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SENATE

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### RECLAMATION SAFETY OF DAMS ACT OF 1978

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JULY 7, 2004.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1727]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1727) to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978, 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. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR THE RECLAMATION SAFETY OF DAMS ACT OF 1978.**

(a) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.—Section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)) is amended by striking “(c) With respect to” and all that follows through “2001” and inserting the following:

“(c) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.—With respect to the additional amounts authorized to be appropriated by section 5”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 5 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 509) is amended in the first sentence—

(1) by inserting “and, effective October 1, 2003, not to exceed an additional \$540,000,000 (October 1, 2003, price levels),” after “(October 1, 2001, price levels),”; and

(2) by striking “\$750,000” and inserting “\$1,250,000 (October 1, 2003, price levels), as adjusted to reflect any ordinary fluctuations in construction costs indicated by applicable engineering cost indexes.”.

**SEC. 2. PARTICIPATION BY PROJECT BENEFICIARIES.**

(a) COST CONTAINMENT; MODIFICATION STATUS.—Section 4 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508) is amended by adding at the end the following:

“(e)(1) During the construction of the modification, the Secretary shall consider cost containment measures recommended by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

“(2) The Secretary shall provide to project beneficiaries on a periodic basis notice regarding the costs and status of the modification.”.

(b) PROJECT BENEFICIARIES.—The Reclamation Safety of Dams Act of 1978 is amended by inserting after section 5 (43 U.S.C. 509) the following:

“SEC. 5A. (a) On identifying a Bureau of Reclamation facility for modification, the Secretary shall provide to the project beneficiaries written notice—

“(1) describing the need for the modification and the process for identifying and implementing the modification; and

“(2) summarizing the administrative and legal requirements relating to the modification.

“(b) The Secretary shall—

“(1) provide project beneficiaries an opportunity to consult with the Bureau of Reclamation on the planning, design, and construction of the proposed modification; and

“(2) in consultation with project beneficiaries, develop and provide timeframes for the consultation described in paragraph (1).

“(c)(1) Prior to submitting the reports required under section 5, the Secretary shall consider any alternative submitted in writing, in accordance with the timeframes established under subsection (b), by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

“(2) The Secretary shall provide to the project beneficiary a timely written response describing proposed actions, if any, to address the recommendation.

“(3) The response of the Secretary shall be included in the reports required by section 5.

“(d) The Secretary may waive 1 or more of the requirements of subsections (a), (b), and (c), if the Secretary determines that implementation of the requirement could have an adverse impact on dam safety or security.”.

#### PURPOSE

The purpose of S. 1727, as ordered reported, is to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978 and to provide for certain opportunities for participation by project beneficiaries.

#### BACKGROUND AND NEED

With the Teton Dam failure in 1976, the Bureau of Reclamation (“Bureau” or “Reclamation”) experienced the only dam failure in its 100 year history. Congress responded by enacting the Reclamation Safety of Dams Act of 1978. The goal of Reclamation’s dam safety program is to ensure the safety and reliability of 369 high hazard dams and dikes located at 250 water projects in Reclamation’s inventory.

At the Subcommittee hearing, the Administration testified that, as of September 30, 2003, the approximately \$159 million remaining in budget authority for the dam safety program would likely be committed in fiscal years 2004 and 2005. The purpose of S. 1727 is to increase by \$540 million (indexed for inflation) the authorized cost ceiling for the Reclamation Safety of Dams Act of 1978. The increased funding level provided by S. 1727 will provide Reclamation with the authority to carry out safety of dams activities through fiscal years 2012–2014, based on current projected funding needs.

The bill also increases from \$750,000 to \$1.25 million the contract cost threshold amount for the requirement that the Bureau send a safety of dams modification report to Congress for review. This provision makes an adjustment for inflation.

