain legislation to authorize a feasibility study was initiated in the 110th Congress and the parties have been waiting over two years since they signed the settlement agreement for an assessment from the United States regarding the feasibility of the project. The settlement parties commissioned technical studies of the proposed water storage project and although those studies have been reviewed by the Bureau of Reclamation, additional analysis and investigation would be required before a feasibility determination could be made. H.R. 1945 does not authorize any construction and does not settle the Tribe's water rights. The settlement parties anticipate separate legislation authorizing the Secretary of the Interior to execute the settlement agreement and construct the project. H.R. 1945 prohibits future projects constructed pursuant to the feasibility study from supplying water for any current or future casino, lodging, dining, entertainment, or other spaces that support a gaming activity.

LEGISLATIVE HISTORY

H.R. 1945, sponsored by Representative Nunes, passed the House of Representatives by a vote of 417–3 on July 8, 2009. Companion legislation, S. 789, was introduced by Senator Feinstein on April 2, 2009. The subcommittee on Water and Power held a hearing on S. 789 on July 23, 2009 (S. Hrg. 111–91). At its business meeting on December 16, 2009, the Committee on Energy and Natural Resources ordered H.R. 1945 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on December 16, 2009, by voice vote of a quorum present, recommends that the Senate pass H.R. 1945.

SECTION-BY-SECTION ANALYSIS

Section 1 identifies the short title of the act as the "Tule River Tribe Water Development Act".

Section 2(a) defines "Secretary" as the Secretary of the Interior, acting through the Commissioner of Reclamation and "Tribe" as the Tule River Indian Tribe of the Tule River Reservation in California.

Section 2(b) requires the Bureau of Reclamation, within two years of receipt of funding, to complete a feasibility study to evaluate alternatives, including those to store 5,000 acre-feet of water, for the provision of domestic, commercial, municipal, industrial and irrigation water supply for the Tribe and to report to the Com-

mittee on Natural Resources of the House and the Committees on Energy and Natural Resources and Indian Affairs of the Senate on the results of the study. Three million dollars is authorized for the study.

Section 2(c)(1) prohibits future projects constructed pursuant to the feasibility study from supplying water for any current or future casino, lodging, dining, entertainment, or other spaces that support a gaming activity.

Section 2(c)(2) requires that a water supply provided by a project constructed relating to the feasibility study must be available to serve the domestic, municipal, and governmental needs of the Tribe and its members and other commercial, agricultural, and industrial needs not related to a gaming activity.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 1945—Tule River Tribe Water Development Act

H.R. 1945 would require the Bureau of Reclamation to conduct a feasibility study to evaluate alternatives for providing a dedicated water supply for the Tule River Tribe of California. Assuming appropriation of the authorized amount, CBO estimates that implementing H.R. 1945 would cost $3 million over the next two years. Enacting the legislation would not affect direct spending or revenues.

H.R. 1945 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 Aurora Swanson. The estimate was approved by Theresa Gullo, 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. 1945.

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. 1945, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 1945, 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

Because H.R. 1945 is identical to companion measure, S. 789, the Committee did not request Executive Agency Views. The testimony provided by the Department of the Interior at the subcommittee hearing on S. 789 on July 23, 2009 follows:

STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairwoman and Members of the Subcommittee, I am Michael Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 789, the Tule River Tribe Water Development Act. For reasons discussed below, the Department does not support S. 789.

The proposed legislation would direct Interior "to conduct a study on the feasibility and suitability of constructing a storage reservoir, outlet works, and a delivery system for the Tule River Indian Tribe of California to provide a water supply for domestic, municipal, industrial, and agricultural purposes, and for other purposes." The Act would authorize $3 million for Reclamation to conduct a feasibility study to be completed within 2 years after funds are appropriated.

Reclamation delivered testimony on similar legislation (H.R. 2535) during the 110th Congress on September 25, 2007. While S. 789 contains some notable changes in Section 2, the Department's concerns with this bill remain.

Reclamation has not reviewed and is not in a position to verify the accuracy of the cost estimates upon which appropriations are authorized in S. 789. Before being asked to consider a request for authorization or funding of a feasibility study, Reclamation typically has had an opportunity to conduct appraisal-level analysis of a project. Without a completed appraisal level study, the Department believes it is premature to authorize this feasibility study. The authorization of $3 million for this study would further compete with the funding needs of other already authorized projects. Reclamation generally requires completion of an appraisal level study before considering whether the project warrants continuing to a feasibility-level analysis. Reclamation understands that the Tribe has conducted a substantial amount of technical, planning, and environmental work over the past decade; however, Reclamation has not reviewed these documents nor determined how they may affect the scope, cost, or schedule of a feasibility study.

In addition, the proposed legislation does not specify a local non-Federal cost-share partner or a cost share requirement for the feasibility study. Reclamation typically shares feasibility study costs with the non-Federal partners paying 50 percent of study costs. There is ample legislative precedent which supports this approach. For several years settlement agreement negotiations have been conducted between the Tribe, downstream water users, and

the Federal negotiation team regarding the Tribe's federally reserved water rights. However, not all of the issues between the Tribe and the Federal negotiating team have been resolved. Moreover, the Department has not analyzed the settlement needs of the Tribe and other parties including the question of whether the proposed storage reservoir, outlet works, and delivery system are a cost effective approach to accomplishing the goals of the settling parties. Nor have issues of cost and cost sharing with other settlement parties been negotiated. Until the Department has completed its analysis of the proposed settlement, it is premature to take a position on the scope, schedule, and cost of the feasibility study that is proposed in this legislation.

Typically, a feasibility study of this size and shape, including National Environmental Policy Act compliance, requires several years to complete with significant costs. Actual costs for this study would be determined after study authorization and appropriations are provided followed by a Plan of Study and public scoping processes. The time and cost to complete the feasibility study and environmental documentation for the Tule River Tribe Water Development Project could be shortened if the Tribe's technical and environmental analyses and documentation are sufficient and compatible with Federal requirements. The costs of a feasibility study are significant and may exceed the $3 million authorization in this bill.

This bill also includes a new subsection 2(c) that would restrict the use of water from any project "relating to the feasibility study" authorized in this legislation, prohibiting the use of water supplies provided by this project for the casino of the Tule River Tribe or any other tribal casino or facility designed to support gaming activity. The Department opposes conditioning support for tribal water development upon restrictions on permissible activities. This bill, if enacted, will place a restriction upon any project that may be authorized as part of a comprehensive water rights settlement even if the exact feasibility study authorized by the bill is never carried out. We understand that the Tribe supports this legislation, but we believe that it raises serious precedent and fairness problems.

Although we do not support this bill, the Department understands the importance of a reliable water supply and will continue to work with the Tribe toward this goal in addressing the issues described above.

That concludes my statement. I would be pleased to answer any questions.

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 H.R. 1945, as ordered reported.

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