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HOUSE OF REPRESENTATIVES

REPT. 112–503
Part 1

BONNEVILLE UNIT CLEAN HYDROPOWER FACILITATION ACT

MAY 30, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 460]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 460) to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project, 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 "Bonneville Unit Clean Hydropower Facilitation Act".

SEC. 2. DIAMOND FORK SYSTEM DEFINED.

For the purposes of this Act, the term "Diamond Fork System" means the facilities described in chapter 4 of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit.

SEC. 3. COST ALLOCATIONS.

Notwithstanding any other provision of law, in order to facilitate hydropower development on the Diamond Fork System, the amount of reimbursable costs allocated to project power in Chapter 6 of the Power Appendix in the October 2004 Supplement to the 1988 Bonneville Unit Definite Plan Report, with regard to power development upstream of the Diamond Fork System, shall be considered final costs as well as costs in excess of the total maximum repayment obligation as defined in section 211 of the Central Utah Project Completion Act of 1992 (Public Law 102–575), and shall be subject to the same terms and conditions.

SEC. 4. NO PURCHASE OR MARKET OBLIGATION; NO COSTS ASSIGNED TO POWER.

Nothing in this Act shall obligate the Western Area Power Administration to purchase or market any of the power produced by the Diamond Fork power plant and

none of the costs associated with development of transmission facilities to transmit power from the Diamond Fork power plant shall be assigned to power for the purpose of Colorado River Storage Project ratemaking.

SEC. 5. PROHIBITION ON TAX-EXEMPT FINANCING.

No facility for the generation or transmission of hydroelectric power on the Diamond Fork System may be financed or refinanced, in whole or in part, with proceeds of any obligation—

(1) the interest on which is exempt from the tax imposed under chapter 1 of the Internal Revenue Code of 1986, or

(2) with respect to which credit is allowable under subpart I or J of part IV of subchapter A of chapter 1 of such Code.

SEC. 6. REPORTING REQUIREMENT.

If, 24 months after the date of the enactment of this Act, hydropower production on the Diamond Fork System has not commenced, the Secretary of the Interior shall submit a report to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate stating this fact, the reasons such production has not yet commenced, and a detailed timeline for future hydropower production.

SEC. 7. PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SEC. 8. LIMITATION ON THE USE OF FUNDS.

The authority under the provisions of section 301 of the Hoover Power Plant Act of 1984 (Public Law 98–381; 42 U.S.C. 16421a) shall not be used to fund any study or construction of transmission facilities developed as a result of this Act.

PURPOSE OF THE BILL

The purpose of H.R. 460, as ordered reported, is to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 460, as amended, removes administrative barriers to jump start hydropower development at an existing federal water supply facility. This hydropower development could occur in the Diamond Fork system of the Bonneville Unit, which is a system of dams, pipelines and tunnels that transports water from the eastern mountains in Utah to the Wasatch Front, where approximately 80% of Utah's population resides.

An internal Department of the Interior cost formula has prohibited any hydropower development for years. Under a 2004 "use of facilities" cost allocation formula, any hydropower developer must agree to pay $106 million over 50 years as part of installing any hydropower infrastructure at Diamond Fork. This would be in addition to the actual capital cost of the facilities, which would be borne by the developer. One witness at a hearing on a predecessor bill in the 111th Congress likened this situation to one that requires any developer to start $106 million "in the hole." Or as others have said, making a home renter not only pay the rent but the owner's mortgage cost as well. As a result, hydropower investment has not occurred because a developer would not want to assume the $106 million cost, as it far outweighs the annual benefits of generating hydropower.

As amended, H.R. 460 defers the $106 million, which is similar to deferrals made with respect to municipal and industrial water costs addressed by the Central Utah Project Completion Act provisions in Public Law 102–575. Under this deferral, hydroelectric power generation at the Diamond Fork System will now become economic and, according to the Congressional Budget Office, the bill would eventually lead to $600,000 in federal revenue generation per year. The bill, as amended, also ensures that any developer would be required to pay for the cost of hydropower infrastructure. If H.R. 460 becomes law, it is anticipated that the Department of the Interior will initiate an open and competitive process to issue a Lease of Power Privilege for the right to install hydropower turbines at Diamond Fork.

COMMITTEE ACTION

H.R. 460 was introduced on January 26, 2011, by Congressman Jason Chaffetz (R–UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. The bill was also referred to the Committee on the Budget. On April 17, 2012, the Subcommittee held a hearing on the bill. On April 25, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. Congressman Tom McClintock (R–CA) offered amendment designated #1 to the bill; the amendment was approved by unanimous consent. The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section designates the short title of the bill as the "Bonneville Unit Clean Hydropower Facilitation Act."

Section 2. Diamond Fork System defined

Section 2 defines the Diamond Fork System as the facilities described in Chapter 4 of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit.

