

## Calendar No. 631

114TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
114-353 }

### WESTERN WATER SUPPLY AND PLANNING ENHANCEMENT ACT OF 2016

SEPTEMBER 15, 2016.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 2902]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2902) to provide for long-term water supplies, optimal use of existing water supply infrastructure, and protection of existing water rights, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Beginning on page 4, strike line 7 and all that follows through page 13, line 5, and insert the following:

#### **SEC. 101. RESERVOIR OPERATION IMPROVEMENT.**

(a) DEFINITIONS.—In this section:

(1) OPERATIONAL DOCUMENT.—The term “operational document” includes a water control plan, water control manual, water control diagram, release schedule, rule curve, operational agreement with a non-Federal entity, and any associated environmental documentation.

(2) RESERVED WORKS.—The term “reserved works” means any Bureau of Reclamation project facility at which the Secretary of the Interior carries out the operation and maintenance of the project facility.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(4) TRANSFERRED WORKS.—The term “transferred works” means a Bureau of Reclamation project facility, the operation and maintenance of which is carried out

by a non-Federal entity, under the provisions of a formal operation and maintenance transfer contract.

(5) TRANSFERRED WORKS OPERATING ENTITY.—The term “transferred works operating entity” means the organization that is contractually responsible for operation and maintenance of transferred works.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report including, for any State in which a county designated by the Secretary of Agriculture as a drought disaster area during water year 2015 is located, a list of projects, including Corps of Engineers projects, and those non-Federal projects and transferred works that are operated for flood control in accordance with rules prescribed by the Secretary pursuant to section 7 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 890, chapter 665), including, as applicable—

(1) the year the original operational documents were approved;

(2) the year for any subsequent revisions to the operational documents;

(3) a list of projects for which—

(A) operational deviations for drought contingency have been requested;

(B) the status of the request; and

(C) a description of how water conservation and water quality improvements were addressed; and

(4) a list of projects for which permanent or seasonal changes to flood control capacity have been requested, and the status of the request.

(c) IDENTIFICATION OF ELIGIBLE PROJECTS.—Not later than 60 days after the date of completion of the report under subsection (b), the Secretary shall identify any projects described in the report—

(1) for which the modification of the operational document, including flood control rule curve, would be likely to enhance existing authorized project purposes;

(2) for which the operational documents and hydrometeorological information establishing the flood control rule curves of the project have not been substantially revised during the 15-year period ending on the date of review by the Secretary; and

(3) for which individuals or entities responsible for operations and maintenance costs or that have storage entitlements or contracts at a Corps of Engineers project, the owner of a non-Federal project, or the non-Federal transferred works operating entity, as applicable, has submitted to the Secretary a written request to revise operational documents, including flood control rule curves, based on the use of improved weather forecasting or run-off forecasting methods, new water-

shed data, changes to project operations, or structural improvements.

(d) PILOT PROJECTS.—

(1) IN GENERAL.—Not later than 1 year after the date of identification of projects under subsection (c), if any, the Secretary shall carry out not less than 15 pilot projects, which shall include not less than 6 non-Federal projects, to implement revisions of operational documents, including flood control rule curves, based on the best available science, which may include—

- (A) forecast-informed operations;
- (B) new watershed data, including data submitted by a non-Federal applicant; and
- (C) if applicable, in the case of non-Federal projects, structural improvements.

(2) CONSULTATION.—In implementing a pilot project under this subsection, the Secretary shall consult with all affected interests, including—

- (A) entities responsible for operations and maintenance costs of a Federal facility;
- (B) individuals and entities with storage entitlements;
- (C) a Federal power management agency that markets power produced by a facility; and
- (D) local agencies with flood control responsibilities downstream of a facility.

(e) COORDINATION WITH NON-FEDERAL PROJECT ENTITIES.—If a project identified under subsection (c) is—

(1) A Non-Federal Project, the Secretary, prior to carrying out an activity under this section, shall—

- (A) consult with the non-Federal project owner; and
- (B) enter into a cooperative agreement, memorandum of understanding, or other agreement with the non-Federal project owner describing the scope and goals of the activity and the coordination among the parties; and

(2) A Federal Project, the Secretary, prior to carrying out an activity under this section, shall—

(A) consult with each Federal and non-Federal entity (including a municipal water district, irrigation district, joint powers authority, transferred works operating entity, or other local governmental entity) that currently—

- (i) manages (in whole or in part) the Federal dam or reservoir; or
- (ii) is responsible for operations and maintenance costs; and

(B) enter into a cooperative agreement, memorandum of understanding, or other agreement with each such entity describing the scope and goals of the activity and the coordination among the parties.

(f) CONSIDERATION.—In designing and implementing a forecast-informed reservoir operations plan under sub-

section (d) or subsection (g), the Secretary may consult with the appropriate agencies within the Department of the Interior and the Department of Commerce with expertise in atmospheric, meteorological, and hydrologic science to consider—

- (1) the relationship between ocean and atmospheric conditions, including—
  - (A) the El Niño and La Niña cycles; and
  - (B) the potential for above-normal, normal, and below-normal rainfall for the coming water year, including consideration of atmospheric river forecasts;
- (2) the precipitation and runoff index specific to the basin and watershed of the relevant dam or reservoir, including incorporating knowledge of hydrological and meteorological conditions that influence the timing and quantity of runoff;
- (3) improved hydrologic forecasting for precipitation, snowpack, and soil moisture conditions;
- (4) an adjustment of operational flood control rule curves to optimize authorized project purposes, without a reduction in flood safety; and
- (5) proactive management in response to changes in forecasts.

