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SENATE

{ REPORT
113-167

AUTHORIZED RURAL WATER PROJECTS COMPLETION ACT

MAY 22, 2014.—Ordered to be printed

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

R E P O R T

[To accompany S. 715]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 715) to authorize the Secretary of the Interior to use designated funding to pay for construction of authorized rural water projects, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Authorized Rural Water Projects Completion Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—RECLAMATION RURAL WATER CONSTRUCTION AND SETTLEMENT IMPLEMENTATION FUND

Sec. 101. Establishment.

Sec. 102. Accounts.

Sec. 103. Deposits to Fund.

Sec. 104. Expenditures from Fund.

Sec. 105. Investments of amounts.

Sec. 106. Transfers of amounts.

Sec. 107. Transferability between accounts.

Sec. 108. Termination.

TITLE II—RURAL WATER PROJECTS

Sec. 201. Rural water projects.

Sec. 202. Restrictions.

TITLE III—RECLAMATION INFRASTRUCTURE AND SETTLEMENT IMPLEMENTATION

Sec. 301. Reclamation infrastructure and settlement implementation.

SEC. 2. DEFINITIONS.

In this Act:

- (1) **FUND.**—The term “Fund” means the Reclamation Rural Water Construction and Settlement Implementation Fund established by section 101.
- (2) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (3) **RURAL WATER PROJECT.**—The term “rural water project” means a project that is designed to provide domestic, industrial, municipal, or residential water to a small community or group of small communities, including Indian tribes and tribal organizations.
- (4) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

TITLE I—RECLAMATION RURAL WATER CONSTRUCTION AND SETTLEMENT IMPLEMENTATION FUND

SEC. 101. ESTABLISHMENT.

There is established in the Treasury of the United States a fund, to be known as the “Reclamation Rural Water Construction and Settlement Implementation Fund”, consisting of—

- (1) such amounts as are deposited in the Fund under section 103; and
- (2) any interest earned on investment of amounts in the Fund under section 105.

SEC. 102. ACCOUNTS.

Within the Fund, there are established the following accounts:

- (1) Rural Water Project Account.
- (2) Indian Irrigation Account.
- (3) Reclamation Infrastructure and Settlement Implementation Account.

SEC. 103. DEPOSITS TO FUND.

(a) **IN GENERAL.**—For each of fiscal years 2014 through 2035, the Secretary of the Treasury shall deposit in the Fund \$150,000,000 of the revenues that would otherwise be deposited for the fiscal year in the reclamation fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093), of which—

- (1) \$80,000,000 for each of the fiscal years shall be deposited in the Rural Water Project Account established under section 102(1);
- (2) \$35,000,000 for each of the fiscal years shall be deposited in the Indian Irrigation Account established under section 102(2); and
- (3) \$35,000,000 for each of the fiscal years shall be deposited in the Reclamation Infrastructure and Settlement Implementation Account established under section 102(3).

(b) **AVAILABILITY OF AMOUNTS.**—Amounts deposited in the Fund under subsection

(a) shall be used, subject to appropriation, to carry out this Act.

SEC. 104. EXPENDITURES FROM FUND.

(a) **IN GENERAL.**—Subject to subsection (b), for each of fiscal years 2014 through 2035, the Secretary may expend from the Fund, in accordance with this Act, not more than the sum of—

- (1) \$150,000,000, to be allocated from the amounts in the accounts specified in section 102; and
- (2) the amount of interest accrued in the Fund within each account for the fiscal year in which the expenditures are made, with the interest accrued within each account used only for expenditures from that account.

(b) **ADDITIONAL EXPENDITURES.**—

- (1) **IN GENERAL.**—The Secretary may expend more than \$150,000,000 for any fiscal year referred to in subsection (a) if the additional amounts are available in the Fund as a result of a failure of the Secretary to expend all of the amounts available under subsection (a) in 1 or more prior fiscal years.
- (2) **RETENTION IN ACCOUNTS.**—Any additional amounts referred to in paragraph (1) shall—

- (A) be retained within the account to which the amounts were designated;

(B) accrue interest for the designated account in accordance with this title; and

(C) only be expended for the purposes for which expenditures from the designated accounts are authorized.

SEC. 105. INVESTMENTS OF AMOUNTS.

(a) **IN GENERAL.**—The Secretary shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(b) **CREDITS TO FUND.**—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

SEC. 106. TRANSFERS OF AMOUNTS.

(a) **IN GENERAL.**—The amounts required to be transferred to the Fund under this title shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(b) **ADJUSTMENTS.**—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates are in excess of or less than the amounts required to be transferred.

SEC. 107. TRANSFERABILITY BETWEEN ACCOUNTS.

(a) **TRANSFERABILITY OF IRRIGATION FUNDS.**—No sooner than fiscal year 2023, if the Secretary determines that there are no further deferred maintenance needs of eligible Indian irrigation projects, the Secretary may expend amounts and any interest accrued in the Indian Irrigation Account established by section 102(2) on any expenditure authorized under section 301 from the Reclamation Infrastructure and Settlement Implementation Account established by section 102(3).

(b) **TRANSFERABILITY OF WATER SETTLEMENT FUNDS.**—No sooner than fiscal year 2023, if the Secretary determines that there are no further needs of Indian tribes under section 301, the Secretary may expend amounts and any interest accrued in the Reclamation Infrastructure and Settlement Implementation Account established by section 102(3) on any expenditure authorized under sections 401 through 406 from the Indian Irrigation Account established by section 102(2).

