

REAUTHORIZATION AND AMENDMENT OF RECLAMATION
SAFETY OF DAMS ACT OF 1978

SEPTEMBER 12, 2000.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3595]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3595) to increase the authorization of appropriations for the Reclamation Safety of Dams Act of 1978, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend 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. INCREASED AUTHORIZATION OF APPROPRIATIONS FOR THE RECLAMATION SAFETY OF DAMS ACT OF 1978.

The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 4 (43 U.S.C. 508)—

(A) in subsection (a), by striking “or from nonperformance of reasonable and normal maintenance of the structure by the operating entity”;

(B) in subsection (c), by—

(i) inserting after “1984” the following: “and the additional \$380,000,000 further authorized to be appropriated by amendments to that Act in 2000”;

(ii) striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(iii) in the first sentence of paragraph (3), as so redesignated, inserting “irrigation,” after “Costs allocated to the purpose of”, and inserting “without regard to water users’ ability to pay” before the period at the end; and

(C) in subsection (d), by inserting before the period at the end the following: “: *Provided further*, That the Secretary is authorized to expend payments of such reimbursable costs made pursuant to a repayment contract at any time prior to completion of construction”;

(2) in section 5 (43 U.S.C. 509), by—

(A) inserting after “levels)” the following: “and, effective October 1, 1997, not to exceed an additional \$380,000,000 (October 1, 2000, price levels)”;

(B) striking “\$750,000” and inserting “\$1,200,000 (October 1, 2000, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein,”; and

(C) striking “sixty days (which” and all that follows through “day certain)” and inserting “30 calendar days”; and

(3) in section 2 (43 U.S.C. 506), by inserting “(a)” before “In order to”, and by adding at the end the following:

“(b) Prior to selecting a Bureau of Reclamation facility for modification, the Secretary shall notify project beneficiaries in writing of such selection and solicit their interest in participating in evaluating the facility for modification. If requested by the project beneficiaries, the Secretary, acting through the Commissioner of the Bureau of Reclamation, is authorized to negotiate an agreement with project beneficiaries for the cooperative oversight of planning, design, cost containment, procurement, construction, and management of the modifications. Prior to submitting the modification reports required by section 5, the Secretary shall consider, and where appropriate implement, alternatives recommended by project beneficiaries. Within 30 days after receiving such recommendations, the Secretary shall provide to the project beneficiaries a written response detailing proposed actions to address the recommendations. The Secretary’s response to the project beneficiaries shall be included in the modification reports required by section 5.

“(c) Following submission of the reports required by section 5, project beneficiaries who wish to receive regular information concerning the status and costs of modifications shall notify the Secretary in writing. During the construction phase of the modifications, the Secretary shall keep such beneficiaries informed of the costs and status of such modifications. The Secretary shall consider, and where appropriate implement, alternatives recommended by project beneficiaries concerning the cost containment measures and construction management techniques needed to carry out such modifications.”.

PURPOSE OF THE BILL

The purpose of H.R. 3595 is to increase the authorization of appropriations for the Reclamation Safety of Dams Act of 1978, and for other purposes.

BACKGROUND

The Bureau of Reclamation spends approximately \$60 million per year for dam safety purposes and estimates that the existing \$650 million ceiling contained in the Reclamation Safety of Dams Act of 1978 will be exceeded in fiscal year 2001. Existing law requires the Bureau of Reclamation to send a dam modification report to Congress for dam safety work costing more than \$750,000. The report must rest before Congress for 60 legislative days prior to the Bureau of Reclamation obligating funds for dam safety construction. H.R. 3595 would raise the threshold for a Congressional report to \$1.2 million and reduce to 30 calendar days the time required for a dam safety modification report rest before Congress prior to Reclamation commencing dam safety repair work.

In addition to increasing the ceiling and shortening the review period, the legislation would make additional changes to the program. Under existing law, irrigators are required to pay a portion of the dam safety costs within 50 years without interest. The bill would amend the statute to charge interest on the dam safety costs allocated for irrigation purposes. This makes irrigation repayment terms for dam safety activities consistent with municipal and industrial water supply repayment. The criteria for allocating costs for irrigators under this bill would be equalized throughout the 17 western states. Although this legislation would also charge interest on the modification project costs allocated for irrigation purposes for the first time, the National Water Resources Association stated

in a March 6, 2000, letter that its members in the 17 western states “consider the added expense a worthy investment”.

The bill requires the Secretary to provide written notice to project beneficiaries prior to selecting a Reclamation facility for modification. The intent of the language is to give project beneficiaries a “place at the table” when decisions concerning the need to modify a structure are under consideration. This will allow project beneficiaries an opportunity to submit their views and recommendations regarding the planning, design, and other details regarding modifications proposed for Reclamation facilities. Project beneficiaries are those entities that have existing contracts for repayment or water service and/or operation and maintenance with the Bureau of Reclamation.

