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WALLOWA LAKE DAM REHABILITATION AND WATER MANAGEMENT ACT OF 2004

MARCH 29, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 1355]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1355) to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes, 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. SHORT TITLE.

This Act may be cited as the "Wallowa Lake Dam Rehabilitation and Water Management Act of 2004".

SEC. 2. DEFINITIONS.

In this Act:

(1) ASSOCIATED DITCH COMPANIES, INCORPORATED.—The term "Associated Ditch Companies, Incorporated" means the nonprofit corporation established under the laws of the State of Oregon that operates Wallowa Lake Dam.

(2) PHASE II AND PHASE III OF THE WALLOWA VALLEY WATER MANAGEMENT PLAN.—The term "Phase II and Phase III of the Wallowa Valley Water Management Plan" means the Phase II program for fish passage improvements and water conservation measures, and the Phase III program for implementation of water exchange infrastructure, developed for the Wallowa River watershed, as contained in the document entitled "Wallowa Lake Dam Rehabilitation and Water Management Plan Vision Statement", dated February 2001, and on file with the Bureau of Reclamation.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(4) WALLOWA LAKE DAM REHABILITATION PROGRAM.—The term "Wallowa Lake Dam Rehabilitation Program" means the program for the rehabilitation of the Wallowa Lake Dam in Oregon, as contained in the engineering document enti-

tled, "Phase I Dam Assessment and Preliminary Engineering Design", dated December 2002, and on file with the Bureau of Reclamation.

SEC. 3. AUTHORIZATION TO PARTICIPATE IN PROGRAM.

(a) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may provide grants to, or enter into cooperative or other agreements with, tribal, State, and local governmental entities and the Associated Ditch Companies, Incorporated, to plan, design, and construct facilities needed to implement the Wallowa Lake Dam Rehabilitation Program and Phase II and Phase III of the Wallowa Valley Water Management Plan.

(b) CONDITIONS.—As a condition of providing funds under subsection (a), the Secretary shall ensure that—

(1) the Wallowa Lake Dam Rehabilitation Program meets the standards of the dam safety program of the State of Oregon;

(2) the Associated Ditch Companies, Incorporated, agrees to assume liability for any work performed, or supervised, with funds provided to it under this Act; and

(3) the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to a facility rehabilitated or constructed under this Act.

(c) COST SHARING.—

(1) IN GENERAL.—The Federal share of the costs of activities authorized under this Act shall not exceed 80 percent.

(2) EXCLUSIONS FROM FEDERAL SHARE.—There shall not be credited against the Federal share of such costs—

(A) any expenditure by the Bonneville Power Administration in the Wallowa River watershed; and

(B) expenditures made by individual agricultural producers in any Federal commodity or conservation program.

(d) COMPLIANCE WITH STATE LAW.—The Secretary, in carrying out this Act, shall comply with otherwise applicable State water law.

(e) PROHIBITION ON HOLDING TITLE.—The Federal Government shall not hold title to any facility rehabilitated or constructed under this Act.

(f) PROHIBITION ON OPERATION AND MAINTENANCE.—The Federal Government shall not be responsible for the operation and maintenance of any facility constructed or rehabilitated under this Act.

(g) OWNERSHIP AND OPERATION OF FISH PASSAGE FACILITY.—Any facility constructed using Federal funds authorized by this Act located at Wallowa Lake Dam for trapping and transportation of migratory adult salmon may be owned and operated only by the Nez Perce Tribe.

SEC. 4. RELATIONSHIP TO OTHER LAW.

Activities funded under this Act shall not be considered a supplemental or additional benefit under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary to pay the Federal share of the costs of activities authorized under this Act $25,600,000.

PURPOSE OF THE MEASURE

The purpose of S. 1355 is to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon.

BACKGROUND AND NEED

Wallowa Lake Dam is a privately owned dam constructed in 1918 and raised in 1929. It is owned and operated by the Associated Ditch Companies, Inc. (ADC). Dam safety deficiencies have been identified by the U.S. Army Corps of Engineers and Oregon Water Resources Department, causing the reservoir to be held below full pool elevation since 1996. ADC, in conjunction with the Grande Ronde Model Watershed Council, the Bureau of Reclamation, and other local, State, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation and Water Management Pro-

gram to address dam safety deficiencies and to tie correction of those deficiencies to larger environmental issues in the Wallowa River Basin.