SEC. 108. TERMINATION.

On September 30, 2035—

(1) the Fund shall terminate; and

(2) the unexpended and unobligated balance of the Fund shall be transferred to the reclamation fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

TITLE II—RURAL WATER PROJECTS

SEC. 201. RURAL WATER PROJECTS.

Subject to section 202, for each of fiscal years 2014 through 2035, the Secretary may use not less than \$80,000,000 of the amounts available in the Rural Water Project Account established under section 102(1) to complete construction of rural water projects—

(1) authorized to be carried out by the Secretary on or before the date of enactment of this Act; or

(2) for which—

(A) pursuant to section 106(e) of the Rural Water Supply Act of 2006 (43 U.S.C. 2405(e)), a feasibility study has been submitted to the Secretary by September 30, 2012; and

(B) an Act of Congress after the date of enactment of this Act has authorized the construction of the project.

SEC. 202. RESTRICTIONS.

(a) **NO OPERATION AND MAINTENANCE COSTS.**—The Secretary shall not use any amounts from the Fund to pay for operation and maintenance costs of an authorized rural water project.

(b) **CONDITIONS.**—The Secretary shall not expend any amounts from the Fund to carry out this title until the date on which the Secretary develops—

(1) programmatic goals to carry out this title that—

(A) would enable the completion of construction of the authorized rural water projects as expeditiously as practicable; and

(B) reflect—

(i) the goals and priorities identified in the laws authorizing the authorized rural water projects; and

- (ii) the goals of the Reclamation Rural Water Supply Act of 2006 (43 U.S.C. 2401 et seq.); and
- (2) funding prioritization criteria to serve as a methodology for distributing funds under this title that take into account—
 - (A) an evaluation of the urgent and compelling need for potable water supplies in the affected rural and tribal communities;
 - (B) the status of the current stages of completion of the authorized rural water project;
 - (C) the financial needs of the affected rural and tribal communities;
 - (D) the potential economic benefits of the expenditures on job creation and general economic development in the affected rural and tribal communities;
 - (E) the ability of the authorized rural water project to address regional and watershed level water supply needs;
 - (F) the ability of the authorized rural water project—
 - (i) to minimize water and energy consumption; and
 - (ii) to encourage the development of renewable energy resources, such as wind, solar, and hydropower elements;
 - (G) the need for the authorized rural water project to address—
 - (i) the needs of Indian tribes and members of Indian tribes; and
 - (ii) other community needs or interests; and
 - (H) such other factors as the Secretary determines to be appropriate to prioritize the use of available funds.

TITLE III—RECLAMATION INFRASTRUCTURE AND SETTLEMENT IMPLEMENTATION

SEC. 301. RECLAMATION INFRASTRUCTURE AND SETTLEMENT IMPLEMENTATION.

Consistent with section 104, for each of fiscal years 2014 through 2035, the Secretary shall use not less than \$35,000,000, plus accrued interest, of the amounts authorized to be expended from the Reclamation Infrastructure and Settlement Implementation Account established under section 102(3)—

- (1) to provide compensation authorized under an Act of Congress to extinguish or otherwise resolve all monetary claims of an Indian tribe against the United States relating to the continued and past use of the land of the Indian tribe by the United States for the generation of hydropower; or
- (2) to complete construction, planning, and design of projects and implement provisions authorized under one or more Acts of Congress that—
 - (A) settle or otherwise resolve, in whole or in part, litigation involving the United States and the rights of one or more federally recognized Indian tribes to access, use, or manage water resources; or
 - (B) implement agreements approved by Congress pursuant to which one or more federally recognized Indian tribes agree to some limitation on the exercise of rights or claims to access, use, or manage water resources.

TITLE IV—REPAIR, REPLACEMENT, AND MAINTENANCE OF CERTAIN INDIAN IRRIGATION PROJECTS

SEC. 401. REPAIR, REPLACEMENT, AND MAINTENANCE OF CERTAIN INDIAN IRRIGATION PROJECTS.

(a) **IN GENERAL.**—The Secretary shall establish a program to address the deferred maintenance needs of Indian irrigation projects that—

- (1) create risks to public or employee safety or natural or cultural resources; and
- (2) unduly impede the management and efficiency of the Indian irrigation program.

(b) **FUNDING.**—Consistent with section 104, of the amounts authorized to be expended from the Indian Irrigation Account established under section 102(2), the Secretary shall use or transfer to the Bureau of Indian Affairs not less than \$35,000,000, plus accrued interest, for each of fiscal years 2014 through 2035 to carry out maintenance, repair, and replacement activities for 1 or more of the Indian irrigation projects described in section 402 (including any structures, facilities, equipment, or vehicles used in connection with the operation of those projects).

SEC. 402. ELIGIBLE PROJECTS.

The projects eligible for funding under section 401(b) are the Indian irrigation projects in the western United States that, on the date of enactment of this Act—

- (1) are owned by the Federal Government, as listed in the Federal inventory required by Executive Order 13327 (40 U.S.C. 121 note; relating to Federal real property asset management);
- (2) are managed by the Bureau of Indian Affairs (including projects managed under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and
- (3) have deferred maintenance documented by the Bureau of Indian Affairs.