The Committee stresses that maintaining public safety is the Secretary’s paramount concern in implementing the Reclamation Safety of Dams Act. The United States is liable for the facilities and the Secretary is the ultimate decision maker regarding dam safety. The bill provides project beneficiaries opportunities to voice their concerns to the Bureau of Reclamation and to make recommendations regarding modifications to project facilities, and gives the Secretary the authority to negotiate an agreement that sets forth the details of the “cooperative oversight” the Secretary may receive from the project beneficiaries. The bill does not diminish the Secretary’s authority to take corrective action the Secretary deems necessary to protect life and property, pursuant to the Secretary’s responsibilities under the Reclamation Safety of Dams Act.

Finally, the Secretary is required to keep project beneficiaries informed of the costs and status of dam safety modifications, if the project beneficiaries notify the Secretary in writing of their interest in this information. The Secretary shall consider recommendations provided by the project beneficiaries regarding cost containment and construction management techniques, and implement appropriate recommendations. The Committee believes that project beneficiaries should be informed of the plans and progress and be provided the opportunity to suggest ways to control dam safety modification costs. However, the Committee again stresses that the Secretary is the ultimate decision maker in all aspects of maintaining dam safety and performing modifications. A project beneficiary may suggest an alternative approach to a dam safety modification, but the Secretary is not required to implement such recommendation.

COMMITTEE ACTION

H.R. 3595 was introduced on February 8, 2000, by Congressman George Miller (D–CA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On June 15, 2000, the Subcommittee met to consider the bill. Congressman John Doolittle (R–CA) offered an amendment to increase the project beneficiaries’ ability to participate in the planning and cost containment of any proposed dam safety modification. The amendment was adopted by voice vote. The bill, as amended, was then ordered to be reported to the Full Committee by voice vote. On June 21, 2000, the Full Resources Committee met to consider the bill. Congressman Miller offered an amendment to further address the water users’ ability to participate in the planning process. Congressman Doolittle offered an

amendment to the Miller amendment that made additional technical clarifications to the language. The Doolittle amendment passed by unanimous consent and the Miller amendment, as amended, was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Increased authorization of appropriations for the Reclamation Safety of Dams Act of 1978

This section reauthorizes the dam safety program. It raises the authorized ceiling on expenditures of the dam safety program. It also requires interest to be placed on the irrigation component and eliminates the ability-to-pay provision in existing law.

The section also requires the Secretary to solicit more participation from project beneficiaries prior to selecting a Bureau of Reclamation facility for modification.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill would result in an increase in direct spending of approximately \$5 million over the 2001–2005 time period. In addition, the bill would result in increased offsetting receipts of \$12 million over a ten year period.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and

section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 2000.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3595, a bill to increase the authorization of appropriations for the Reclamation Safety of Dams Act of 1978, and for other purposes.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3595—A bill to increase the authorization of appropriations for the Reclamation Safety of Dams Act of 1978, and for other purposes

Summary: H.R. 3595 would authorize the appropriation of \$380 million (plus additional amounts to account for inflation), and raise the total authorization level for the Dam Safety Program from its current ceiling of \$650 million. H.R. 3595 also would authorize the government to spend repayment receipts from beneficiaries of new dam safety projects while a project undergoes construction, require the Bureau of Reclamation to charge interest on new capital costs attributed to irrigation needs, and make other changes to the Dam Safety Program.

Assuming appropriation of the authorized level, CBO estimates that implementing H.R. 3595 would cost \$168 million over the 2001–2005 period, and an additional \$257 million after 2005. CBO expects that enacting H.R. 3595 would increase direct spending by about \$5 million over the 2001–2005 period. Because H.R. 3595 would affect direct spending, pay-as-you-go procedures would apply.

H.R. 3595 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Some state and local governments would probably incur additional costs as a result of the bill's enactment, but these costs would stem from voluntary contractual agreements with the federal government.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3595 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION					
Spending Under Current Law:					
Estimated Authorization Level ¹	63	65	6	0	0
Estimated Outlays	62	64	29	8	1
Proposed Changes:					
Estimated Authorization Level	0	0	62	70	72
Estimated Outlays	0	0	37	61	70
Spending Under H.R. 3595:					
Estimated Authorization Level	63	65	68	70	72
Estimated Outlays	62	64	66	69	71
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	0	0	1	2	2
Estimated Outlays	0	0	1	2	2

¹ The 2001–2003 levels are CBO's estimates of the bureau's use of its remaining authority under the Dam Safety Program.

Basis of estimate: CBO expects that the current authorization ceiling for the Dam Safety Program of \$650 million will be met in fiscal year 2003, and that appropriations for additional amounts that would be authorized by the bill would begin in fiscal year 2003. Estimates of discretionary outlays are based on information from the Bureau of Reclamation and the historical spending pattern of this program.

Because H.R. 3595 would authorize the bureau to spend all repayment receipts while new projects undergo construction, CBO estimates that enacting the bill would increase direct spending. Based on information from the bureau, CBO expects that about 25 percent of project beneficiaries would choose to prepay their obligations as a result of the bureau's new authority to spend repayments during construction. (This may allow construction of some projects to be completed faster.) These prepayments would change the timing of total repayment receipts to the federal government, increasing receipts in the short term and decreasing receipts in the long term. Including these prepayments along with regular scheduled repayments, CBO estimates that the authority to spend all new project repayments would cost \$36 million over the next 10 years.