Finally, the legislation, as amended, addresses the participation by project beneficiaries in Reclamation’s dam safety process. The bill provides project beneficiaries with opportunities as set forth in the bill to consult with the Bureau on the planning, design and construction of the proposed modification.

## LEGISLATIVE HISTORY

S. 1727 was introduced by Senator Domenici on October 14, 2003, and referred to the Energy and Natural Resources Committee. A hearing before the Subcommittee on Water and Power was conducted on March 25, 2004. The Energy and Natural Resources Committee, on June 16, 2004, by a unanimous vote of a quorum present, favorably reported S. 1727, as amended.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on June 16, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1727, if amended as described herein.

## COMMITTEE AMENDMENT

The amendment in the nature of a substitute makes the following changes to S. 1727 as introduced:

1. Makes a technical correction by reinserting the word “and” before “effective October 1, 2001.”

2. Amends section 4 of the Reclamation Safety of Dams Act to add a new subsection (e)(1) to address participation by project beneficiaries in the Bureau’s Safety of Dams program. The new subsection directs the Secretary to consider cost containment measures submitted by project beneficiaries participating in the Bureau’s consultation process (“participating project beneficiaries”) with respect to the proposed modification. The Secretary is further directed to provide project beneficiaries with periodic notice on costs and status of the modification.

3. Amends the Reclamation Safety of Dams Act to add a new section 5A. The new section directs the Secretary to provide written notice to the project beneficiaries once a facility has been identified for modification. The notice is to include information on the identification and implementation process for modification, along with a summary of the administrative and legal requirements related to the modification. The Secretary must provide the opportunity for project beneficiaries to consult with the Bureau on the planning, design, and construction of the proposed modification, as well as on timeframes for such consultation. The new section 5A established by the Committee amendment directs the Secretary to consider a written proposal that has been timely submitted by a participating project beneficiary. The Secretary is directed to provide a written response to the project beneficiary on the submitted proposal, and such response shall be included in any Congressional report required by section 5 on the modification. Finally, the new section authorizes the Secretary to waive one or more of the requirements set forth by the new section for safety or security reasons.

## SECTION-BY-SECTION ANALYSIS

Section 1(a) eliminates a redundant listing of additional authorization levels for the Safety of Dams Program contained in section 4(c) of the Reclamation Safety of Dams Act of 1978, as amended. Section 1(a) inserts in that subsection a cross-reference to section 5 of the Reclamation Safety of Dams Act, which sets forth these ad-

ditional authorization levels, as well as the increase of an additional \$540,000,000 in authorization provided for by the bill. The change made by section 1(a) simplifies the statutory language and eliminates redundancy, and the other obligations imposed by section 4(c) with respect to the previous additional authorization levels remain unchanged. The obligations of section 4(c) also apply to the new additional authorization level of \$540,000,000.

Section 2(a) amends section 4 of the Reclamation Safety of Dams Act to add a new subsection (e)(1). This new subsection directs the Secretary to consider cost containment measures offered by participating project beneficiaries. The new subsection further directs the Secretary to provide project beneficiaries with notice on the costs and status of a project modification on a periodic basis.

Subsection (b) amends the Reclamation Safety of Dams Act to add a new section 5A. The new section 5A(a) directs the Secretary, upon identifying a project for modification, to provide written notice to the project beneficiaries containing the following information: the need for the modification; the identification and implementation process for the modification; and a summary of the modification's legal and administrative requirements relating to the modification.

The new section 5A(b) directs the Secretary to provide project beneficiaries with the opportunity to consult with the Bureau on the planning, design and construction of the proposed modification and to establish and provide timeframes for such consultation.

The new section 5A(c) further directs the Secretary to consider any written alternative submitted in a timely fashion by a participating project beneficiary, prior to submitting a modification report to Congress if required by section 5 of the Act. The new section 5A(c) directs the Secretary to provide a timely written response to a participating project beneficiary's proposed alternative and to include such response in any required reports to Congress.