SEC. 403. REQUIREMENTS AND CONDITIONS.

Not later than 180 days after the date of enactment of this Act and as a precondition to amounts being expended from the Fund to carry out this title, the Secretary of the Interior, in consultation with the Assistant Secretary for Indian Affairs, the Commissioner of the Bureau of Reclamation, and representatives of affected Indian tribes, shall develop and submit to Congress—

- (1) programmatic goals to carry out this title that—
 - (A) enable the completion of repairing, replacing, improving, or performing maintenance on projects as expeditiously as possible;
 - (B) facilitate or improve the ability of the Bureau of Indian Affairs to carry out the mission of the Bureau of Indian Affairs in operating a project; and
 - (C) ensure that the results of government-to-government consultation required under section 405 be addressed; and
- (2) funding prioritization criteria to serve as a methodology for distributing funds under this title, that take into account—
 - (A) the extent to which deferred maintenance of qualifying irrigation projects poses a threat to public or employee safety or health;
 - (B) the extent to which deferred maintenance poses a threat to natural or cultural resources;
 - (C) the extent to which deferred maintenance poses a threat to the ability of the Bureau of Indian Affairs to carry out the mission of the Bureau of Indian Affairs in operating the project;
 - (D) the extent to which repairing, replacing, improving, or performing maintenance on a facility or structure will—
 - (i) improve public or employee safety, health, or accessibility;
 - (ii) assist in compliance with codes, standards, laws, or other requirements;
 - (iii) address unmet needs; and
 - (iv) assist in protecting natural or cultural resources;
 - (E) the methodology of the rehabilitation priority index of the Secretary, as in effect on the date of enactment of this Act;
 - (F) the potential economic benefits of the expenditures on job creation and general economic development in the affected tribal communities;
 - (G) the ability of the qualifying project to address tribal, regional, and watershed level water supply needs; and
 - (H) such other factors as the Secretary determines to be appropriate to prioritize the use of available funds that are, to the fullest extent practicable, consistent with tribal and user recommendations received pursuant to the consultation and input process under section 405.

SEC. 404. STUDY OF INDIAN IRRIGATION PROGRAM AND PROJECT MANAGEMENT.

(a) **TRIBAL CONSULTATION AND USER INPUT.**—Before beginning to conduct the study required under subsection (b), the Secretary of the Interior shall—

- (1) consult with the Indian tribes that have jurisdiction over the land on which an irrigation project eligible to receive funding under section 402 is located; and
- (2) solicit and consider the input, comments, and recommendations of the landowners served by the irrigation project.

(b) **STUDY.**—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, shall complete a study that evaluates options for improving programmatic and project management and performance of irrigation projects managed and operated in whole or in part by the Bureau of Indian Affairs.

(c) **REPORT.**—On completion of the study under subsection (b), the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, shall submit to the Committees on Energy and Natural Resources and Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a report that—

- (1) describes the results of the study; and
 - (2) includes recommendations for improving programmatic and project management and performance in each qualifying project area and for the program as a whole.
- (d) FUNDING.—Of the amounts authorized to be expended from the Indian Irrigation Account established under section 102(2), \$1,000,000 shall be made available during fiscal year 2014 to carry out this section, to remain available until expended.

SEC. 405. TRIBAL CONSULTATION AND USER INPUT.

Before expending funds on an Indian irrigation project pursuant to section 401, the Secretary of the Interior shall—

- (1) consult with the Indian tribe that has jurisdiction over the land on which an irrigation project eligible to receive funding under section 402 is located; and
- (2) solicit and consider the input, comments, and recommendations of the landowners served by the irrigation project.

SEC. 406. ALLOCATION AMONG PROJECTS.

(a) IN GENERAL.—Subject to subsection (b), to the maximum extent practicable, the Secretary shall ensure that, for each of fiscal years 2014 through 2035, each Indian irrigation project eligible for funding under section 402 that has critical maintenance needs receives part of the funding under section 401 to address critical maintenance needs.

(b) PRIORITY.—In allocating amounts under section 401(b), in addition to considering the funding priorities described in section 403, the Secretary shall give priority to Indian irrigation projects for which funding has not been made available during the 15-year period ending on the day before the date of enactment of this Act under any other Act of Congress that expressly identifies the Indian irrigation project or the Indian reservation of the project to address the deferred maintenance, repair, or replacement needs of the Indian irrigation project.

(c) CAP ON FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), in allocating amounts under section 401(b), the Secretary shall allocate not more than \$15,000,000 to any individual Indian irrigation project described in section 402 during any consecutive 3-year period.

(2) EXCEPTION.—Notwithstanding the cap described in paragraph (1), if the full amount under section 401(b) cannot be fully allocated to eligible irrigation projects because the only remaining activities authorized in section 401(b) are for irrigation projects that would exceed the cap described in paragraph (1), the Secretary may allocate the remaining funds to eligible irrigation projects in accordance with this title.

(d) BASIS OF FUNDING.—Any amounts made available under this section shall be nonreimbursable.

(e) APPLICABILITY OF ISDEAA.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall apply to activities carried out under this section.

PURPOSE

The purpose of S. 715, as ordered reported, is to authorize the Secretary of the Interior to use designated funding to pay for construction of authorized rural water projects, implementation of Indian water settlements, and deferred maintenance of Indian irrigation projects.