(g) FUNDING.—

- (1) IN GENERAL.—The Secretary may accept and expend amounts from entities described in subsection (d)(2), the owners of non-Federal projects regulated for flood control by the Secretary, and public or private entities holding contracts with the Federal Government for water storage or water supply at Federal projects to fund all or a portion of the cost of carrying out a review or revision of operational documents for—
  - (A) a Corps of Engineers project;
  - (B) a non-Federal project regulated for flood control by the Secretary; or
  - (C) a Bureau of Reclamation facility regulated for flood control by the Secretary.
- (2) INCLUSION.—Funds received from entities under paragraph (1) may include amounts provided by non-Federal entities through agreements, partnerships, or joint ventures with public or private nonprofit entities or Indian tribes.
- (3) IN-KIND CONTRIBUTIONS.—The Secretary may accept and use materials and services contributed by an entity under this paragraph and credit the value of the materials and services toward the cost of carrying out a review or revisions of operational documents.

(h) EFFECT.—

- (1) MANUAL REVISIONS.—A revision of an operational document shall not reduce the water supply available for any authorized purposes of a Federal project or the existing purposes of a non-Federal project regulated for flood control by the Secretary.
- (2) EFFECT OF SECTION.—

(A) Nothing in this section authorizes the Secretary to carry out, at a Federal dam or reservoir, any project or activity for a purpose not otherwise authorized as of the date of enactment of this Act.

(B) Nothing in this section affects or modifies any obligation of the Secretary under State law.

(C) Nothing in this section affects or modifies any obligation to comply with any applicable Federal law.

(3) APPLICATION.—

(A) CERTAIN FACILITIES.—This section applies only to a facility located in a State in which a Bureau of Reclamation project is located.

(B) CERTAIN PROJECTS EXCLUDED.—This section shall not apply to—

(i) any project authorized by the Act of December 31, 1928 (43 U.S.C. 617 et seq.) (commonly known as the “Boulder Canyon Project Act”); or

(ii) the initial units of the Colorado River Storage Project, as authorized by the first section of the Act of April 11, 1956 (43 U.S.C. 620) (commonly known as the “Colorado River Storage Project Act”).

(C) BUREAU OF RECLAMATION RESERVED WORKS EXCLUDED.—This section—

(i) shall not apply to any dam or reservoir operated by the Bureau of Reclamation as a reserved work, unless all non-Federal project sponsors of a reserved work jointly provide to the Secretary a written request for application of this section to the project; and

(ii) shall apply only to Bureau of Reclamation transferred works at the written request of the transferred works operating entity.

(i) PRIOR STUDIES.—In carrying out subsections (b), (c), and (d), to the maximum extent practicable, the Secretary shall—

(1) coordinate with the efforts of the Secretary to complete the reports required under subparagraphs (A)(iii) and (B) of subsection (a)(2) of section 1046 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2319 note, 128 Stat. 1251); and

(2) consider the findings of the reports described in paragraph (1) if the reports are available prior to carrying out subsections (b), (c), and (d).

(j) MODIFICATIONS TO MANUALS AND CURVES.—Not later than 180 days after the date of completion of a modification to an operational document, the Secretary shall submit to the Committees on Environment and Public Works and Energy and Natural Resources of the Senate and the Committees on Transportation and Infrastructure and Natural Resources of the House of Representatives a report regarding the components of the forecast-based reservoir operations plan incorporated into the change.

2. Beginning on page 19, line 24, strike “shall—” and all that follows through “(1) fund” on page 20, line 1, and insert “shall fund”.

3. On page 20, line 7, strike the semicolon at the end and insert a period.

4. Beginning on page 20, strike line 8 and all that follows through page 21, line 3.

5. On page 22, line 7, strike “\$10,000,000” and insert “\$8,000,000”.

6. Beginning on page 102, strike line 22 and all that follows through page 103, line 5, and insert the following:

water right beyond any applicable limitations under State water law; or

(4) the modification of the terms and conditions

7. On page 107, line 15, strike “\$35,000,000” and insert “\$30,900,000”.

8. On page 108, line 3, strike “\$35,000,000” and insert “\$30,900,000”.

9. On page 108, line 6, strike “\$35,000,000” and insert “\$30,900,000”.

10. On page 110, line 1, strike “\$35,000,000” and insert “\$30,900,000”.

11. On page 124, line 7, strike “75” and insert “65”.

12. On page 124, line 15, strike “75” and insert “65”.

#### PURPOSE

The purpose of S. 2902 is to provide for long-term water supplies, optimal use of existing water supply infrastructure, and protection of existing water rights.

#### BACKGROUND AND NEED

Across the West, federal agencies, farmers, American Indian tribes, irrigation districts, and a broad array of others face a wide range of water-related challenges including drought, aging infrastructure, limited supply and competing uses, and lengthy permitting processes. In the face of prolonged drought, the Colorado River Basin states have joined together in a “system conservation program” that includes water conservation projects designed to reduce the demands on Lake Mead’s water supply. Despite the program’s success, there is continuing risk that water elevations in the Colorado River system could drop to levels that would trigger shortages. In addition, the federal water storage permitting process for analyzing the feasibility, cost effectiveness, and environmental impacts of dams and other infrastructure is often lengthy, complex, and costly as multiple agencies are involved. While cost efficiencies and feasibility are the major barriers to developing new storage, addressing the length of reviews and number of agencies involved is often cited by proponents as further hindering the opportunities to develop needed storage. The maintenance backlog at Bureau of Reclamation facilities is significantly hindering the agency’s ability to ensure the upkeep of existing infrastructure and completion of needed rural water projects. Similarly, challenges at the Bureau of Indian Affairs hamper the agency’s ability to complete water related projects and improvements in a timely fashion.

