AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 284

112TH CONGRESS, 2d Session | SENATE | REPORT 112–122

LEADVILLE MINE DRAINAGE TUNNEL ACT

JANUARY 13, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of December 17, 2011

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

R E P O R T

[To accompany S. 1047]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1047) to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to require the Secretary of the Interior, acting through the Bureau of Reclamation, to take actions to improve environmental conditions in the vicinity of the Leadville Mine Drainage Tunnel in Lake County, Colorado, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1047 is to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to require the Secretary of the Interior, acting through the Bureau of Reclamation, to take actions to improve environmental conditions in the vicinity of the Leadville Mine Drainage Tunnel in Lake County, Colorado.

BACKGROUND AND NEED

The Bureau of Mines (BOM) constructed the Leadville Mine Drainage Tunnel (LMDT) in the 1940s and 1950s to drain water from mines in the Leadville, Colorado area. In 1959, the Bureau of Reclamation took full custody, accountability, and future responsibility for the LMDT. Reclamation's original purpose in acquiring the LMDT was to obtain additional water for the Fryingpan-Arkansas Reclamation Project, which was authorized in 1962, but this plan never materialized.

19–010

In 1992, to implement a settlement agreement involving Clean Water Act violations related to discharge from the LMDT, through Title VII of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575), Congress authorized Reclamation to construct a treatment plant to clean up discharge from the LMDT. The 1992 law specified that Reclamation's treatment plant must be constructed to treat the quantity and quality of effluent "historically discharged" from the LMDT.

In 1983, a significant portion of the Leadville area, known as the California Gulch National Priority List Site, was designated as a Superfund site. The LMDT is hydraulically connected to certain Superfund units within the site. In 2003, the Environmental Protection Agency issued a Record of Decision for one of the Superfund units that implicated the operations of the treatment plant and led to uncertainty with respect to Reclamation's authority to treat additional water at the plant. EPA is in the process of developing a revised water management plan and Record of Decision that may reduce the long term need to utilize the treatment plant and drainage tunnel.

In 2008, Reclamation and EPA developed a short-term plan to drill a relief well to dewater the LMDT and treat the pooled water at Reclamation's existing treatment plant. S. 1047 would clarify Reclamation's authority to treat water delivered through the LMDT and to maintain the existing treatment plant. In addition the Bill authorizes the Secretary, upon entering into an agreement with the EPA or other entity or agency to provide funding, to improve or expand the plant.

LEGISLATIVE HISTORY

Senator Mark Udall introduced S. 1047 on May 23, 2011. The Subcommittee on Water and Power of the Committee on Energy and Natural Resources held a hearing on S. 1047 on June 23, 2011 (S. Hrg. 112–129). The Committee on Energy and Natural Resources ordered S. 1047 favorably reported without amendment at its business meeting on November 10, 2011.

During the 111th Congress, the Committee considered similar legislation, S. 3404, sponsored by Mark Udall. The Subcommittee on Water and Power held a hearing on S. 3404 on June 9, 2010 (S. Hrg. 111–707). The Committee ordered S. 3404 favorably reported with an amendment in the nature of a substitute on August 27, 2010 (S. Rpt. 111–320).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on November 10, 2011, by voice vote of a quorum present recommends that the Senate pass S. 1047.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the bill.

Section 2 amends section 703 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575) to specify that the Secretary of the Interior shall take any action necessary to maintain the structural integrity of the Leadville Mine Drainage Tunnel to maintain public safety and prevent an uncontrolled re-

lease of water. Further, the Secretary of the Interior is provided with the authority to operate and maintain a water treatment plant.

Section 3 amends section 705 of Public Law 102–575 to specify that the Secretary may enter into an agreement with any other entity or government agency to provide funding for increased operation, maintenance, replacement, capital improvement, or expansion cost that is necessary to improve or expand the treatment plant. Upon entering into such agreement, the Secretary may make necessary capital improvements or expansions and may treat flows conveyed to the water treatment plant that are in excess of the quantities historically discharged into the tunnel, including surface water diverted into the tunnel and water collected by the dewatering relief well installed in June 2008.

Section 4 amends section 708(a) of Public Law 102–575 to require the Administrator of the EPA to consult with Reclamation on a new or amended Record of Decision that affects the operation and maintenance of the drainage tunnel or the water treatment plant. Section 4 also specifies that the Secretary may implement any improvement to or new operation of the tunnel or treatment plant only upon entering into an agreement with the EPA or other entity or agency to provide funding for the improvement or new operation.

Section 5 authorizes appropriations for sections 703 and 709 of Public Law 102–575.