BACKGROUND AND NEED

Safe and reliable drinking water supplies are not available to millions of Americans, particularly in rural America. Many rural areas do not have the capital or the bonding capacity to pay for outlays of new water infrastructure or to upgrade deteriorating infrastructure. A 1995 assessment conducted by the Department of Agriculture found over one million people in the United States had no water piped into their homes, and more than 2.4 million had critical drinking water needs. Tribal communities are particularly hard hit. For example, it is estimated that over 30 percent of the Navajo Nation residents do not have access to safe, piped drinking

water. Lack of a secure water supply presents a hardship to residents and impedes economic development.

In July 2012, the Bureau of Reclamation (“Bureau” or “BOR”) released a report, “Assessment of Reclamation’s Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States” (“BOR Assessment”), which quantifies the range of unmet needs for rural water supply systems in terms of dollars. That report estimates that the unmet need for potable water supply in the 17 western States to be from \$5 billion to \$8 billion for non-Indian rural water supply projects and \$1.2 billion for specific Indian water supply projects in the western States as of fiscal year 2009.

According to the same BOR Assessment, in the past 2 years, the Bureau has received 68 applications for funding for appraisal and feasibility studies of rural water supply projects. Thus, it appears that the demand for funds to study and develop plans for proposed rural water supply projects may well outstrip the appropriated levels and authorized ceiling of \$15 million annually.

Congress enacted the “Rural Water Supply Act of 2006,” which required the Secretary of the Interior to establish a rural water supply program. By definition, under the Act, a “rural water supply project” serves a community or group of communities, each of which has a population of less than 50,000 inhabitants, and may include Indian tribes, dispersed homesites, and rural areas.

Pursuant to the Rural Water Supply Act, the Secretary is to carry out a program in the 17 western Reclamation States to: (1) investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal, and industrial use; (2) plan the design and construction, through appraisal and feasibility studies, of rural water supply projects; and (3) oversee the construction, as appropriate, of rural water supply projects that are recommended by the Secretary and subsequently authorized by Congress. Under this program, the Secretary, acting through the Bureau, may undertake the construction of individual rural water supply projects only as expressly authorized by Congress.

Between 1980 and 2007, Congress directed the Bureau to undertake 11 specific rural water supply projects. Four of these have been completed. However, there is no predictable funding for the remaining projects, because construction funding must be secured annually through the appropriations process. There is a significant backlog in construction funding for these 7 projects.

The Bureau receives on average approximately \$50 million per year in appropriations for construction of the authorized projects. The Bureau’s Assessment report indicates that, assuming an unconstrained level of annual Federal funding of \$162 million, as projected in the project engineering reports, and assuming non-Federal funding at the minimum required, all remaining projects could be completed by 2029 at a total Federal investment of about \$3 billion. However, at the current level of funding of \$50 million annually for construction, projects would be completed much later (perhaps as late as 2063) at a cost of \$4 billion.

The Reclamation Fund was established by Congress in 1902, and was intended to be used as a funding source to construct water projects in the West. The fund today is derived from several

sources, including a federal share of oil and gas revenues and other mineral receipts from federal lands. These sources, as well as repayments and revenues associated with federal water resources development and some sales, rentals, and leases (including natural resource leasing) of federal land in the western United States, generally make up the fund. Of these funds, natural resource royalties and hydropower revenues make up the majority of incoming receipts. The Congressional Research Service indicates that, over the last five years, an average of 91 percent of the incoming funding came from natural resource royalties (79%) and from hydropower (11%). However, the use of monies from the Reclamation Fund has been subject to appropriation, and therefore, large balances have remained in the Fund. The average annual surplus in the Reclamation Fund from fiscal year 2005 through fiscal year 2011 was \$960 million.

While these monies were intended to be used for water project construction in the West, funds often have not been appropriated when needed. As a result, a backlog of authorized but uncompleted Federal water supply projects, including rural water supply projects remains. As an example, outstanding construction authorizations for rural water supply projects total over \$2.6 billion.

In Indian water rights settlements, Indian tribes, states, municipalities, and the United States enter into binding agreements whereby an affected tribe agrees to some limitation on the seniority of its water rights in exchange for water supply project funding. The United States—pursuant to its responsibility as trustee for the various Indian tribes—shares the costs of construction of these projects. Any agreement binding the United States as a party must be approved by Congress and most of the water settlements enacted from 1978 to present make funding for settlements contingent on the annual appropriations cycle. With funding for settlements uncertain, tribes and other parties have been increasingly concerned over whether projects authorized in water settlements legislation will be timely completed. Some tribes whose settlements were enacted nearly 20 years ago still must lobby for funding to keep projects on schedule every year. Such uncertainty makes it less and less likely tribes will continue to look toward settlements as a viable option which will lead to continued uncertainty over water rights in the arid west.

Settling Indian water rights claims rather than litigating them is generally seen as being advantageous for all parties and has been formal federal policy since the George H.W. Bush Administration (55 Fed. Reg. 9223 (1990)), so it is in the national interest to ensure a conducive atmosphere to settling water rights claims.