The new section 5A(d) authorizes the Secretary to waive one or more of the requirements provided by section 5(A)(a), (b), or (c) if the Secretary determines that implementation of the requirement could have an adverse impact on dam safety or security.

#### COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 23, 2004.*

Hon. PETE V. DOMENICI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1727, a bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978.

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

Sincerely,

ELIZABETH ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 1727—A bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978*

Summary: S. 1727 would increase the ceiling on amounts authorized to be appropriated for the Reclamation Safety of Dams Act by \$540 million (excluding adjustments for inflation). Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$135 million over the 2005–2009 period and an additional \$465 million after 2009 (including costs to cover anticipated inflation). Enacting S. 1727 would not affect direct spending or revenues.

In addition, the bill would increase the cost threshold from \$750,000 to \$1.25 million that causes the Bureau of Reclamation to prepare a safety of dams modification report for the Congress and would make other administrative changes to the program. Based on information from the bureau, CBO expects that these provisions would have no significant cost.

S. 1727 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. Any costs incurred by state or local governments to match or reimburse the federal funds authorized by this legislation result from participating in a voluntary federal program.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1727 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—					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
Dam Safety Spending Under Current Law:						
Estimated Authorization Level <sup>1</sup> .....	55	48	57	0	0	0
Estimated Outlays .....	30	37	49	24	13	6
Proposed Changes:						
Estimated Authorization Level .....	0	0	0	60	62	63
Estimated Outlays .....	0	0	0	31	47	57
Dam Safety Spending Under S. 1727						
Estimated Authorization Level .....	55	48	57	60	62	63
Estimated Outlays .....	30	37	49	55	60	63

<sup>1</sup>The 2004 amount is an estimate of the amount appropriated for the bureau's Dam Safety Program. The 2005 and 2006 levels are the agency's estimate of the use of the remaining authorization level for this program.

Basis of estimate: This bill would increase the amounts authorized to be appropriated for the Reclamation Safety of Dams Act of 1978 by \$540 million (excluding adjustments for inflation).

Under current law, \$105 million remains to be appropriated of the program authorization level. The current ceiling on amounts authorized to be appropriated for this program is about \$1 billion, including adjustments for inflation. The Bureau of Reclamation estimates that its plan to upgrade dams will use this remaining au-

thorization level by fiscal year 2006 to fund ongoing and future projects.

For this estimate, CBO assumes that S. 1727 will be enacted near the end of 2004. Including adjustments for anticipated inflation, CBO estimates that the authorization ceiling for the program would increase by \$600 million. CBO expects that the additional authorization level under the bill would be needed starting in fiscal year 2007 and would fund projects through 2015. Based on information from the bureau, CBO estimates that implementing this bill would cost \$135 million over the 2005–2009 period and \$465 million after that period (including costs to cover anticipated inflation).

Intergovernmental and private-sector impact: S 1727 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Any costs incurred by state or local governments to match or reimburse the federal funds authorized by this legislation results from participating in a voluntary federal program.

Estimate prepared by: Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Majorie Miller; and Impact on the Private Sector: Crystal Taylor.

Estimate approved by: Peter H. Fontaine, 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. 1727. The Act is not a regulatory measure in the sense of imposing government-established standards or significant 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. 1727.

#### EXECUTIVE COMMUNICATIONS

On June 16, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1727. These reports had not been received when this report was filed. The testimony provided by the Department of the Interior at the Subcommittee hearing on S. 1727 follows:

##### STATEMENT OF JOHN W. KEYS III, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairman, I am John W. Keys III, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to provide the Department's views on S. 1727, to increase the authorized cost ceiling for the Reclamation Safety of Dams Act administered by the Bureau of Reclamation's Dam Safety Program by \$540 million, and ad-

just the reporting threshold for inflation. The Administration strongly supports this bill.

