

Calendar No. 805

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 110-373

EASTERN NEW MEXICO RURAL WATER SYSTEM AUTHORIZATION ACT

JUNE 16, 2008.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 2814]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2814) to authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 2814 is to authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System (ENMRWS), and for other purposes.

BACKGROUND AND NEED

A number of communities in eastern New Mexico, including Cannon Air Force Base, are predominantly reliant on water from the Ogallala and Entrada Aquifers for municipal, industrial, and agricultural uses. Despite voluntary conservation efforts and improvements in agricultural water use efficiencies, current estimates indicate that present levels of groundwater use in some areas of eastern New Mexico are only sustainable for an additional 12 to 25 years.

Ute Reservoir was constructed in 1959 by the State of New Mexico with the intention of providing a long-term sustainable water

supply for the region. Located approximately 100 miles north of Clovis, New Mexico, the reservoir is believed to be the most viable source of water available to supply the water needed to sustain long-term needs in eastern New Mexico. In 1966, Congress authorized the Bureau of Reclamation to study the feasibility of a project that would utilize Ute Reservoir to supply water to communities in eastern New Mexico (P.L. 89–561). Numerous studies have been completed, but it was not until recently that several communities, concerned about their reliance on declining and degraded groundwater supplies in the area, began to plan seriously for the development of a regional water system that would make use of the renewable supply available from Ute Reservoir. As part of that process, the Eastern New Mexico Rural Water Authority (Authority) was formed to carry out the development of the ENMRWS. The Authority consists of 6 communities and two counties in eastern New Mexico, and has been very effective in securing local funds and State funding to support the studies and planning necessary to move the project forward. To date, the State of New Mexico has provided approximately \$7.5 million to develop the ENMRWS. The water supply provided by the Project will help provide long-term stability to the regional economy in eastern New Mexico.

LEGISLATIVE HISTORY

S. 2814 was introduced by Senator Bingaman for himself and Senator Domenici on April 3, 2008, and referred to the Committee on Energy and Natural Resources. The Water and Power Subcommittee held a hearing on S. 2814 on April 24, 2008. At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered S. 2814 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by voice vote of a quorum present, recommends that the Senate pass S. 2814.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the Act.

Section 2 defines a number of terms used in the Act.

Section 3(a) authorizes the Secretary to provide financial and technical assistance to the Authority to plan, design, and construct the rural water system, and directs that any financial assistance be provided pursuant to a cooperative agreement and specified criteria.

Section 3(b) specifies that the Federal cost-share for the system shall not exceed 75 percent of its total cost, and defines a time-frame for determining the total cost.

Section 3(c) limits the use of Federal money for construction of the system until an operation, maintenance, and replacement plan is developed and there has been compliance with the National Environmental Policy Act.

Section 4(a) declares that the Authority shall be responsible for system operation, maintenance, and replacement costs.

Section 4(b) requires the Authority to develop an operation, maintenance, and replacement plan with the Secretary.

Section 5(a) provides general authorizations for the Secretary to carry out the Act, and directs the Secretary to enter into a cooperative agreement with the Authority to provide financial assistance and address certain requirements in developing the system.

Section 5(b) authorizes the Secretary to provide technical assistance.

Section 5(c) directs the Secretary to consult with the New Mexico Interstate Stream Commission and Authority in preparing a biological assessment of the system under the Endangered Species Act.

Section 5(d) disclaims specified effects of the Act.

Section 6(a) authorizes appropriations to carry out the Act.

Section 6(b) provides for an adjustment to the authorized appropriations to account for changes in construction costs over time.

Section 6(c) declares that funding provided to the Authority under the cost-sharing requirement shall be nonreimbursable.

Section 6(d) declares that unexpended funds may be retained for use in subsequent years.

COST AND BUDGETARY CONSIDERATIONS

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

S. 2814—Eastern New Mexico Rural Water System Authorization Act

Summary: S. 2814 would authorize the Secretary of the Interior to provide financial and technical assistance to the Eastern New Mexico Rural Water Authority to help plan, design, and construct a water delivery project.

Based on information from the Bureau of Reclamation and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 2814 would cost \$348 million over the 2009–2013 period. Enacting the legislation would not affect direct spending or revenues.

S. 2814 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2814 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—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	80	100	100	80	0	360
Estimated Outlays	48	80	97	88	35	348

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the start of fiscal year 2009 and that the necessary amounts will be appropriated for each year.

S. 2814 would authorize the appropriation of \$327 million, plus additional amounts to reflect changes in construction costs after January, 2007. Under the bill, the Secretary would not be able to provide federal funds for operation and maintenance costs of the

project. The maximum federal share of any activity related to the project would be limited to 75 percent. Any federal funds contributed to construct the project would be nonreimbursable.