In February 2006, the Government Accountability Office issued a report in response to Congressional concerns over 16 Indian irrigation projects in the Western United States. GAO, *Indian Irrigation Projects: Numerous Issues Need to Be Addressed to Improve Project Management and Financial Sustainability* (GAO-06-314). The irrigation projects, which were generally initiated in the late 1800s and early 1900s by the Department of the Interior, were aimed at assimilating tribal communities into mainstream society by giving them the ability to build agriculturally-based economies. Over time, non-Indians began buying or leasing the land served by the projects for agricultural purposes, and project stakeholders

evolved from Indian water users and the tribes within the reservation to include non-Indian water users as well. Today, many of the water users are non-Indian.

The GAO report found numerous problems associated with the management of these irrigation projects including deferred maintenance costs estimated at \$850 million. The Bureau of Indian Affairs generally defines deferred maintenance as upkeep that is postponed until some future time. Deferred maintenance varies from project to project and ranges from cleaning weeds and trees which divert water from irrigation ditches, to repairing leaky or crumbling check gates designed to regulate water flow, to resloping eroded canal banks to optimize water flow.

S. 715, as ordered reported, is needed to address these problems. The bill establishes a new fund in the Treasury, using \$150 million per year that would otherwise be deposited in the Reclamation Fund, to fund rural water projects, Indian water rights settlements, and deferred maintenance of Indian irrigation projects.

LEGISLATIVE HISTORY

S. 715 was introduced by Senator Baucus on April 11, 2013. Senators Tester, Harkin, Udall of New Mexico, Klobuchar, Franken, Johnson of South Dakota, Heinrich, Hoeven, and Heitkamp are original co-sponsors. The Subcommittee on Water and Power held a hearing on the bill on April 16, 2013 (S. Hrg. 113–32). The Committee adopted an amendment in the nature of a substitute, as amended by a second degree amendment, and ordered the bill, as amended, favorably reported on November 21, 2013.

In the 112th Congress similar legislation, S. 3385, was introduced by Senator Baucus on July 16, 2012. The Senate Energy and Natural Resources Committee held a hearing on July 31, 2012 (S. Hrg. 112–588).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 21, 2013, by a majority voice vote of a quorum present, recommends that the Senate pass S. 715, if amended as described herein. Senators Landrieu, Risch, Flake, and Scott asked to be recorded as voting no.

COMMITTEE AMENDMENTS

During its consideration of S. 715, the Committee adopted an amendment in the nature of a substitute, as amended by a second degree amendment to the substitute. The amendment in the nature of a substitute, as amended by the second degree amendment, expands the scope of the bill and the scope of the Reclamation Rural Water Construction Fund established by the bill to fund not only rural water projects, but also the settlement of claims of Indian tribes arising from the use of Indian land for the generation of hydropower and the deferred maintenance needs of Indian irrigation projects. The amendment in the nature of a substitute separates the provisions relating to the establishment of the Reclamation Rural Water Construction Fund and provisions relating to funding rural water projects into two separate titles and adds a third title providing for the implementation of reclamation infrastructure and

settlement agreements. The second degree amendment adds a fourth title addressing the deferred maintenance needs of Indian irrigation projects. The amendment in the nature of a substitute, as amended by the second degree amendment, renames the Rural Water Construction Fund, splits it into 3 separate accounts, increases the authorized amount from \$80 million to \$150 million, annually, and makes expenditures from the fund subject to appropriation.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title and table of contents.

Section 2 defines key terms.

TITLE I—RECLAMATION RURAL WATER CONSTRUCTION AND SETTLEMENT IMPLEMENTATION FUND

Section 101 establishes a fund in the United States Treasury to be known as the “Reclamation Rural Water Construction and Settlement Implementation Fund.”

Section 102 establishes three accounts within the fund established in Section 101. The three accounts are named: (1) the “Rural Water Project Account”; (2) the “Indian Irrigation Account”; and (3) the “Reclamation Infrastructure and Settlement Implementation Account.”

Section 103(a) directs the Secretary of the Treasury to deposit \$150,000,000 of revenues that would otherwise be deposited in the Reclamation Fund for each of fiscal years 2014 through 2035 into the fund established under Section 101. These funds would be divided amongst the three accounts in the following manner: \$80,000,000 to the Rural Water Project Account; \$35,000,000 to the Indian Irrigation Account; and \$35,000,000 to the Reclamation Infrastructure and Settlement Implementation Account.

Section 103(b) specifies that amounts deposited into the Fund under Section 103(a) shall be subject to appropriation.

Section 104 discusses expenditures from the Fund—stating that the Secretary may expend up to the amounts allocated under Section 102 plus accrued interest. The Secretary may expend more than \$150,000,000 in a given year if there are funds left over in the accounts from previous years. This section also makes clear that any unexpended funds must be retained in the accounts to which they are designated and expended for the purposes for which expenditures from the designated accounts are authorized.

Section 105 directs the Secretary to invest such portions of the Fund that are not required for current withdrawals. This section also specifies that interest earned on the amounts in the Fund along with proceeds from the sale or redemption of any obligations held in the Fund shall be credited to, and form part of, the Fund.

Section 106 requires amounts to be transferred to the Fund from the Reclamation Fund at least monthly and also discusses how adjustments shall be made.

Section 107 permits funds within the Indian Irrigation Account established by section 102(2) and the Reclamation Infrastructure and Settlement Implementation Account established by section 102(3) to be transferable with regard to authorized uses if, during or after fiscal year 2023, the Secretary determines that funds are no longer needed in either the Indian Irrigation Account or the

Reclamation Infrastructure and Settlement Implementation Account.