Since the passage of the Reclamation Safety of Dams Act of 1978, the Bureau of Reclamation has developed a model dam safety program to implement the Federal Guidelines for Dam Safety and to modify dams in accordance with the act. In 1996, an independent review team comprised of representatives from the Association of Dam Safety Officials was assembled to assess the Department of the Interior's Dam Safety Program. It was the first outside review of Reclamation's program in two decades. In 1997, the team released a comprehensive and independent report. The report found that the Bureau of Reclamation has "an effective Dam Safety Program" overseen by "highly competent" staff using "state-of-the-art technical standards and expertise." Reclamation's ability to respond to dam safety issues and to take preventative, corrective actions to reduce the public risks under the authority of the Reclamation Safety of Dams Act was a critical component of this favorable peer review. The team made a number of recommendations in Reclamation's program, and we have taken steps to implement them. Among them, we now have an officer who audits and oversees the dam safety program, but is independent of the dam safety program staff. Outside experts annually review Reclamation's dam safety activities to ensure that the program has adequate policies and procedures in place to address public safety issues.

#### BACKGROUND

Public Law 95-578 and Public Law 98-404, along with Federal Guidelines for Dam Safety and the Department manual, guide Reclamation's dam safety efforts. In this regard, Reclamation's top priorities are to deliver water to and generate power for its customers without disruption, while protecting public safety.

There are 369 high hazard dams and dikes located at 250 water projects in Reclamation's inventory. The dam safety program helps to ensure the safety and reliability of these facilities. Approximately 50 percent of Reclamation's dams were built between 1900 and 1950 and approximately 90 percent of the dams were built before current state-of-the-art design and construction practices. Considering the age of Reclamation dams, the ongoing monitoring, facility reviews, analysis, investigations, and emergency management are critical components of the dam safety program. We are proud of our dam safety work but we also realize we cannot take safety for granted.

In its 100 year history, Reclamation has only had one dam failure—Teton Dam—that resulted in loss of life and damage to property. Teton Dam toppled in 1976 during initial filling due to a design and construction deficiency.

After Teton, Reclamation instituted a dam safety program. Congress enacted the Reclamation Safety of Dams Act in 1978 (Public Law 95-578) to preserve the structural

safety of Reclamation dams and facilities. In 1984, Congress adopted amendments (Public Law 98–404) instituting a 15 percent non-Federal cost share requirement for modifications made as a result of new hydrologic or seismic information or changes in the state-of-the-art technology. Public Law 95–578 authorized \$100 million and Public Law 98–404 increased the authorized cost ceiling an additional \$650 million, indexed for inflation. The 1984 Amendments also directed Reclamation to submit to Congress, prior to taking corrective actions, a report on any modifications expected to exceed \$750,000 in actual construction costs. In Fiscal Years 2001 and 2002, Congress adopted amendments to increase the authorized cost ceiling by \$95 million (Public Law 106–377) and by \$32 million (Public Law 107–117) respectively.

Recognizing the importance of our relationships with the end users of the water and power from Reclamation projects, we have adopted a policy and directives that formalize requirements for communicating the need for modifications in a timely fashion. The policy and directives also require the development of a plan in cooperation with our water and power contractors to assure continued communication and involvement during the development of alternatives, selection of a preferred alternative, and implementation of the actions required to reduce risk.

As of September 30, 2003, approximately \$159 million remained in budget authority for the dam safety program. Reclamation anticipates that entire remaining authorization ceiling will be committed in fiscal years 2004 and 2005 to fund new and ongoing projects.

#### EFFECT OF S. 1727

S. 1727 would make two primary changes in the existing program.

First, the bill would increase by \$540 million (indexed for inflation) the authorized cost ceiling for the Reclamation Safety of Dams Act. Reclamation anticipates that this funding level will provide Reclamation with authority to carry out safety of dams activities through approximately Fiscal Years 2012–2014, based on current projected funding needs for safety of dams modifications. If annual obligations are required at a faster rate to meet identified needs, the ceiling would be expended sooner.