## LEGISLATIVE HISTORY

S. 2902 was introduced on May 9, 2016, by Senator Flake. Original cosponsors include Senators Barrasso, McCain, Risch, Heller, and Daines. The Water and Power Subcommittee held a hearing on May 17, 2016.

The Committee on Energy and Natural Resources met in open business session on July 13, 2016, and ordered S. 2902 favorably reported as amended.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 13, 2016, by a recorded vote of 12–10, with a quorum present, ordered S. 2902 as amended reported S. 2902 and recommends that the Senate pass the bill if amended as described herein.

The roll call vote on reporting the measure was 12 yeas and 10 nays, as follows:

YEAS	NAYS
Ms. Murkowski	Ms. Cantwell
Mr. Barrasso	Mr. Wyden
Mr. Risch	Mr. Sanders *
Mr. Lee	Ms. Stabenow
Mr. Flake	Mr. Franken *
Mr. Cassidy	Mr. Manchin *
Mr. Gardner	Mr. Heinrich
Mr. Daines	Ms. Hirono *
Mr. Portman	Mr. King
Mr. Hoeven	Ms. Warren
Mr. Alexander	
Ms. Capito	

\* Indicates vote by proxy.

## COMMITTEE AMENDMENTS

During its consideration of S. 2902, the Committee adopted 12 amendments that would: (1) modify the reservoir operations provisions to ensure affected interests are consulted by federal agencies implementing a pilot project and provided for contributions of non-Federal funds by public or private non-profit entities or Indian tribes through agreements partnerships or joint-ventures; (2) strike language regarding the release or delivery of surplus water in Lake Mead; and, (3) reduce the total authorization funding levels in the bill by \$89 million; and (4) strike redundant language regarding applicability of state water law in the water rights protection provision.

## SECTION-BY-SECTION

## TITLE I—LONG-TERM IMPROVEMENTS FOR WESTERN STATES SUBJECT TO DROUGHT

## SUBTITLE A—WATER SUPPLY IMPROVEMENTS

*Section 101. Reservoir operations*

Section 101 provides the authority for not less than 15 pilot projects to be carried out to update flood control operations (USACE, USBR, or non-federal) in order to ensure application of the best available science, including up-to-date forecasting methods and hydrology, to enhance water supply and other benefits.

*Section 102. Authority to make the entire active capacity of Fontenelle Reservoir available for use*

Section 102 provides authority for the Secretary of Interior to enter into cooperative agreements with the state of Wyoming to make improvements to the Fontenelle Reservoir to use the entire active capacity of the Reservoir.

*Section 103. Saltcedar control efforts*

Section 103 directs a study by the National Academy of Sciences on the effectiveness of tamarisk/salt cedar control efforts as well as specifying existing authorities that could be used to implement such controls and a list of Federal permits that would be required by such a program. It also requires a report on a plan to implement such a program.

*Section 104. Colorado River system*

Section 104 directs the Secretary of the Interior to develop a voluntary program to increase water in Colorado River reservoirs and authorizes \$8 million per year for 10 years to carry out this section.

## SUBTITLE B—PROTECTING CRITICAL WATER SUPPLY WATERSHEDS

*Section 111. Definitions*

Section 111 provides definitions for this title.

*Section 112. Analysis of only two alternatives in proposed collaborative management activities*

Section 112 provides the agency with authority for limiting evaluation in permit processed for forest and wildland restoration activities on Federal Lands in critical water supply watersheds assuming certain criteria are met to only two alternatives: (1) the management activity as proposed; and (2) the alternative of no action.

*Section 113. Categorical exclusion to expedite certain critical response actions*

Section 113 provides authority to the Secretary concerned to use a categorical exclusion to carry out a management activity on National Forest System land or public land under certain conditions and within certain criteria.



*Section 114. Compliance with land use plans*

Section 114 directs that a management activity covered by a categorical exclusion granted by this provision shall be conducted in a manner consistent with the applicable land use plan.

SUBTITLE C—BUREAU OF RECLAMATION TRANSPARENCY ACT

*Section 121. Short title*

Section 121 provides the title for the section.

*Section 122. Findings*

Section 122 describes the findings for the subtitle.

*Section 123. Definitions*

Section 123 provides the definitions for the subtitle.

*Section 124. Asset management report enhancements for reserved works*

Section 124 requires the Secretary of the Interior to submit to Congress a report on the efforts of the Bureau of Reclamation to manage its infrastructure assets, including reserved works—facilities owned and operated by the Bureau of Reclamation—and a detailed assessment and ranking of major repair and rehabilitation needs for all reserved works.

*Section 125. Asset management report enhancements for transferred works*

Section 125 requires the Secretary of the Interior to develop requirements for Asset Management Reports for transferred works—facilities owned by the Bureau of Reclamation but operated by others—and develop and implement a rating system to prioritize efforts to address major repair and rehabilitation needs for transferred works.