Section 6 makes a conforming amendment to the table of contents of Public Law 102–575.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1047—Leadville Mine Drainage Tunnel Act of 2011

S. 1047 would require the Secretary of the Interior to maintain the structural integrity of the Leadville Mine Drainage Tunnel, located one mile north of Leadville, Colorado. The bill also would authorize the Secretary, if necessary, to seek reimbursements from private or public entities for the cost of expanding and operating the water treatment plant associated with the Leadville Tunnel to handle any increased water volumes. Based on information from the Bureau of Reclamation and the Environmental Protection Agency (EPA), CBO does not anticipate that any costs would be incurred under the bill beyond what the bureau will spend under current law to repair and maintain the tunnel over the next several years. Enacting S. 1047 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The Leadville Tunnel is located near the California Gulch Superfund site. EPA's plan to clean up the site minimizes the use of the tunnel and treatment plant by avoiding diversion of water into those facilities except in cases of an emergency. Under the bill and subject to the availability of appropriated funds, EPA would be authorized to pay for any improvements and associated operation and maintenance costs to the tunnel and water treatment plant if such improvements are necessary. Under current law, costs to treat and manage contaminated water from the California Gulch are already

a federal responsibility; therefore, this provision would not result in additional federal outlays.

S. 1047 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 Aurora Swanson. The estimate was 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. 1047.

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. 1047, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1047, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the June 23, 2011, Subcommittee hearing on S. 1047 follows:

STATEMENT OF GRAYFORD F. PAYNE, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairman and Members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 1047, the Leadville Mine Drainage Tunnel Act of 2011.

The Department last testified before the Subcommittee on legislation related to the Leadville Mine Drainage Tunnel (LMDT) in June of 2010, and prior to that, in April of 2008. Since the last Congress, the sponsor has continued to refine the specific language of this bill, and incorporated reference to new information from the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE) regarding new management actions at the California Gulch National Priority List (Superfund) Site, which overlies the LMDT. S. 1047 is consistent with the Department's ongoing commitment to ensure that the LMDT poses no threat to public

safety and the environment. The Department supports the revisions made to the bill to date and looks forward to working with the Committee on further refinements to clarify remaining concerns.

The bill has been substantially improved to address the concerns raised by the Department related to reimbursement and liability. In our previous testimony, the Department was particularly concerned that the bill could have been understood to create a liability for Reclamation where none currently exists. S. 1047 ameliorates these concerns by appropriately identifying ongoing responsibilities of the Secretary of the Interior. S. 1047 contains new language not found in previously introduced versions of the Leadville Mine Drainage Tunnel Act.[1] In particular, Section 3 of S. 1047 acknowledges the multi-agency nature of efforts underway at Leadville, and authorizes the Department to enter into agreements with other entities for reimbursement in the event of improvements or expansion of the treatment plant in Leadville. The bill language authorizes an agreement to cover costs for "any necessary capital improvement" as well as costs associated with "flows that are conveyed to the treatment plant," including surface water. We note that the Department interprets section 3 to affirm existing discretionary authority to improve or expand the treatment plant as well as to allow the Secretary to enter into reimbursement agreements with other entities with respect to the treatment plant.

We continue to assert that the language in Section 2 of the bill, which calls on the Secretary of the Interior to "take any action necessary to maintain the structural integrity of the [LMDT]," does not take into consideration Reclamation's 2008 Risk Assessment on the LMDT. The Assessment's purpose was to evaluate the stability and assess the risk associated with the LMDT. The Risk Assessment utilized a similar process to the one Reclamation uses to assess risk at its dams, a model that is an international standard for conducting risk assessments. The Risk Assessment's independent peer review confirmed that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT, or through the bulkheads installed in the tunnel. Moreover, the Risk Assessment concluded that even if an existing natural blockage in the upper part of the LMDT failed rapidly, a sudden release of water through the lower blockage and bulkheads is unlikely. In 2008, Reclamation also worked cooperatively with the EPA and CDPHE to install additional drainage capability into the LMDT. We have also held several public meetings with residents living in the Village at East Fork and others in the Leadville area to convey Reclamation's findings that the LMDT is safe, and have continued an active dialogue with the EPA during the agen-

[1] The Committee-reported version of S. 3404 during the 111th Congress was amended to include reimbursement language that is similar to the language found in this session's S. 1047; however, the reimbursement language was not part of S. 3404 at the time Reclamation testified on the bill on June 9, 2010.

cy's revision of the proposed remedy for Operable Unit 6 (OU6) of the California Gulch National Priority List (Superfund) Site, which lies above the LMDT. We agree with the remedy selected in EPA's amended Record of Decision, published in 2010, which would implement actions to avoid diversion of water into the LMDT. Recent studies conducted by EPA conclude that using the mine workings and the LMDT to convey water cannot be relied on for the long term, and that it is neither cost effective nor efficient to treat diluted acid rock drainage this way in perpetuity. We have also had very productive interactions with Senator Mark Udall's office and the Subcommittee on this legislation, and we appreciate those discussions.

