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SMALL-SCALE HYDROPOWER ENHANCEMENT ACT OF 2011

SEPTEMBER 23, 2011.—Ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 795]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 795) to expand small-scale hydropower, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small-Scale Hydropower Enhancement Act of 2011".

SEC. 2. DEFINITIONS.

In this Act:

(1) CONDUIT.—The term "conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 3. APPLICABILITY OF LAW.

Notwithstanding any other provision of law, a hydroelectric project that uses only a non-federally owned conduit to generate electric power that does not exceed 1.5 megawatts and that, on or before the date of enactment of this Act, is not licensed under, or exempted from the license requirements contained in, part I of the Federal Power Act (16 U.S.C. 792 et seq.) shall not be required to be licensed under part I of such Act.

SEC. 4. INCLUSION OF CERTAIN FACILITIES IN REPORT AND STUDY.

The Secretary shall—

(1) not later than 6 months after the date of enactment of this Act, revise and update the study and report required under section 1834 of the Energy Policy Act of 2005 (Public Law 109–58) to include facilities that would result in less than 1 megawatt of capacity;

(2) to the maximum extent practicable, consult with non-Federal and noncontracting interests in implementing this section;

(3) implement this section on a nonreimbursable basis; and

(4) include in the report revised and updated under paragraph (1), information regarding the availability and importance of using materials and equipment produced and manufactured in the United States in the type of facilities referred to in that report.

PURPOSE OF THE BILL

The purpose of H.R. 795, as ordered reported, is to expand small-scale hydropower.

BACKGROUND AND NEED FOR LEGISLATION

Faced with aging infrastructure costs, static or declining federal and state budgets and mounting energy and environmental costs for pumping water, irrigation districts and water utilities seek to generate revenue from new hydropower production at canals, ditches, pipes, laterals and other water delivery devices (collectively known as "conduits"). Although small in nature, this "low-head" hydropower has the potential to add significant amounts of renewable electricity on a cumulative scale and generate local revenue as a way to decrease dependence on federal appropriations. In Colorado alone, conduit development could lead to 1,400 megawatts of production (equivalent to Glen Canyon dam's hydropower capacity). At a time when some irrigation districts are using diesel fuel to pump water, emissions-free hydropower would also have a direct environmental benefit by replacing that fossil fuel source.

While there are thousands of miles of canals and water pipelines in the western United States available for potential hydropower development, and with technological advances making small turbines more cost-effective, water utilities and other potential hydropower developers indicate that unnecessary federal regulations and lack of creativity and vision at the Department of the Interior have stifled conduit hydropower production.

Under federal law, any non-federal conduit hydropower project must have a Federal Energy Regulatory Commission (FERC) license or an "exemption" from that license, no matter the size of the project and the lack of environmental impact. Specifically, FERC must carry out its license/exemption responsibilities under Section 30 of the Federal Power Act, which requires the agency to consult with the U.S. Fish and Wildlife Service as it relates to the Fish and Wildlife Coordination Act. This requirement has proven time-consuming and costly to the point where project costs have increased 100 percent. This requirement makes little sense because conduits are already off-river on previously disturbed ground and have no impact on the environment. Some opponents of the legislation point out that FERC has improved this process to reduce costs and time, however the expensive time delays are much longer than FERC's review time. Most of the time and cost is spent by applicants before FERC review. In reality, this makes the real time barrier at least two to four times larger than the formal review period. As a result, Section 3 of H.R. 795 exempts any non-federal conduit hydropower project that generates 1.5 megawatts or less from the FERC licensing/exemption process.

This bill does nothing to harm the environment. For example, non-federal conduit hydropower development covered in this bill is

already categorically excluded from the National Environmental Policy Act process under FERC regulations. In addition, the legislation does not preclude reviews resulting from Endangered Species Act, Clean Water Act or other environmental statutes. The legislation simply seeks to end unnecessary paperwork while keeping environmental protections in place.

Section 4, which is jurisdictional to the Natural Resources Committee, directs the Bureau of Reclamation to re-examine its facilities for conduit hydropower development using its authority in Section 1834 of the Energy Policy Act of 2005 (Public Law 109–58). The agency failed to include these facilities in its initial assessment, but is now using existing funding to examine conduit hydropower development. There are concerns among water utilities and other developers that the agency will not pursue an aggressive study and will fail to solicit private input. H.R. 795 requires the Bureau of Reclamation to finish the report within six months of bill enactment and encourages non-federal participation in the study.

COMMITTEE ACTION

H.R. 795 was introduced on February 18, 2011, by Congressman Adrian Smith (R–NE). The bill was referred primarily to the Committee on Energy and Commerce. The bill was referred additionally to the Committee on Natural Resources, and within that Committee to the Subcommittee on Water and Power. The bill was also referred to the Committee on Transportation and Infrastructure. On June 23, 2011, the Subcommittee on Water and Power held a hearing on the bill. On July 20, 2011, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. Congressman John Garamendi (D–CA) offered an amendment; the amendment was adopted by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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:

Under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) issues licenses and regulates hydroelectric facilities, regardless of size. H.R. 795 would exempt certain small hydroelectric facilities with less than 1.5 megawatts of generating capacity from FERC's licensing requirements. In addition, the bill would require the Department of the Interior (DOI) to report on the potential for generating more electricity from small hydroelectric facilities on federal lands.

CBO estimates that implementing H.R. 795 would have no significant impact on the federal budget. Exempting small hydroelectric facilities from federal licensing requirements would reduce FERC's workload. However, because FERC recovers 100 percent of its costs through user fees, any reduction in administrative costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges, resulting in no net change in federal spending. Based on information from DOI, CBO also estimates that meeting expanded reporting requirements under H.R. 795 would not significantly affect the department's costs. Furthermore, any such costs would be subject to the availability of appropriated funds.

Enacting H.R. 795 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. H.R. 795 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of 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, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing H.R. 795 would have no significant impact on the federal budget.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

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

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

H.R. 795 would exempt non-federally owned in-conduit hydropower projects with the capacity of 1.5-megawatt or less from any Federal Energy Regulatory Commission (FERC) oversight. This includes an exemption from the FERC process for conduit exemptions. Section 4 of H.R. 795 directs the Secretary of the Interior to perform a study that looks at hydropower capabilities of 1-megawatt or less. Because of the jurisdictional constraints, only section 4 of the legislation is referred to the Natural Resources Committee. We support the general intent of Section 4, but have concerns with the remainder of the bill.

Since 2001, FERC has issued 50 conduit exemptions. From 2006–2010, 13 conduit exemptions were completed in less than a year. Of the 11 conduit exemptions that were issued in 2011, orders regarding the nine conduit exemptions that presented no substantive issues were issued on average 40 days after the comment deadline established in the public notice.

Proponents for the legislation will argue that the FERC conduit exemption process is tedious, costly, and time consuming. It is unclear, however, why an exemption from the FERC process for in-conduit hydropower is necessary when a conduit exemption is already in place and when it appears that the process is approving projects in as little as two months. Removing FERC oversight also removes any ability for environmental mitigation, if any is necessary.

EDWARD J. MARKEY,
Ranking Member.

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