S. 1355 authorizes the Secretary of the Interior, acting through the Commissioner of Reclamation, to participate in: (1) the Wallowa Lake Dam Rehabilitation Program, in cooperation with ADC; and (2) phases II and III of the Wallowa Valley Water Management Plan, in cooperation with tribal, State, and local governmental entities. The Wallowa Lake Dam Rehabilitation Program, as described in the Vision Statement (February 2001), focuses on planning, designing, and constructing recommended improvements to Wallowa Lake Dam. When this phase is completed, ADC will be able to raise pool levels, working closely with the Oregon State Parks Department to assess the impact on nearby park facilities.

Phase II of the Wallowa Valley Water Management Plan will focus on the planning and implementation of fish screens, automated head gates, and flow measurements devices at unscreened diversions. The Nez Perce Tribe is currently working with the Oregon Department of Fish and Wildlife to plan and implement fish recovery measures, and S. 1355 provides that only the Tribe may own and operate fish passage facilities constructed with Federal funds at Wallowa Lake Dam.

Phase III focuses on planning, designing, and implementing the institutional framework and infrastructure, including pumps and pipelines, needed for a water exchange between the Wallowa River and the Lostine and Bear Creek Valley irrigation system.

LEGISLATIVE HISTORY

S. 1355 was introduced by Senators Smith and Wyden on June 26, 2003. The Subcommittee on Water and Power held a hearing on S. 1355 on October 15, 2003. S. Hrg. 108–271. At the business meeting on March 10, 2004, the Committee on Energy and Natural Resources ordered S. 1355 favorably reported, with an amendment in the nature of a substitute.

During the 107th Congress, a similar measure, S. 1883, was introduced by Senators Smith and Wyden. The Subcommittee on Water and Power held a hearing on S. 1883 on June 6, 2002. The Committee on Energy and Natural Resources ordered S. 1883 favorably reported on July 31, 2002 with an amendment. S. 1883 passed the Senate as title III of S. 2556 on November 20, 2002.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 10, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1355, if amended as described herein.

COMMITTEE AMENDMENT

During consideration of S. 1355, the Committee adopted an amendment in the nature of a substitute. The amendment in the nature of a substitute modifies the original test to: (1) clarify that the Secretary may provide grants to, or enter into cooperative agreements with, tribal, state, and local government entities and ADC, to plan, design, and construct facilities needed to implement

the Wallowa Lake Dam Rehabilitation Program and Phase II and Phase III of the Wallowa Valley Water Management Plan; (2) require the Secretary to ensure, as a condition of providing funds, that the Rehabilitation Program meet the standards of the dam safety program of the State of Oregon; (3) provide the ADC, as a condition of receiving funds, agrees to assume liability for work performed or supervised with funds under the Act; (4) provide a waiver of liability for the United States, as set forth in the amendment; and (5) reduce the authorization level to fund only the Federal share of the Wallowa Lake Dam Rehabilitation Program and Phase II and III of the Wallowa Valley Water Management Plan. The amendment is further described in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the "Wallowa Lake Dam Rehabilitation and Water Management Act of 2004".

Section 2 defines key terms used in the Act.

Section 3(a) authorizes the Secretary to provide grants or enter into cooperative or other agreements with tribal, State, and local governmental entities and the Associated Ditch Company, Incorporated, to plan, design, and construct facilities needed to implement the Wallowa Lake Dam Rehabilitation Program and Phases II and III of the Wallowa Valley Water Management Plan.

The Committee recognizes that this bill, by authorizing the Bureau of Reclamation to provide grant money for the rehabilitation of the Wallowa Dam, and for Phase II and Phase III of the Wallowa Valley Water Management Plan, provides a unique, cost-effective means of enhancing flood control protection for downstream communities, and of reestablishing a fishery for the Nez Perce Tribe.