We recognize the desire of Congress to assure the residents of Leadville and the Village at East Fork that Reclamation will continue to manage its facilities appropriately, and be accountable. This legislation essentially codifies these ongoing actions for the long term.

This concludes my written statement. I am pleased 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, changes in existing law made by the bill S. 1047, 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 PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992

Public Law 102–575 (106 Stat. 4656)

AN ACT To authorize additional appropriations for the construction of the Buffalo Bill dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1992".

* * * * * * *

SEC. 2. DEFINITION AND TABLE OF CONTENTS.

For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

TABLE OF CONTENTS

Sec. 1. Short title.

* * * * * * *

TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

Sec. 701. Authorization.
Sec. 702. Costs nonreimbursable.
[Sec. 703. Operation and maintenance.]

Sec. 703. Tunnel maintenance; operation and maintenance.

* * * * * * *

TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

* * * * * * *

[SEC. 703. OPERATION AND MAINTENANCE.

[The Secretary shall be responsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.]

SEC. 703. TUNNEL MAINTENANCE; OPERATION AND MAINTENANCE.

(a) LEADVILLE MINE DRAINAGE TUNNEL.—The Secretary shall take any action necessary to maintain the structural integrity of the Leadville Mine Drainage Tunnel—

(1) to maintain public safety; and

(2) to prevent an uncontrolled release of water.

(b) WATER TREATMENT PLANT.—

(1) IN GENERAL.—Subject to section 705, the Secretary shall be responsible for the operation and maintenance of the water treatment plant authorized under section 701, including any sludge disposal authorized under this title.

(2) AUTHORITY TO OFFER TO ENTER INTO CONTRACTS.—In carrying out paragraph (1), the Secretary may offer to enter into 1 or more contracts with any appropriate individual or entity for the conduct of any service required under paragraph (1).

* * * * * * *

SEC. 705. LIMITATION.

[The treatment plant] *(a) IN GENERAL.—Except as provided in subsection (b), the treatment plant* authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine [Drainage Tunnel] *Drainage Tunnel (which includes any surface water diverted into the Leadville Mine Drainage Tunnel and water collected by the dewatering relief well installed in June 2008).*

(b) EXCEPTION.—The Secretary may—

(1) enter into an agreement with any other entity or government agency to provide funding for an increase in any operation, maintenance, replacement, capital improvement, or expansion cost that is necessary to improve or expand the treatment plant; and

(2) upon entering into an agreement under paragraph (1)—make any necessary capital improvement to or expansion of the treatment plant.

* * * * * * *

SEC. 708. WATER QUALITY RESTORATION.

[(a) The Secretary] *(a) IN GENERAL.—*

(1) AUTHORIZATION.—The Secretary is authorized, in consultation with the State of Colorado, the Administrator of the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and impacts attributed to mining-related and other development in

the Upper Arkansas River basin, to develop corrective action plans, and to implement corrective action demonstration projects. [Neither]

(2) LIABILITY.—Neither the Secretary nor any person participating in a corrective action demonstration project shall be liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act for costs or damages as a result of actions taken or omitted in the course of implementing an approved work plan developed under this section; Provided, That this subsection shall not preclude liability for costs or damages which result from negligence on the part of such persons. [The Secretary shall have]

(3) FACILITIES COVERED UNDER OTHER LAWS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall have no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act.

(B) EXCEPTION.—If the Administrator of the Environmental Protection Agency proposes to amend or issue a new Record of Decision for operable unit 6 of the California Gulch National Priorities List Site, the Administrator shall consult with the Secretary with respect to each feature of the proposed new or amended Record of Decision that may require any alteration to, or otherwise affect the operation and maintenance of—

(i) the Leadville Mine Drainage Tunnel; or

(ii) the water treatment plant authorized under section 701.

(4) AUTHORITY OF SECRETARY.—The Secretary may implement any improvement to, or new operation of, the Leadville Mine Drainage Tunnel or water treatment plant authorized under section 701 as a result of a new or amended Record of Decision for operable unit 6 of the California Gulch National Priorities List Site only upon entering into an agreement with the Administrator of the Environmental Protection Agency or any other entity or government agency to provide funding for the improvement or new operation. [For the purpose of]

(5) DEFINITION OF UPPER ARKANSAS RIVER BASIN.—In this section, the term "Upper Arkansas River basin" means the Arkansas River hydrologic basin in Colorado extending from Pueblo Dam upstream to its headwaters.

* * * * * * *

(f) There is authorized to be appropriated such sums as may be required to fulfill the provisions of [sections 707 and 708] *this section and sections 703, 705, and 707* of this title.

* * * * * * *

○