Second, the bill would increase from \$750,000 to \$1.25 million the contract cost threshold amount for the Bureau of Reclamation to send a safety of dams modification report to Congress for review. This change would adjust the threshold for inflation since 1984, and thus allow Reclamation to independently initiate the modifications of the size and scope contemplated in the 1984 amendments.

#### CONCLUSION

Since 1978, when Congress first created the Safety of Dams program, we have carried out 64 risk reduction corrective actions and 4 more are currently underway. Rec-

lamation has implemented these corrective actions to protect public safety at the lowest cost possible.

S. 1727 would provide the additional budget authority for this effort to continue into the future. While the Administration supports the increase of appropriations ceiling, we will continue to evaluate this program for potential changes to improve planning and operations, better serve the taxpayer, and protect the safety of the people and businesses that rely on the soundness and integrity of Reclamation facilities.

In conclusion, Madam Chairman, the Administration strongly support S. 1727, and I would be pleased to answer any questions you may have.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1727, as ordered 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

Public Law 95-578, 92 Stat. 2471, as amended by Public Law 98-404, § 1(2), 98 Stat. 1481, 1482; Public Law 106-377, § 1(a)(2), 114 Stat. 1441; and Public Law 107-117, div. B, chap. 5, § 503(1), 115 Stat. 2308

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. 4. (a) Costs heretofore or hereafter incurred in the modification of structure 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 projects 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.

(b) With respect to the \$100,000,000 authorized to be appropriated in the Reclamation Safety of Dams Act of 1978, costs heretofore or hereafter 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 nonreimbursable and nonreturnable under the Federal Reclamation 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 \$95,000,000 further authorized to be appropriated by amendments to that Act in 2000, and the additional \$32,000,000 further authorized to be appropriated by amendments to the Act in 2001] (c) *REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.*—*With respect to the additional amounts author-*

ized to be appropriated by section 5, 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.

\* \* \* \* \*

(e)(1) *During the construction of the modification, the Secretary shall consider cost containment measures recommended by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.*

(2) *The Secretary shall provide to project beneficiaries on a periodic basis notice regarding the costs and status of the modification.*

\* \* \* \* \*

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, 2000, not to exceed an additional \$95,000,000 (October 1, 2000, price levels,) and, effective October 1, 2001, not to exceed an additional \$32,000,000 (October 1, 2001, price levels), and, effective October 1, 2003, not to exceed an additional \$540,000,000 (October 1, 2003, 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]** \$1,250,000 (October 1, 2003, price levels), as adjusted to reflect any ordinary fluctuations in construction costs indicated by applicable engineering cost indexes, shall be obligated for carrying out actual construction to modify an existing dam under authority of this Act prior to 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.

SEC. 5A. (a) *On identifying a Bureau of Reclamation facility for modification, the Secretary shall provide to the project beneficiaries written notice—*

- (1) *describing the need for the modification and the process for identifying and implementing the modification; and*
- (2) *summarizing the administrative and legal requirements relating to the modification.*

(b) *The Secretary shall—*

- (1) *provide project beneficiaries an opportunity to consult with the Bureau of Reclamation on the planning, design, and construction of the proposed modification; and*

*(2) in consultation with project beneficiaries, develop and provide timeframes for the consultation described in paragraph (1).*

*(c)(1) Prior to submitting the reports required under section 5, the Secretary shall consider any alternative submitted in writing, in accordance with the timeframes established under subsection (b), by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.*

*(2) The Secretary shall provide to the project beneficiary a timely written response describing proposed actions, if any, to address the recommendation.*

*(3) The response of the Secretary shall be included in the reports required by section 5.*

*(d) The Secretary may waive 1 or more of the requirements of subsections (a), (b), and (c), if the Secretary determines that implementation of the requirements could have an adverse impact on dam safety or security.*

\* \* \* \* \*