Section 108 provides for termination of the Fund on September 30, 2035, and mandates any remaining unexpended or unobligated balances be transferred to the Reclamation Fund.

TITLE II—RURAL WATER PROJECTS

Section 201 permits the Secretary to use not less than \$80,000,000 of the amounts available in the Rural Water Project Account, annually, for fiscal years 2014 through 2035, to complete construction of rural water projects meeting certain criteria.

Section 202 places certain restrictions on the Secretary's use of the amounts under section 201. The restrictions include that the Secretary shall not use the amounts for operation and maintenance costs, that before expending any amounts the Secretary shall develop programmatic goals for carrying out this title, and that the Secretary shall develop funding prioritization criteria to serve as a methodology for distributing funds under this title prior to expending any amounts.

TITLE III—RECLAMATION INFRASTRUCTURE AND SETTLEMENT IMPLEMENTATION

Section 301 directs the Secretary to use not less than \$35,000,000, plus accrued interest, of the amounts authorized to be expended from the Reclamation Infrastructure and Settlement Implementation Account established under section 102(3), annually, for fiscal years 2014 through 2035, and describes the purposes for which the amounts may be expended.

TITLE IV—REPAIR, REPLACEMENT, AND MAINTENANCE OF CERTAIN INDIAN IRRIGATION PROJECTS

Section 401 directs the Secretary to establish a program to address the deferred maintenance needs of Indian irrigation projects and to transfer to the Bureau of Indian Affairs not less than \$35,000,000, plus accrued interest, annually, for each of fiscal years 2014 through 2035, to carry out maintenance, repair, and replacement activities for eligible projects.

Section 402 lays out criteria for projects eligible for funding under section 401(b).

Section 403 directs the Secretary, as a precondition of expending amounts to carry out this title and within 180 days from the enactment of this act, and in consultation with the Assistant Secretary for Indian Affairs, the Commissioner of the Bureau of Reclamation, and representatives of affected Indian tribes, to develop and submit to Congress programmatic goals to carry out this title and a funding prioritization criteria to serve as a methodology for distributing funds under this title. Section 403 lays out details of what those goals and prioritization criteria should contemplate.

Section 404 directs the Secretary—acting through the Assistant Secretary for Indian Affairs—to complete a study within 2 years from the enactment of this act, that evaluates options for improving programmatic and project management and performance of irrigation projects managed in whole or in part by the Bureau of Indian Affairs and report it to Congress. Section 404 also directs the

Secretary to consult with Indian tribes having jurisdiction over the land on which an eligible project is located and with other landowners served by the project prior to beginning said study. Section 404 also allocates funding to enable completion of the report.

Section 405 requires the Secretary, prior to expending funds pursuant to section 401, to consult with the Indian tribe that has jurisdiction over the land on which an eligible irrigation project is located and to consider the input of other affected landowners.

Section 406(a) directs the Secretary to ensure, to the maximum extent practicable, that for each of fiscal years 2014 through 2035, each Indian irrigation project eligible for funding under section 402, that has critical maintenance needs, receives part of the funding under section 401 to address those needs.

Section 406(b) directs the Secretary to give priority to Indian irrigation projects for which funding has not been made available during the 15-year period ending the day before the date of enactment of this act.

Section 406(c) caps funding for any individual project to \$15,000,000 over any consecutive 3-year period unless there are no other projects needing funding.

Sections 406(d) and 406(e) clarify that any amounts made available under this section shall be nonreimbursable and that the Indian Self-Determination and Education Assistance Act applies to activities carried out under this section, respectively.

COST AND BUDGETARY CONSIDERATIONS

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

S. 715—Authorized Rural Water Projects Completion Act

Summary: S. 715 would establish a new Reclamation Rural Water Construction and Settlement Implementation Fund and transfer \$150 million from the existing Reclamation Fund into the proposed fund annually through 2035. Those annual deposits and interest credited to the unspent balances in the new fund would be authorized to be appropriated for constructing certain rural water projects, settling claims against the federal government regarding the use of tribal lands, and maintaining Indian irrigation projects.

Based on information from the Bureau of Reclamation (BOR) and the Bureau of Indian Affairs (BIA), CBO estimates that subject to appropriation of the authorized amounts, the legislation would cost \$692 million over the 2015–2019 period and \$2.6 billion after 2019. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 715 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Tribal governments and rural communities would benefit from funds appropriated under this bill.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 715 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015–2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Title II—Rural Water Projects:						
Estimated Authorization Level	80	81	83	83	83	410
Estimated Outlays	48	69	83	83	83	366
Title III—Reclamation Infrastructure and Settlement Implementation:						
Estimated Authorization Level	35	35	36	36	36	178
Estimated Outlays	32	35	36	36	36	175
Title III—Indian Irrigation:						
Estimated Authorization Level	35	35	36	36	37	180
Estimated Outlays	18	27	35	36	37	152
Total Costs:						
Estimated Authorization Level	150	152	155	155	156	767
Estimated Outlays	97	131	153	155	156	692

Note: Components may not sum to totals because of rounding. Additional costs would continue after 2019, subject to appropriation, until around 2035. CBO estimates those costs would total about \$2.6 billion.