Based on information from the Bureau of Reclamation and assuming appropriation of the necessary amounts, CBO estimates that implementing the legislation would cost \$348 million over the 2009–2013 period, and an additional \$12 million thereafter.

Intergovernmental and private-sector impact: S. 2814 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Funds authorized in the bill to design, plan, and construct a system for delivering water would benefit the Eastern New Mexico Rural Water Authority. Any costs the authority might incur would result from complying with conditions for receiving federal assistance.

Estimate prepared by: Federal Costs: Tyler Kruzich; Impact on State, Local, and Tribal Governments: Melissa Merrell; and 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. 2814. 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. 2814, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

In accordance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section: 6, Provision: Authorization of appropriations, Member: Senator Bingaman.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Subcommittee hearing on April 24, 2008, on S. 2814 follows:

STATEMENT OF ROBERT W. JOHNSON, COMMISSIONER,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Subcommittee, I am Robert W. Johnson, and I am Commissioner of the Bureau of Reclamation. I am pleased to be here to provide the Department of the Interior's views on S. 2814, the Eastern New Mexico Rural Water Project Act. The Department cannot support S. 2814.

Reclamation has been working with the state of New Mexico and local parties on developing concepts for the

Eastern New Mexico Rural Water Project since Congress authorized feasibility studies in 1966. Reclamation has participated in a number of studies on this evolving project over the years. Since 1998, Congress has provided \$1,763,000 for planning and technical assistance, of which more than \$1.2 million has been transferred directly to the City of Clovis, acting as the fiscal agent for the local communities, for work on the project. The FY 2008 omnibus appropriation includes \$246,000 for the Project.

The proposed Eastern New Mexico Rural Water Project would provide a sustainable water supply for the eastern New Mexico municipalities of Clovis, Elida, Grady, Melrose, Portales, and Texico, as well as Curry and Roosevelt counties and Cannon Air Force Base. The area currently depends entirely on a groundwater source that is diminishing in both quantity and quality. The currently envisioned project would supply 16,400 acre-feet per year. The water would be delivered through a pipeline from Ute Reservoir, which was built by the State of New Mexico in 1963 as a water supply source for eastern New Mexico, and would cost approximately \$436 million to construct, with \$8.2 million in annual operations and maintenance costs.

In 2004, Reclamation testified on legislation (HR 4623) to authorize construction of the Eastern New Mexico Rural Water Supply Project. During that hearing, Reclamation cited concerns with the adequacy of the Conceptual Design Report to support authorization and identified some critical questions that needed to be answered before construction should proceed, such as whether all economically viable alternatives had been considered, whether design and construction costs were consistent with comparable projects, and whether the communities that would be sharing project costs had an accurate estimate of how much those costs might be. Reclamation also expressed concerns with the proposed cost sharing formula, which assumed an 80% federal share for construction of the project. The federal cost share in the new legislation (S. 2814) is 75%.

In the intervening years, a Reclamation "Oversight Committee" has been assisting the Eastern New Mexico Rural Water Authority (Authority) and their consultants in developing a more complete and thorough feasibility report.

A "Preliminary Engineering Report" prepared for the Authority by their consultant that was submitted in December 2006 represents significant progress toward a feasibility-level analysis. Reclamation is continuing to work with the Authority as they further develop the proposed project's design, cost estimates, financing plan, and environmental analysis.

The Authority is working with their consultant to take the design and associated cost estimate to the feasibility level. Feasibility-level cost estimates are based on information and data which is sufficient to permit the preparation of preliminary layouts and designs used to estimate each kind, type, or class of material, equipment, and labor necessary to complete a project. A second consultant has been

selected by the Authority to work on National Environmental Policy Act compliance. A third consultant for the Authority is working on a detailed plan for financing the project.

As stated above, the most recent cost estimate for construction, as prepared last year by the Authority's consultant, is \$436 million, with an estimated annual operation and maintenance cost of \$8.2 million. The local communities would pay 100% of the operation, maintenance, and replacement costs.

Reclamation is committed to working with its customers, States, Tribes, and other stakeholders to find ways to balance and provide for the mix of water resource needs in the future. The Administration is concerned, however, about becoming the primary source of funds for these types of projects. Because of this project's high cost, with a federal cost share of \$327 million, and because this project would compete with ongoing work by Reclamation in New Mexico and across the West, the Department cannot support S. 2814. However, we are working with the Authority and the State to bring the project to a point where a feasibility determination is possible.

This concludes my statement, and I am happy to answer any questions the Subcommittee may have.

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. 2814, as ordered reported.