H.R. 3595 would require the bureau to charge interest on capital costs attributed to irrigation needs, so we estimate that enacting the bill also would increase offsetting receipts by about \$12 million over the same 10-year period. These estimates are based on information from the bureau, and assume that project beneficiaries repay their obligations over a 25-year period. According to the bureau, about 15 percent of these projects' capital costs are repaid by project beneficiaries, and irrigation users contribute 59 percent of this repayment.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net change in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	0	0	1	2	2	3	3	4	4	5
Changes in receipts	Not applicable										

Intergovernmental and private-sector impact: H.R. 3595 contains no intergovernmental or private-sector mandates as defined in UMRRA. As a result of this legislation, amounts paid by irrigators to reimburse the federal costs of dam safety projects would include interest. Some of these beneficiaries would be public entities. The additional costs, however, would stem from voluntary contractual agreements with the Bureau of Reclamation.

Estimate prepared by: Federal Costs: Rachel Applebaum. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Sarah Sitarek and Patrice Gordon.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

RECLAMATION SAFETY OF DAMS ACT OF 1978

AN ACT To authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes

* * * * *

SEC. 2. (a) In order to preserve the structural safety of Bureau of Reclamation dams and related facilities the Secretary of the Interior is authorized to perform such modifications as he determines to be reasonably required. Said performance of work shall be in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory or supplementary thereto).

(b) *Prior to selecting a Bureau of Reclamation facility for modification, the Secretary shall notify project beneficiaries in writing of such selection and solicit their interest in participating in evaluating the facility for modification. If requested by the project beneficiaries, the Secretary, acting through the Commissioner of the Bureau of Reclamation, is authorized to negotiate an agreement with project beneficiaries for the cooperative oversight of planning, design, cost containment, procurement, construction, and management of the modifications. Prior to submitting the modification reports required by section 5, the Secretary shall consider, and where appropriate implement, alternatives recommended by project beneficiaries.*

Within 30 days after receiving such recommendations, the Secretary shall provide to the project beneficiaries a written response detailing proposed actions to address the recommendations. The Secretary's response to the project beneficiaries shall be included in the modification reports required by section 5.

(c) Following submission of the reports required by section 5, project beneficiaries who wish to receive regular information concerning the status and costs of modifications shall notify the Secretary in writing. During the construction phase of the modifications, the Secretary shall keep such beneficiaries informed of the costs and status of such modifications. The Secretary shall consider, and where appropriate implement, alternatives recommended by project beneficiaries concerning the cost containment measures and construction management techniques needed to carry out such modifications.

* * * * *

SEC. 4. (a) Costs heretofore or hereafter incurred in the modification of structures under this Act, the cause of which results from age and normal deterioration of the structure **【or from nonperformance of reasonable and normal maintenance of the structure by the operating entity】** shall be considered as project costs and will be allocated to the purposes for which the structure was authorized initially to be constructed and will be reimbursable as provided by existing law.

* * * * *

(c) With respect to the additional \$650,000,000 authorized to be appropriated in The Reclamation Safety of Dams Act Amendments of 1984 *and the additional \$380,000,000 further authorized to be appropriated by amendments to that Act in 2000*, costs incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes, shall be reimbursed to the extent provided in this subsection.

(1) * * *

【(2) Costs allocated to irrigation water service and capable of being repaid by the irrigation water users shall be reimbursed within 50 years of the year in which the work undertaken pursuant to this Act is substantially complete. Costs allocated to irrigation water service which are beyond the water users' ability to pay shall be reimbursed in accordance with existing law.】

【(3) (2) Costs allocated to recreation or fish and wildlife enhancement shall be reimbursed in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended.】

【(4) (3) Costs allocated to the purpose of irrigation, municipal, industrial, and miscellaneous water service, commercial power, and the portion of recreation and fish and wildlife enhancement costs reimbursable under the Federal Water Project Recreation Act, shall be repaid within 50 years with interest. The interest rate used shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period during the month preceding the fis-

cal year in which the costs are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish an interest rate at the weighted average of the rates so determined *without regard to water users' ability to pay*.

(d) The Secretary is authorized to negotiate appropriate contracts with project beneficiaries providing for the return of reimbursable costs under this Act: *Provided, however, That no contract entered into pursuant to this Act shall be deemed to be a new or amended contract for the purposes of section 203(a) of Public Law 97-293: Provided further, That the Secretary is authorized to expend payments of such reimbursable costs made pursuant to a repayment contract at any time prior to completion of construction.*

SEC. 5. There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary and, effective October 1, 1983, not to exceed an additional \$650,000,000 (October 1, 1983, price levels) *and, effective October 1, 1997, not to exceed an additional \$380,000,000 (October 1, 2000, price levels)*, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: *Provided, That no funds exceeding* **[\$750,000]** *\$1,200,000 (October 1, 2000, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein,* shall be obligated for carrying out actual construction to modify an existing dam under authority of this Act prior to **[sixty days (which sixty days shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain)]** *30 calendar days* from the date that the Secretary has transmitted a report on such existing dam to the Congress. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required, alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification.

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