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TO MAKE AVAILABLE THE CONTINUED USE OF PICK-SLOAN MISSOURI BASIN PROGRAM PROJECT USE POWER BY THE KINSEY IRRIGATION COMPANY AND THE SIDNEY WATER USERS IRRIGATION DISTRICT, AND FOR OTHER PURPOSES

NOVEMBER 21, 2019.—Ordered to be printed

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

REPORT

[To accompany S. 1882]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1882) to make available the continued use of Pick-Sloan Missouri Basin Program project use power by the Kinsey Irrigation Company and the Sidney Water Users Irrigation District, and for other purposes, 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.

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. CONTINUED USE OF PICK SLOAN MISSOURI BASIN PROGRAM PROJECT USE POWER BY THE KINSEY IRRIGATION COMPANY AND THE SIDNEY WATER USERS IRRIGATION DISTRICT.

(a) AUTHORIZATION.—Notwithstanding any other provision of law and subject to subsection (b), the Secretary of the Interior (acting through the Commissioner of Reclamation) shall continue to treat the irrigation pumping units known as the "Kinsey Irrigation Company" in Custer County, Montana and the "Sidney Water Users Irrigation District" in Richland County, Montana, or any successor to the Kinsey Irrigation Company or Sidney Water Users Irrigation District, as irrigation pumping units of the Pick-Sloan Missouri Basin Program for the purposes of wheeling, administration, and payment of project use power, including the applicability of provisions relating to the treatment of costs beyond the ability to pay under section 9 of the Act of December 22, 1944 (commonly known as the "Flood Control Act of 1944") (58 Stat. 891, chapter 665).

(b) LIMITATION.—The quantity of power to be provided to the Kinsey Irrigation Company and the Sidney Water Users Irrigation District (including any successor to the Kinsey Irrigation Company or the Sidney Water Users Irrigation District) under subsection (a) may not exceed the maximum quantity of power provided to the Kinsey Irrigation Company and the Sidney Water Users Irrigation District

under the applicable contract for electric service in effect on the date of enactment of this Act.

PURPOSE

The purpose of S. 1882 is to make available the continued use of Pick-Sloan Missouri Basin Program project use power by the Kinsey Irrigation Company and the Sidney Water Users Irrigation District.

BACKGROUND AND NEED

In 1938, Congress enacted the Fort Peck Project Act directing the completion of the Fort Peck Project in Montana, and authorizing the Bureau of Reclamation (BOR) to transmit and sell electric energy generated by the project (Act of May 18, 1938, ch. 250, 52 Stat. 403). In 1944, Congress enacted the Flood Control Act of 1944 (58 Stat. 891, chapter 665). The Act authorized the Missouri River Basin Project, (now known as the Pick-Sloan Missouri Basin Program (Program)), incorporated the Fort Peck project into the Program, and approved a comprehensive plan for the Program to be governed by Reclamation laws.

The Kinsey Irrigation Company (Kinsey) and the Sidney Water Users Irrigation District operate non-federal water projects in eastern Montana. Both have relied on electric service from the Program for the past 73 years. The Kinsey Project was constructed by the Farm Security Administration in 1937. Although it briefly operated as a unit of the Program, Kinsey purchased all project facilities in 1945 and has been a non-federal project since that time. The Sidney Project was built by the State of Montana in 1938. Although federal funds from the Public Works Administration were used in its construction, it has never been a federal project. Nonetheless, the BOR entered into project use power (PUP) contracts with Kinsey and Sidney in 1946. These contracts provide electric service needed to operate and maintain the two projects.

The PUP contracts between the BOR and the two irrigation districts have been modified and renewed over the years. The current PUP contracts expire in 2020. During the negotiations to renew the PCP contracts, the BOR determined it did not have the authority to continue supplying either Kinsey or Sidney with electric energy because the two irrigation districts are not part of the federal project.

Kinsey and Sidney have relied on Program power for over 73 years, primarily for groundwater pumping, and together currently serve over 130 farmers and nearly 12,000 acres. If Kinsey is unable to extend its contract it would have to obtain service through the local rural electric cooperative, which Kinsey expects will increase power rates about 1900 percent. Likewise, Sidney would seek to purchase power from the Western Area Power Administration and expects, based on current rate schedules, for power rates to increase about 3200 percent.

S. 1882 will authorize BOR to continue to treat Kinsey and Sidney as units of the Program for purposes of purchasing project use power.

LEGISLATIVE HISTORY

S. 1882 was introduced by Senator Daines on June 18, 2019. The Subcommittee on Water and Power held a hearing on the measure on June 26, 2019.