*Section 126. Offset*

Section 126 provides a two million dollar reduction in authorizations to offset the estimated additional cost to carry out this section.

SUBTITLE D—WATER SUPPLY PERMITTING ACT

*Section 131. Short title*

Section 131 provides the short title of the subtitle.

*Section 132. Definitions*

Section 132 provides the definitions used in the subtitle.

*Section 133. Establishment of lead agency and cooperating agencies*

Section 133 establishes the Bureau of Reclamation as the lead agency for a wide range of activities related to coordinating new water supply projects. Agency action would include coordination of all reviews, analyses, opinions, statements, permits, licenses, or other approvals required under Federal law. It also directs that the Commissioner of Reclamation identify and notify, as early as prac-

licable, any other federal agency that will have jurisdiction, and play a role in activities associated with a project.

*Section 134. Bureau responsibilities*

Section 134 describes the principal responsibilities of the Bureau of Reclamation, including serving as the point of contact for applicants for projects, state agencies, and others. The Bureau would also provide direction and coordination of all federal agency reviews necessary for project development and construction of qualified project as well as preparation of unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands and construction of qualifying projects.

*Section 135. Cooperating agency responsibilities*

Section 135 describes cooperating agency responsibilities, including the need for the head of each agency to submit a timeframe to the Bureau under which the cooperating agency will reasonably be able to complete its authorized responsibilities.

*Section 136. Funding to process permits*

Section 136 authorizes the Secretary of Interior to accept and expend funds contributed by a non-federal public entity to expedite the evaluation of a permit related to a qualifying project.

SUBTITLE E—BUREAU OF RECLAMATION PROJECT STREAMLINING ACT

*Section 141. Short title*

Section 141 provides the short title of the subtitle.

*Section 142. Definitions*

Section 142 provides the definitions used in the subtitle.

*Section 143. Acceleration of studies*

Section 143 directs that, to the extent practicable, a project study initiated by the Secretary of Interior shall result in the completion of a final feasibility report not later than three years after the date of initiation, have a maximum Federal cost of \$3 million, and ensure personnel from the local project, region, and headquarters concurrently conduct the required reviews. The section also prescribes other guidance regarding the acceleration of studies and requires reports to Congress on the implementation of the required reforms.

*Section 144. Expedited completion of reports*

Section 144 requires the Secretary of Interior to expedite the completion of any ongoing project study initiated before the date of enactment of the Act, and if the Secretary determines the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project.

*Section 145. Project acceleration*

Section 145 establishes process reforms to promote timely completion of project studies and environmental reviews for project studies. Among other steps, the section requires the Secretary to develop a coordinated environmental review process for the devel-

opment of project studies. The Section also imposes financial penalties on the agency for failure to render a decision relating to applicable project studies.

*Section 146. Annual report to Congress*

Section 146 requires that by February 1 of each year, the Secretary shall submit to relevant committees of Congress a report that, among other things, provides a description of the status, benefits, and costs of Bureau of Reclamation projects, reports, and studies that require specific congressional authorization, proposed project studies, and proposed modifications to authorized projects.

## TITLE II—PROTECTING EXISTING WATER RIGHTS

*Section 201. Short title*

Section 201 establishes the short title for the title.

*Section 202. Definitions*

Section 202 establishes definitions for title

*Section 203. Applicability*

Section 203 makes clear that this title applies to each action by the Secretary of Agriculture and Secretary of the Interior to, among other actions, issue, renew, amend, or extend any permit, approval, license, allotment, or easement.

*Section 204. Prohibitions*

Section 204 prohibits the Secretary from conditioning or withholding action, in whole or in part, on— (1) the transfer of any State water right to the United States or any other designee; or (2) the acquisition of a State water right in the name of the United States. This Section also prohibits the Secretary from (1) limiting the date, time, quantity, location of diversion or pumping, or place of use of a State water right beyond any applicable limitation under State water law; or (2) the modification of the terms and conditions of groundwater withdrawal, guidance and reporting procedures, and conservation and source protection measures established by a State.

*Section 205. Policy development*

Section 205 requires that in developing a rule, policy, directive or other similar federal action, the Secretary shall recognize the authority of States to evaluate, protect, and regulate groundwater and shall coordinate with states to ensure any federal action, such as a rule or directive, is consistent with, and imposes no greater restriction or regulatory requirement than applicable state law.

*Section 206. Effect of title*

Section 206 includes seven savings provisions clarifying that nothing in the title limits or expands and reserved water right of the Federal Government on land administered by the Secretary, affects implementation of the Endangered Species Act, or limits or expands the Federal Power Act.

### TITLE III—COMPLETING AND MAINTAINING RURAL WATER SUPPLY INFRASTRUCTURE AND INDIAN IRRIGATION PROJECTS

SUBTITLE A—THE IRRIGATION REHABILITATION AND RENOVATION FOR  
INDIAN TRIBAL GOVERNMENTS AND THEIR ECONOMIES (IRRIGATE) ACT

#### *Section 301. Short title*

Section 301 establishes the short title for the title.

#### *Section 302. Definitions*

Section 302 establishes definitions for title.

#### PART I—INDIAN IRRIGATION FUND

#### *Section 311. Establishment*

Section 311 establishes an Indian Irrigation Fund that will consist of amounts deposited in the Fund plus interest earned on investment of the Fund.

#### *Section 312. Deposits to Fund*

Section 312 authorizes deposits of \$30.9 million annually into the Indian Irrigation Fund (Fund) each year from Fiscal Year 2017 to 2038 of funds that would otherwise be deposited into the Reclamation Fund.