Basis of estimate: For this estimate, CBO assumes that S. 715 will be enacted by the end of 2014 and that the authorized amounts will be appropriated for each fiscal year. Estimated outlays are based on information from the BOR and BIA, and on historical spending patterns for similar projects.

Title II—Rural Water Projects: CBO estimates that implementing title II to construct rural water projects would cost \$366 million over the 2015–2019 period and about \$1.4 billion thereafter, assuming appropriation of the authorized amounts.

Title II would authorize the appropriation of \$80 million annually through 2035 plus interest credited to a portion of the proposed fund to construct certain water projects to provide rural and tribal communities with access to clean, safe and reliable drinking water. Based on information provided by the BOR, CBO estimates that seven projects would be eligible for funding using the criteria specified in S. 715. Those seven projects are currently being constructed or are ready to be constructed.

Title III—Reclamation Infrastructure and Settlement Implementation: CBO estimates that implementing title III would cost \$175 million over the 2015–2019 period and \$631 million thereafter, assuming appropriation of the authorized amounts.

Title III would authorize the appropriation of \$35 million annually through 2035 plus interest credited to a portion of the proposed fund to satisfy certain settlement agreements between the federal government and federally recognized Indian tribes. Settlements eligible for funding under this title would include those that have been authorized by the Congress, that have some portion of the settlement amount subject to appropriation, and that meet certain other criteria. According to BIA, several settlement agreements previously authorized by the Congress would meet the bill's criteria; for example, the White Mountain Apache Tribe Water Rights quantification, the Taos Pueblo Indian Water Rights Settlement, and the Aamodt Litigation Settlement. Future settlements could also qualify to receive amounts authorized by the bill.

Title IV—Indian Irrigation: CBO estimates that implementing title IV would cost \$152 million over the 2015–2019 period and \$634 million thereafter, assuming appropriation of the authorized amounts.

Title IV would authorize the appropriation of \$35 million annually through 2035 plus interest credited to a portion of the proposed fund to maintain Indian irrigation projects owned by the federal government and managed by the Bureau of Indian Affairs. According to BIA, the agency manages 14 Indian irrigation projects that have nearly \$600 million in deferred maintenance costs. Under the bill, additional maintenance costs that accrue at those 14 projects prior to 2035 also would be eligible to be paid from amounts appropriated from the fund.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 715 contains no intergovernmental or private-sector mandates as defined in UMRA. Assuming appropriation of necessary amounts, tribal governments and rural communities would benefit from this bill.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Michael Kulas; Impact on the Private Sector: Amy Petz.

Estimate 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 S. 715.

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. 715.

CONGRESSIONALLY DIRECTED SPENDING

S. 715, 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 Bureau of Reclamation at the April 16, 2013, Subcommittee on Water and Power hearing on S. 715 follows:

STATEMENT OF ROBERT QUINT, SENIOR ADVISOR, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Chairman Schatz and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to be here to provide the views of the Department of the Interior (Department) on S. 715, the "Authorized Rural Water Projects Completion Act". My statement today will draw upon the testimony provided by Commissioner Mike Connor in July 2012 on S. 3385, prior legislation discussed in this Committee during the 112th Congress.

Like the sponsors of this legislation, the Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents. Rural water projects help build strong, secure rural communities and are important to our non-federal sponsors, which is why the President's FY 2014 Budget includes \$40 million for rural water projects.

As a threshold matter, the Obama Administration has supported Reclamation's rural water program over the last four years, allocating \$231 million of funding, in the FY 2010–2013 budgets, to construct, operate, and maintain authorized rural water projects in addition to \$232 million provided for these projects in the Recovery Act. Still, the rural water program must compete with a number of other priorities within the Budget, including aging infrastructure, Indian water rights settlements, environmental compliance and restoration actions, and other priorities intended to address future water and energy related challenges. Notwithstanding the importance of rural water projects, current budget constraints have limited the ability to make Federal investments that match on-the-ground capabilities.

Despite such constraints Reclamation has made progress in promoting certainty, sustainability, and resiliency for those who use and rely on water resources in the West and in supporting the basic drinking water needs of rural communities, as directed by the Congress. S. 715 provides a constant level of mandatory funding to support the construction of authorized rural water projects to deliver water to smaller, isolated communities. However, the Department believes Federal investments in such projects must recognize the current fiscal constraints and the need to make tough choices in prioritizing those investments. The Administration supports the goals embodied by S. 715 of advancing the economic security of Americans living in rural areas, and constructing these important infrastructure projects will not only help provide the economic benefits of a clean, reliable, drinking water system that most Americans take for granted, but will also assist in creating jobs in the short-term through ongoing construction, but the Administration supports discretionary funding for these projects.

Since the 1980s, Congress has authorized Reclamation to undertake the design and construction of specific projects intended to deliver potable water supplies to rural communities located in North Dakota, South Dakota, Montana, New Mexico, Minnesota and Iowa. These projects exist in communities that are experiencing urgent needs for water due to poor quality of the existing supply or the lack of a secure, reliable supply. For example, in rural Montana, some communities have, from time-to-time, been subject to "boil water" orders due to the unsafe conditions of the existing drinking water supplies. In Eastern New Mexico, the existing communities currently rely on the diminishing Ogallala Aquifer and the current drinking water

systems are projected to be depleted within 40 years. Reclamation's Rural Water Program provides a resource to rural communities under those circumstances and the Congress has authorized federal assistance to meet those needs.