The Wallowa Basin is aboriginal territory for the Nez Perce, who are co-managers with the Federal government of certain fish resources and support enactment of the bill. It will also help provide water for the recovery of ESA-listed species in an important subbasin within the Columbia River Basin, where actions by the Bureau of Reclamation are covered by the 2000 Columbia River biological opinion. The Nez Perce Tribe, as well as numerous State, Federal and local agencies have collaborated on this successful project since 1992. The management plan for the Wallowa Valley is consistent with action plans associated with the Bonneville Power Administration Fish and Wildlife Program and the Wallowa County/Nez Perce Tribe Salmon Habitat Recovery Plan. Rehabilitation of the dam is necessary to provide for additional water storage.

With the ability to fill the lake to a higher elevation, the water rights holders have agreed to make an additional 4,300 acre-feet of water available each year, in accordance with State water law, to help Nez Perce Tribal Fisheries restore sockeye and coho salmon passage at the dam, and provide for the downstream water exchange, which will resolve issues related to Federally-listed salmon runs. The Committee notes that these circumstances are unique and the Committee does not intend this legislation to set precedent for Federal assistance to private projects.

Section 3(b)(1) requires the Secretary, as a condition of providing funds, ensure that the program meet the standards of the dam safety program in the State of Oregon.

Section 3(b)(2) requires that as a condition of receiving funding, ADC assume liability for work performed or supervised with funds provided to it under this Act.

Section 3(b)(3) provides a liability waiver for the United States for damages arising out of any act, omission, or occurrence, relating to a facility rehabilitated or constructed under this Act.

Section 3(c) limits the Federal share of the cost of activities authorized under this Act to 80 percent.

Section 3(c)(2)(A) excludes any expenditures by the Bonneville Power Administration from being credited against the Federal share of the costs.

Section 3(c)(2)(B) excludes any expenditures made by individual agricultural producers in any Federal commodity or conservation program from being credited against the Federal share of the costs.

Section 3(d) requires the Secretary to comply with applicable State water law.

Section 3(e) prohibits the Federal Government from holding title to any facility rehabilitated or constructed under this Act.

Section 3(f) provides that the Federal Government is not responsible for the operation and maintenance of any facility constructed or rehabilitated under this Act.

Section 3(g) provides that any facility constructed using Federal funds for trapping and transporting migratory salmon may be owned and operated only by the Nez Perce tribe.

Section 4 states that activities funded under this Act shall not be considered a supplemental or additional benefit under Federal reclamation law.

Section 5 authorizes appropriations.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 19, 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. 1355, the Wallowa Lake Dam Rehabilitation and Water Management Act of 2004.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1355—Wallowa Lake Dam Rehabilitation and Water Management Act of 2004

Summary: S. 1355 would authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon and the implementation of the Wallowa Valley Water Management Plan. The bill would limit the bureau's share of the rehabilitation costs to 80 percent. Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1355 would cost $25 million over the 2005–2009 period. In addition, we estimate that implementing S. 1355 would result in additional net direct spending by the Bonneville Power Administration (BPA) of $5 million over the 2005–2009 period. The federal government would not hold title to any facility rehabilitated or constructed under this bill, nor would the federal government be responsible for the operation and maintenance of those facilities.

S. 1355 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. 1355 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—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Rehabilitation Spending by the Bureau of Reclamation:					
Estimated Authorization Level	5	7	7	7	0
Estimated Outlays	2	4	7	7	5
CHANGES IN DIRECT SPENDING					
Net BPA Spending:					
Estimated Budget Authority	5	0	0	0	0
Estimated Outlays	2	2	1	[1]	[1]

[1] Collections of less than $500,000.

Basis of estimate: For this estimate, CBO assumes that S. 1355 will be enacted by the end of fiscal year 2004 and that spending would occur at the same rate as similar bureau and BPA projects.

Spending subject to appropriation

Based on information from the Bureau of Reclamation, CBO estimates that the total cost of rehabilitating the Wallowa Lake Dam in Oregon and implementing the Wallowa Valley Water Management Plan would be about $32.6 million. S. 1355 would authorize the appropriation of $25.6 million for the bureau's share of the cost of those projects. The remaining $7 million would be paid by the BOA and the Bonneville Power Foundation, a nonprofit organization. Based on information from the bureau, we expect that rehabilitation of the dam and implementation of the management plan would take five years and that funds will be appropriated in roughly equal installments over that period to complete the projects. Assuming appropriation of the authorized amount, we estimate that implementing the bill would cost the bureau $25 million over the 2005–2009 period, and an additional $2 million after that period.