#### *Section 313. Expenditures from Fund*

Section 313 establishes that the Secretary of the Interior may expend not more than \$30.9 million and interest accrued for each of Fiscal Years 2017 through 2038, subject to appropriations. The Secretary may expend more than \$30.9 million if additional funds are available in the Fund as a result of a failure of the Secretary to expend all the amounts available in 1 or more prior years.

#### *Section 314. Investments of amounts*

Section 314 establishes that the Secretary of the Treasury shall invest excess amounts from the Fund if there is enough money to meet current withdrawals. Interest accrued and any sales from such investments shall be credited to and become a part of the Fund.

#### *Section 315. Transfers of amounts*

Section 315 provides that amounts to be transferred in the Indian Irrigation Fund shall be transferred at least monthly from the general fund on the basis of estimates by the Secretary of the Interior.

#### *Section 316. Termination*

Section 316 provides that at the end of Fiscal Year 2038, the Indian Irrigation Fund shall terminate and the unexpended and unobligated balances of the funds shall be returned to the reclamation fund.

PART II—REPAIR, REPLACEMENT, AND MAINTENANCE OF CERTAIN  
INDIAN IRRIGATION PROJECTS

*Section 321. Repair, replacement, and maintenance of certain Indian irrigation projects*

Section 321 requires the Secretary of the Interior to establish a program to address the deferred maintenance needs of Indian irrigation projects that: pose risks to public or employee safety or natural or cultural resources or impede management and efficiency. The section also requires that the Secretary of the Interior shall transfer \$30.9 million, plus any accrued interest, from the Fund to the Bureau of Indian Affairs (BIA) every year from 2017 to 2038 to carry out the program to address the deferred maintenance needs of Indian irrigation projects. This section also ensures that the funds expended shall not be subject to reimbursement or assessment as debt against landowners that are served by the BIA irrigation systems, consistent with the Federal Government's responsibility for these systems.

*Section 322. Eligible projects*

Section 322 establishes that projects eligible for funds from the Indian Irrigation Fund, are specific Indian irrigation projects in the western United States and are owned by the Federal Government, managed and operated by the BIA (or Indian tribes through *Indian Self Determination and Education Assistance Act* contracts or compacts), and have documented deferred maintenance.

*Section 323. Requirements and conditions*

Section 323 requires that within 120 days after enactment the Secretary, in consultation with the Assistant Secretary for Indian Affairs and representatives of affected Indian tribes, shall develop and submit to Congress (1) programmatic goals to carry out the new Indian irrigation program and (2) funding prioritization criteria to serve as a methodology for distributing the funds.

*Section 324. Study of Indian irrigation program and project management*

Section 324 establishes that within 2 years, the Secretary, acting through the Assistant Secretary for Indian Affairs, shall complete a study that evaluates options for improving programmatic and project management of BIA-managed Indian irrigation projects. The study report, to be submitted to Congress, will also include recommendations for improvement in each qualifying project area. Prior to conducting the study, the Secretary is required to consult with Indian tribes with jurisdiction over the land on which an eligible project is located and consider input of landowners served by the project. This section also requires the Secretary of the Interior to report not less frequently than every two years to Congress on the progress being made to improve the irrigation systems with the fund.

*Section 325. Tribal consultation and user input*

Section 325 establishes that, within 120 days of enactment and prior to spending any funds on a project, the Secretary shall con-

sult with impacted Indian tribes and consider the input of land-owners.

*Section 326. Allocation among projects*

Section 326 establishes that, for every year funding is available through 2038, each eligible project with critical maintenance needs qualifies for at least some funding. This section establishes additional considerations for prioritizing funding for Indian irrigation projects.

The section also limits the total allocation for any individual project to no more than \$15 million during any consecutive three year period. Notwithstanding the cap, if the full amount of \$30.9 million cannot be allocated because the costs of the remaining maintenance activities exceed the cap, the Secretary may allocate funds in accordance with this title. This section authorizes the *Indian Self Determination and Education Assistance Act* to apply to activities under this section.

SUBTITLE B—THE CLEAN WATER FOR RURAL COMMUNITIES ACT

*Section 331. Short title*

Section 331 provides the short title for subtitle.

*Section 332. Purpose*

Section 332 establishes that the purpose of the title is to ensure a safe and adequate water supply for municipal, rural, and industrial customers in several counties in Montana and North Dakota.

*Sec. 333. Definitions*

Section 333 provides definitions for terms in the subtitle.

*Section 334. Dry-Redwater Regional Water Authority System and Musselshell-Judith Rural Water System*

Section 334 authorizes the Secretary of the Interior to carry out the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System rural water projects, consistent with the applicable feasibility studies for each project. The section also authorizes cooperative agreements and cost sharing arrangements between the Federal government and the applicable water system authorities.

*Section 335. Use of power from Pick-Sloan program by Dry-Redwater Regional Water Authority System*

Section 335 authorizes the Western Area Power Administrator to provide electric power—up to 1.5 megawatts—to the Dry-Redwater Regional Water System under certain conditions (including rates to be set by the Administrator) to meet the systems' needs regarding pumping stations, water treatment facilities and storage tanks among others. The cost of additional power if needed, would be reimbursed to the Western Area Power Administration by the Dry-Redwater Regional Water Authority.