The Rural Water Supply Act of 2006 (P.L. 109-451) authorized Reclamation to establish a program to work with rural communities, including tribes, in the 17 Western States to assess rural water supply needs and conduct appraisal and feasibility studies without individual acts of Congress. Pursuant to the Rural Water Supply Act, Reclamation created a rural water program to enable coordinated examination of the various options to address rural communities' water supply needs through a cost effective, priority-based process.

In addition to authorizing appraisal investigations and feasibility studies, Section 104 of the Rural Water Supply Act required that the Secretary of the Interior, in consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development and the Secretary of the Army, to develop a comprehensive assessment of the status of the existing, authorized rural water projects. Section 104 also directs Reclamation to describe its plans for completing the design and construction of the authorized rural water projects.

In response to Section 104, Reclamation issued a draft assessment report titled "Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States" which is posted on Reclamation's website (www.usbr.gov/rural/water/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf). Comments on the draft report were submitted through September 10, 2012. In addition to providing a report of the status of the existing authorized rural water projects, the assessment report describes how Reclamation's Rural Water Supply Program will be carried out and coordinated with other Federal programs which support the development and management of water supplies in rural communities in the western states and to maximize efficiency of the various programs by leveraging Federal and non-Federal funding to meet the shared goals of the programs.

As described in the assessment report, with the exception of Title III of P.L. 107-331 that authorized the Jicarilla rural water supply system, each of the Acts of Congress authorizing Reclamation's involvement in the rural water supply projects required that the cost ceilings included in the original authorizing legislation be indexed to adjust for inflation which is estimated to be 4% annually. The result of these indexing requirements is that the overall cost of the authorized rural water projects has risen and continues to rise during the time needed for con-

struction, such that the total estimated funding that would be required to complete these projects is now \$2.6 billion, which is substantially higher than the original authorization amounts, which totaled \$2.0 billion.

Reclamation has recognized the need to make meaningful progress in constructing authorized rural water projects and has budgeted \$40 million in FY2014 toward that effort. At the levels provided in the 2013 budget, and without additional non-Federal funding, progress would be made towards project completion, but some of the currently authorized projects would be completed much later, perhaps not until well after 2063 despite close to \$4.0 billion being invested by that time. It is estimated that as of 2063, an outstanding balance of approximately \$1.1 billion would remain to complete construction of currently authorized projects.

Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the Federal government would have in the past. Constrained Federal budgets do not preclude the ability of non-Federal parties to move forward with important investments in water resources infrastructure and the Department stands ready to support that effort. Even with the additional resources made available through S. 715, we would expect that non-Federal entities will likely need to increase their share of funding to build these projects in the timeframes they have envisioned.

S. 715 establishes a dedicated Reclamation Rural Water Construction Fund in the United States Treasury comprised of funds that would otherwise be deposited into the Reclamation Fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093). This funding source would enable earlier completion of projects. Section 3(b)(3) of S. 3385 provides that the bill's cost would be offset so as to not increase the deficit. The Department supports such language. However, even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the Federal government, including deficit reduction.

Section 3 of S. 715 provides that for each fiscal year from 2014 through 2030, \$80,000,000 per year will be deposited into the Fund in addition to interest earned on invested money that is available in the Fund but not utilized for the current withdrawal. Section 3(c) of S. 715 limits expenditures from fiscal year 2014 through 2035 from the Fund to not more than \$80,000,000 in addition to interest accrued in that same fiscal year, with an allowance for the use of funds carried over from prior years.

S. 715 also provides that if a feasibility study has been submitted to the Secretary by September 30, 2012, and those projects are subsequently authorized by Congress, they may be eligible to receive funding through the Reclamation Rural Water Construction Fund. S. 715 directs the Secretary of the Interior to develop programmatic

goals enabling the expeditious completion of construction of the existing rural water projects and to establish prioritization criteria for the distribution of funds. Reclamation's draft assessment report would meet these requirements when complete. Reclamation's first goal is to advance the construction of rural water projects that meet the most urgent water supply needs in the shortest amount of time, given our current budget constraints. The second goal is to give priority to rural water projects that address Indian and tribal water supply needs.

Within the context of the above goals, Reclamation recognizes that current and projected funding levels may not be sufficient to expeditiously complete the federal funding portion of every project and that it must prioritize the allocation of available funding. The draft assessment report outlines prioritization criteria to guide Reclamation's decision making to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The six criteria identified by Reclamation for rural water construction prioritization are:

- Is there an urgent and compelling need for potable water supplies?
- How close is the Project to being completed and what is the commitment of the project sponsors to making that happen?
- What is the financial need of the communities and what is the relative economic effect of the Project?
- Does the Project fulfill Reclamation's authorized niche for taking a regional and watershed approach to rural water projects?
- Does the project minimize water and energy consumption and encourage the development of renewable energy resources such as wind, solar, hydropower, etc., to meet local needs?
- Does the project serve the needs of tribal communities and tribal members?

The analysis outlined in the draft assessment report underscores that in times of constrained federal budgets, non-federal funding in excess of the minimum contributions originally contemplated will be required to expedite project completion and reduce the effects of indexing over the construction period.

This concludes my written statement. I am 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, the Committee notes that no changes in existing law are made by the bill S. 715 as ordered reported.