Direct spending

Implementing S. 1355 also would result in additional direct spending by BPA of $5 million over the 2005–2009 period for structures to allow for safe passage of fish through the Wallowa Lake Dam projects authorized in the bill. Such spending is authorized under current law, but BPA would not make these investments without the bureau's involvement in the Wallowa Lake projects. Because BPA must recover its costs through the sale of electricity, any additional spending would be offset by slightly higher proceeds from electricity sales over the next 15 to 20 years. Consequently, BPA's additional spending would have a negligible net budgetary impact over many years.

Intergovernmental and private-sector impact: S. 1355 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Julie Middleton and Lisa Cash Driskill; Impact on State, Local and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Selena Caldera.

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. 1355.

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. 1355.

EXECUTIVE COMMUNICATIONS

On March 5, 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 views on S. 1355. These reports had not been received at the time the report on S. 1355 was filed. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

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

Mr. Chairman and Members of the Subcommittee I am John Keys, Commissioner of the Bureau of Reclamation. I appreciate the opportunity to present the Department's views on S. 1355, a bill that would authorize Reclamation to participate in implementation of the Wallowa Lake Dam Rehabilitation Program and Wallowa Valley Water Management Plan in Oregon. Reclamation believes the Wallowa Lake Dam Rehabilitation Program and Wallowa Valley Water Management Plan are potentially worth-

while, with numerous benefits. While we believe there may be merit to this proposed project, the Department does not support S. 1355, as currently drafted.

Wallowa Lake Dam is a privately-owned dam constructed in 1918 and raised in 1929, and is owned and operated by the Associated Ditch Companies, Inc. (ADC). Dam safety deficiencies have been identified by the United States Army Corps of Engineers and Oregon Water Resources Department. ADC, in conjunction with the Grande Ronde Model Watershed, Reclamation, and other local, state, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation Program to address dam safety deficiencies and developed the Wallowa Valley Water Management Plan to tie correction of those deficiencies to larger environmental issues in the Wallowa River Basin. The Dam Rehabilitation Program and Water Management Plan is a six year proposal with an estimated total cost of $38,800,000. S. 1355 sets out an 80/20 cost share for these efforts, under which the Federal government would pay $32 million funded through the Bureau of Reclamation.

While the programs developed by the ACD and the Model Watershed provide a concept, they do not meet Federal standards established in the Principles and Guidelines for planning water development programs. Furthermore, the project may affect species listed under the Endangered Species Act (ESA). Should Reclamation be authorized to fund this project, a funding decision may constitute a major Federal action subject to consultation under Section 7 of the ESA. It would also require environmental analysis in compliance with the National Environmental Policy Act (NEPA). The bill, as currently drafted, does not provide for Reclamation's participation in the planning stages of the dam rehabilitation aspects of the project and separates dam rehabilitation from implementation of the water management plan. Consequently, it would be difficult for Reclamation to meet the environmental compliance requirements for the ESA and NEPA. Until adequate planning can be completed, the Administration can not support funding this project.

The proposed bill would authorize Reclamation to provide funding to the ADC for dam rehabilitation activities, [nit] however, it does not provide administrative authority to transfer those funds. The legislation would need revision to provide Reclamation authority to issue grants. We would be pleased to work with the Committee in developing appropriate language.

Finally, we are concerned that Reclamation's participation in this program would adversely impact ongoing projects and operations. S. 1355 would authorize the use of Reclamation funds for a non-Federal purpose. Reclamation funds are limited and are targeted to perform essential functions at our projects, such as security, operations and maintenance (O&M), resource management, dam safety, and construction. In addition, despite the very high Federal cost share for the project under S. 1355, there is

no provision for repayment by project beneficiaries in accordance with Reclamation law. Funding for this project was not included in the President's budget, and we can not support activities which detract from high priority work on current Bureau of Reclamation facilities. The Department cannot, therefore, support S. 1355.

Thank you again for the opportunity to provide the Administration's position on S. 1355. I would be happy to answer any questions you might 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. 1355 as ordered reported.

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