*Section 336. Water rights*

Section 336 makes clear that nothing in the subtitle preempts or affects any state water law or state authority to manage water resources within that state.

*Section 337. Authorization of appropriations*

Section 337 authorizes to be appropriated such sums as are necessary to carry out the planning, design, and construction of the Water Systems, substantially in accordance with the applicable cost estimates.

## TITLE VI—OFFSET

*Sec. 401. Accelerated revenue, repayment, and surface water storage enhancement*

Section 401 directs the Department of the Interior to convert any existing water service contracts between the United States and water users' associations to repayment contracts to allow for prepayment of such contracts, upon the request of the water users association.

## 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, August 12, 2016.*

Hon. LISA MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2902, the Western Water Supply and Planning Enhancement Act of 2016.

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

Sincerely,

MARK P. HADLEY  
(For Keith Hall, Director).

Enclosure.

*S. 2902—Western Water Supply and Planning Enhancement Act of 2016*

Summary: S. 2902 would direct the Bureau of Reclamation (BOR) to convert water service contracts with water districts in 17 western states to repayment contracts if a contractor requests it, which would allow contractors to repay their share of capital costs to the federal government earlier than would otherwise occur under current law. CBO estimates that accelerating those payments would, on net, increase offsetting receipts, which are treated as reductions in direct spending, by \$635 million over the next 10 years. Additionally, the staff of the Joint Committee on Taxation (JCT) expects that some nonfederal water contractors would finance those accelerated payments to the government with bonds that are ex-

empt from federal taxation. JCT estimates that enacting the legislation would decrease revenues by \$77 million over the 2017–2026 period.

On net, CBO estimates that those changes in direct spending and revenues would decrease budget deficits over that 10-year period by \$558 million. Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply.

S. 2902 also would authorize multiple water projects. Based on information from BOR and the Bureau of Indian Affairs (BIA), CBO estimates that implementing those provisions would cost \$319 million over the next five years and \$669 million over the 2017–2026 period, assuming appropriation of the authorized and estimated amounts.

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

S. 2902 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 effect of S. 2902 is shown in table 1. The costs of this legislation fall within budget function 300 (natural resources and environment).



TABLE 1.—SUMMARY OF BUDGETARY EFFECTS UNDER S. 2902

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–2021	2017–2026
INCREASES OR DECREASES (–) IN DIRECT SPENDING												
Estimated Budget Authority <sup>a</sup>	–170	–350	–396	–165	39	83	82	81	81	80	–1,042	–635
Estimated Outlays	–170	–350	–396	–165	39	83	82	81	81	80	–1,042	–635
DECREASES IN REVENUES												
Estimated Revenues <sup>b</sup>	*	–2	–4	–7	–9	–11	–11	–11	–11	–11	–22	–77
NET INCREASE OR DECREASE (–) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Effect on Deficit	–170	–348	–392	–158	48	94	93	92	92	91	–1,020	–558
INCREASES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	50	75	90	77	78	78	65	66	67	68	370	714
Estimated Outlays	27	54	81	80	77	78	70	68	67	67	319	669

Note: Components may not sum to totals because of rounding. \* = between zero and –\$500,000.

<sup>a</sup> CBO estimates that offsetting receipts would decline by \$1.1 billion in years after 2026 for a net loss of about \$470 million over the next 30 years.

<sup>b</sup> Estimates prepared by the staff of the Joint Committee on Taxation.

Basis of estimate: For this estimate, CBO assumes that S. 2902 will be enacted near the end of 2016.

*Direct spending*

BOR delivers water under 860 water service and repayment contracts in 17 western states. In addition to paying for the water, contractors also pay for a portion of the estimated capital costs of constructing the reservoirs and conveyance systems that store and deliver that water. CBO estimates that in each of the next several years, those contractors will pay about \$245 million annually for their share of construction costs (including interest) to the federal government. Collectively those water contractors have an outstanding obligation to the government of about \$5.5 billion (including principal and interest) over the next 30 years.

Generally, BOR contractors receive water under service contracts until construction of an entire project is complete. At that time, new contracts are negotiated (known as repayment contracts) with annual payments adjusted to reflect the final capital costs. The repayment period under those contracts cannot exceed 40 years and water contractors typically cannot pay their share of the construction costs on an accelerated schedule.<sup>1</sup>

S. 2902 would require BOR to convert any water service contract to a repayment contract if the contractor requests it. Amounts due under such a repayment contract would be based on an estimate of final costs if construction of the project is not yet complete. Under the bill, contractors that choose to convert would be required to repay their share of the capital costs of the project on an accelerated schedule. Those contractors that are already operating under repayment contracts would have the option to repay the government on an accelerated schedule.

Under the bill irrigation contractors would pay, either in one lump sum or in equal installments over three years, the present value of their future contract payments discounted at one-half of the 20-year maturity rate for Treasury securities. Municipal and industrial contractors would be required to prepay their entire outstanding principal balance in a lump sum.