Section 3. Cost allocations

This section states that the current amount of reimbursable costs allocated to power for the Diamond Fork System are final costs. This defers costs that are preventing hydropower development and clears the way for the government to receive revenue once development is complete. The Committee expects that the Interior Department will follow the longstanding federal "beneficiary pays" concept to ensure ratepayers who do not benefit from the Diamond Fork System will not have to pay for any deferment costs. In particular, the Committee expects that such deferred costs not be allocated to power users for repayment.

Section 4. No purchase or market obligation; No costs assigned to power

Section 4 ensures that nothing obligates the Western Area Power Administration to purchase or market any of the power produced

by the Diamond Fork System. This section also ensures that none of the transmission costs associated with the Diamond Fork power plant shall be assigned to other power users.

Section 5. Prohibition on tax-exempt financing

This section prohibits the use of tax-exempt financing to fund any facility for the generation or transmission of hydropower on the Diamond Fork System.

Section 6. Reporting requirement

This provision requires the Secretary of the Interior to report to the House Committee on Natural Resources and the Senate Energy and Natural Resources Committee if hydropower production on the Diamond Fork System has not commenced within 24 months after the date of enactment, and requires the Secretary to provide a detailed timeline for future hydropower production.

Section 7. Paygo

This provision contains language complying with the Statutory Pay-As-You-Go Act of 2010.

Section 8. Limitation on the use of funds

This section ensures that the project is not eligible for funding under the Western Area Power Administration's borrowing authority created in Public Law 111–5.

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:

H.R. 460—Bonneville Unit Clean Hydropower Facilitation Act

Summary: CBO expects that enacting H.R. 460 would lead to the development of hydropower facilities at the Diamond Fork Project in Utah by a nonfederal entity within a few years, sooner than expected under current law. Based on information from the Bureau of Reclamation, CBO estimates that the federal government would receive payments from the hydropower developer of about $4 million over the 2013–2022 period. Enacting the bill would increase offsetting receipts (a credit against direct spending); therefore, pay-

as-you-go procedures apply. Enacting the bill would not affect revenues.

H.R. 460 contains no intergovernmental or private-sector mandates as defined in Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The costs of this legislation fall within budget function 300 (natural resources and environment). CBO estimates that enacting H.R. 460 would increase offsetting receipts by $600,000 a year, beginning in 2017, for a total collection of about $4 million over the 2017–2022 period.

Basis of estimate: Based on information from the Bureau of Reclamation, CBO expects that the federal government is unlikely—under current law—to develop the hydropower resources of the Diamond Fork project for at least the next 10 years. Although there are no formal development proposals currently being considered by the bureau, two nonfederal entities—the Central Utah Water Conservancy District and the Strawberry Water Users' Association—have expressed interest in developing those resources since at least 1995.

Among the reasons that CBO expects the site is unlikely to be developed over the next 10 years is a requirement that project sponsors pay the Treasury for the federal government's power-related investments in the water project. According to the bureau, those payments would average about $5 million annually, beginning after the hydroelectric facilities go into service and continuing through the life of the lease.

CBO expects that eliminating that requirement would encourage nonfederal entities to pursue development of the hydropower resources at Diamond Fork. Assuming that H.R. 460 is enacted in 2012, we expect that the Bureau of Reclamation would receive a proposal to develop the hydroelectric resources within a year or two and that such a project could be completed by 2017. In that case, the government would collect annual fees from the project developer totaling about $600,000 a year (adjusted for inflation) for the life of the project.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 460 would increase offsetting receipts (a credit against direct spending) by about $600,000 annually beginning in 2017. The budgetary changes that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 460 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON APRIL 25, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2020–2022
NET INCREASE OR DECREASE (−) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	−1	−1	−1	−1	−1	−1	−1	−4

Intergovernmental and private-sector impact: H.R. 460 contains no intergovernmental or private-sector mandates as defined in UMRA; any additional costs to state and local governments would result from participating in a voluntary federal program.

Previous CBO estimate: On January 13, 2012, CBO transmitted a cost estimate for S. 499, the Bonneville Unit Clean Hydropower Facilitation Act, as ordered reported by the Senate Committee on Energy and Natural Resources on November 10, 2011. At that time, CBO estimated that offsetting receipts from lease payments under S. 499 would total $2 million over the 2017–2022 period. H.R. 460 and S. 499 are substantively similar; however, our estimates differ because of a change in administrative policy that took effect after we estimated the impact of S. 499. Specifically, the Bureau of Reclamation's new policy for lease payments includes an additional charge of about 5 percent of the gross revenue generated from hydropower under the project. As a result of that change, we now estimate that receipts generated under either bill would total $4 million over the 2017–2022 period.

Estimate prepared by: Federal costs: Aurora Swanson; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate 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. Based on information from the Bureau of Reclamation, CBO estimates that the federal government would receive payments of about $4 million over the 2013–2022 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project.

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.

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