An identical bill, H.R. 3471, was introduced by Representative Gianforte in the House of Representatives on July 10, 2019, and referred to the House Committee on Natural Resources.

The Senate Committee on Energy and Natural Resources met in open business session on September 25, 2019, and ordered S. 1882 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 25, 2019, by a majority voice vote of a quorum present, recommends that the Senate pass S. 1882, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1882, the Committee adopted an amendment in the nature of a substitute. The substitute strikes all findings from the bill and adds language in section 1(a) clarifying the applicability to the irrigation districts of provisions relating to treatment of costs beyond the ability to pay under section 9 of the Act of the Flood Control Act of 1944.

SECTION-BY-SECTION-ANALYSIS

Sec. 1. Continued use of Pick Sloan Missouri Basin Program project use power by the Kinsey Irrigation Company and the Sidney Water Users Irrigation District

Subsection (a) directs the Secretary of the Interior, acting through the Commissioner of Reclamation, notwithstanding any other provision of law, to continue to treat the Kinsey Irrigation Co. and Sidney Water Users Irrigation District as irrigation pumping units of the program for the purpose of wheeling, administration, and payment of project use power, including the applicability of provisions in Flood Control Act of 1944 related to the treatment of costs beyond the ability of irrigators to pay.

Subsection (b) specifies that the contract is subject to the requirements that the quantity of power provided cannot exceed the maximum quantity provided to the Kinsey and Sidney on the date of enactment.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the internet at www.cbo.gov.

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. 1882. The bill is not a regulatory measure in the sense of impos-

ing 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. 1882, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1882, 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 provided by the Department of the Interior at the June 26, 2019, Subcommittee on Water and Power hearing on S. 1882 follows:

> STATEMENT OF KIEL WEAVER, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR
>
> Chairman McSally, Ranking Member Cortez Masto, and Members of the Subcommittee, I am Kiel Weaver, Principal Deputy Assistant Secretary for Water and Science with the U.S. Department of the Interior ("Department"). Thank you for the opportunity to provide the views of the Department on several water related pieces of legislation. I will address each of these individually.
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> *S. 1882, The Kinsey/Sidney (Montana) Project Use Power Bill*
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> The Department did not receive a final draft of this legislation in enough time to provide detailed testimony on the bill. Reclamation would need additional time to analyze the final text of this legislation before stating a position.
>
> CONCLUSION
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> Again, thank you for the opportunity to testify. The Department looks forward to working closely with this Committee on these bills. I would be happy to answer any questions.

Additional views were requested from the Bureau of Reclamation on S. 1882, at the Subcommittee on Water and Power hearing on June 26, 2019. The Bureau of Reclamation provided additional views on September 23, 2019 on S. 1882 as follows:

> DEAR MADAM CHAIRMAN: As requested during the June 26, 2019, hearing before your subcommittee, the Department of the Interior is providing these views on S. 1882, a bill to make available the continued use of Pick-Sloan Missouri Basin Program Project Use Power (PUP) by the Kinsey Irrigation Company and the Sidney Water Users Irrigation District, and for other purposes.

Under the laws governing the Reclamation program, PUP is generally only available to federal projects, unless otherwise authorized by Congress.

The Sidney Pumping Project was constructed by the State of Montana in 1938 and financed through a loan and a grant from the Federal Public Works Administration. Reclamation initially believed the project met the conditions to receive PUP as it was financed by the United States. However, this determination was made in error because the Sidney Project is not and has never been a federal project with the required federal nexus to receive PUP. As such, Reclamation did not have authority to enter into the PUP contract with Sidney.

The Kinsey Project was constructed in 1937 by the Farm Security Administration and was briefly a Pick-Sloan Missouri Basin Program unit. However, in 1945, Kinsey purchased all project facilities, thus rendering it a non-federal project.

Reclamation has been providing PUP to both Sidney and Kinsey since 1946, although neither Sidney nor Kinsey are Reclamation projects or are specifically authorized by Congress to receive PUP. As a result, Reclamation has notified both Sidney and Kinsey that we will be unable to renew their contracts when they expire on December 31, 2020 absent specific legislative authority.

This legislation, if enacted, would give Reclamation the authority to continue to provide PUP to both Sidney and Kinsey. In addition, the legislation includes language to preserve the current contractual service while limiting the quantity of PUP from exceeding the maximum contractual amount in the future.

In general, the Department does not oppose the inclusion of specific authority for these specific cases.

Sincerely,

BRENDA BURMAN,
Commissioner.

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 as ordered reported.

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