Based on information from BOR about the terms of current water contracts, CBO expects that about 35 percent of the current contractors would choose to convert to repayment contracts in the first few years after the bill's enactment. CBO estimates the receipts from those accelerated payments would total \$1.4 billion over the 2017–2026 period. During the same period there would be a corresponding loss of annual repayments (including applicable interest costs) that would otherwise occur totaling \$807 million. On net, under S. 2902, CBO estimates that offsetting receipts would increase by \$635 million over the 2017–2026 period. However, the reduction in offsetting receipts after 2026 would be greater than the net increase in receipts that would occur over the 2017–2026 period. CBO estimates that the net loss in offsetting receipts from

<sup>1</sup>Agreements between the federal government and water contractors for delivering water for irrigation, municipal, and industrial purposes from federally built projects are generally governed by either water service contracts or repayment contracts. Water service contracts are used when construction of a project is still in progress and the final costs—including the contractors' share of those costs—are not yet known. They are also used when a contractor does not want a permanent contract. Repayment contracts are available to contractors when final construction costs and the contractor's share of those costs are known.

enacting this provision would total about \$470 million over the next 30 years.

### *Revenues*

JCT estimates that some of the accelerated payments from water districts to the federal government would be financed with bonds that are exempt from federal taxation and that issuing those bonds would lead to a revenue loss of \$77 million over the next 10 years.

### *Spending subject to appropriation*

As shown in Table 2, CBO estimates that implementing the discretionary components of the bill would cost \$319 million over the 2017–2021 period and \$669 million over the 2017–2026 period, assuming appropriation of the authorized and estimated amounts.

TABLE 2.—INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2902

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
INCREASES IN SPENDING SUBJECT TO APPROPRIATION												
Indian Irrigation Projects:												
Estimated Authorization												
Level .....	31	31	32	32	32	32	32	32	32	32	158	320
Estimated Outlays .....	15	23	30	32	32	32	32	32	32	32	133	294
Rural Water Projects:												
Estimated Authorization												
Level .....	3	14	30	31	32	33	20	21	22	22	110	229
Estimated Outlays .....	2	9	22	28	31	32	25	23	21	22	93	216
Colorado River Basin												
Projects:												
Authorization Level .....	8	8	8	8	8	8	8	8	8	8	40	80
Estimated Outlays .....	5	7	8	8	8	8	8	8	8	8	36	76
Accelerating Project Reviews:												
Estimated Authorization												
Level .....	6	6	6	6	5	5	5	5	5	5	29	54
Estimated Outlays .....	4	5	6	6	5	5	5	5	5	5	26	51
Other Provisions:												
Estimated Authorization												
Level .....	2	15	15	0	0	0	0	0	0	0	32	32
Estimated Outlays .....	1	10	15	6	0	0	0	0	0	0	32	32
Total Increases:												
Estimated Author- ization Level ....	50	75	90	77	78	78	65	66	67	68	370	714
Estimated Outlays	27	54	81	80	77	78	70	68	67	67	319	669

Note: Components may not sum to totals because of rounding.

**Indian Irrigation Projects.** S. 2902 would establish a new Indian Irrigation Fund and transfer \$31 million from the existing Reclamation Fund into the proposed fund each year over the 2017–2038 period. The bill would authorize the appropriation of those annual deposits (plus any interest credited to the fund) to maintain irrigation projects owned by the federal government and operated by BIA. According to BIA, the agency operates 18 Indian irrigation projects that would be eligible to receive appropriated funds under the bill. CBO estimates that implementing those provisions would cost \$294 million over the 2017–2026 period and about \$390 million thereafter.

**Rural Water Projects.** S. 2902 would authorize the construction of two water projects for treatment, storage and delivery of water to rural communities in Montana and North Dakota. Based on in-

formation from BOR, CBO estimates that the federal share (65 percent) of costs for constructing those projects would total \$216 million over the 2017–2026 period. Those projects and their respective costs are described below:

- The Dry-Redwater Rural Water Project in Montana would construct water treatment and distribution facilities to deliver water to existing storage tanks in rural communities in eastern Montana and a small area in northwestern North Dakota. Based on information from BOR, including adjustments for anticipated inflation as specified by the bill, CBO estimates that the federal share of costs for constructing this project would total \$151 million over the 2017–2026 period and about \$57 million after 2026.
- The Musselshell-Judith Rural Water Project located in Montana would construct groundwater wells and distribution facilities to deliver water to rural communities in central Montana. Based on information from BOR, including adjustments for anticipated inflation as specified by the bill, CBO estimates that the federal share of costs for constructing the project would total \$65 million over the 2017–2026 period.

Colorado River Basin Projects. S. 2902 would permanently authorize a pilot program to construct water storage projects on some reservoirs in the Colorado River Basin that is scheduled to expire in 2018. The bill would authorize the appropriation of \$8 million a year to provide grants to certain public entities for projects that would increase water storage capacity. The bill also would authorize BOR to provide grants for renewing or implementing existing agreements with nonfederal public entities that focus on conserving water to mitigate drought conditions. Based on historical spending patterns for similar projects, CBO estimates that implementing those provisions would cost \$76 million over the 2017–2026 period.

Accelerating Project Reviews. S. 2902 would establish BOR as the lead federal agency to coordinate with states, other federal agencies, and the public to:

- Expedite environmental reviews and evaluations of permit applications,
- Facilitate early detection and resolution of environmental issues, and
- Construct a publicly accessible database that would include a list of requirements for the study for each project and information on the progress toward completing each requirement.

S. 2902 also would require BOR to identify water projects across the United States that were excluded from environmental reviews because they were determined to have no significant effect on the environment. The agency would be tasked with developing guidelines for new exclusions based on the characteristics of those projects.

S. 2902 would limit BOR to spending \$3 million or less on studies conducted as part of its reviews; those studies would have to be completed within three years. If a study could not be completed within that period for \$3 million or less, BOR would be required to provide written notice to the Congress and any other agencies involved. Finally, the bill would direct BOR to annually solicit proposals to build water projects through the *Federal Register* and to

report to the Congress on the preliminary costs and benefits of each of those proposals.

Based on information from BOR and other federal agencies, CBO estimates that the additional activities required to implement those provisions would cost \$51 million over the 2017–2026 period for additional staff to coordinate agency reviews, consolidate project data and documentation, and conduct reviews.

**Other Provisions.** Other costs under S. 2902 would stem from provisions that would direct the Corps, in coordination with BOR, to identify 15 federal and nonfederal projects designed to control the risk of flooding in states that were declared federal disaster areas in 2015 because of drought. Based on information from the BOR and the Army Corps of Engineers, CBO estimates that implementing those provisions would cost \$31 million over the 2017–2026 period.

Finally, the bill would direct BOR to contract with the National Academy of Sciences (NAS) to conduct a study to evaluate the efforts to control saltcedar in combination with increasing water supplies and improving riparian habitats.<sup>2</sup> S. 2902 would direct BOR to use the results of the NAS study and develop a plan to control the spread of saltcedar. Based on information from BOR, CBO estimates that implementing those provisions would cost \$1 million over the 2017–2026 period.

**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. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 3.

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<sup>2</sup>Saltcedar (also called tamarisk) is considered an invasive species in the western United States. It is a small shrub that displaces native plants and harms riparian ecosystems.

TABLE 3.—PAY AS YOU GO CONSIDERATIONS FOR S. 2902

	By fiscal year, in millions of dollars——												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016 2021	2016 2026
NET INCREASE OR DECREASE ( - ) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact .....	0	- 170	- 348	- 392	- 158	48	94	93	92	92	91	- 1,020	- 558
Memorandum:													
Changes in Outlays .....	0	- 170	- 350	- 396	- 165	39	83	82	81	81	80	- 1,042	- 635
Changes in Revenues .....	0	0	- 2	- 4	- 7	- 9	- 11	- 11	- 11	- 11	- 11	- 22	- 77

Intergovernmental and private-sector impact: S. 2902 contains no intergovernmental or private-sector mandates as defined in UMRA. State, local, and tribal governments, as well as other public entities that manage water infrastructure, would benefit from greater flexibility provided in the bill to study, permit, manage, and finance water projects supported by federal agencies. Any costs incurred by those entities under agreements with federal agencies, including cost-sharing contributions, would result from complying with conditions of federal assistance. The bill also would benefit water user associations by allowing them to prepay what they own in remaining capital obligations to the federal government for their use of federal water infrastructure.

Increase in long-term net direct spending and deficits: CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

Previous CBO estimate: On July 14, 2015, CBO transmitted a cost estimate for H.R. 2898, the Western Water and American Food Security Act of 2015, as ordered reported by the House Committee on Natural Resources on July 9, 2015. Some of the provisions of H.R. 2898 are similar to those in S. 2902—including those regarding the accelerated repayment of debt and expediting project reviews. CBO's estimate of the cost of those provisions reflects current and new information about the status of debt repayments.

On March 30, 2015, CBO transmitted a cost estimate for S. 438, the IRRIGATE Act, as ordered reported by the Senate Committee on Indian Affairs on March 30, 2015. S. 438 and S. 2902 have similar provisions that would establish a new Indian Irrigation Fund.

Estimate prepared by: Federal spending: Aurora Swanson; Federal revenues: Staff of the Joint Committee on Taxation; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, 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. 2902. 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. 2902, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 2902, 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 Bureau of Reclamation of the U.S. Department of the Interior and the U.S. Forest Service of Department of Agriculture before the Water and Power Subcommittee on May 17, 2016, follows:

STATEMENT OF ESTEVAN LÓPEZ, COMMISSIONER, BUREAU  
OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Chairman Lee, Ranking Member Hirono and Members of the Subcommittee, I am Estevan López, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to provide the views of the Department on S. 2902, the Western Water Supply and Planning Enhancement Act. Several provisions of S. 2902 include distinct and targeted provisions that touch on operational, environmental, planning and budget functions, many of which the Department has previously testified on. For this reason, much of my statement will summarize the Department's previously expressed views on the proposals in those provisions rather than the bill as a whole.

TITLE I, SUBTITLE A—WATER SUPPLY IMPROVEMENTS

Section 101 of S. 2902 contains language of interest to the Bureau of Reclamation (Reclamation) and Army Corps of Engineers. Section 101, dealing with Reservoir Operation Improvement, would direct the creation of pilot projects to implement revisions of water operations manuals. The Department notes that the directives of Section 101 fall on the U.S. Army Corps of Engineers (Corps), and that, pursuant to subparagraph 101(h)(3) the activities referenced would exclude Bureau of Reclamation (Reclamation) facilities except under certain conditions.

Reclamation believes that maintaining operations standards that reflect both the current state of science as well as changes in climate and hydrology to be an important part of supporting water resource management. In Fiscal Year 2015 Reclamation began a Reservoir Operations Pilot Initiative as part of the WaterSMART program. Historically, uncertainties in weather prediction and assumptions of an unchanging climate have resulted in conservative federal operating criteria for reservoir management. It is expected that in some locations these criteria will have to be updated with consideration for weather forecast technology and shifts in climate conditions. In 2015 Reclamation selected five pilot studies, one within each of Reclamation's regions, to initiate work that is expected to be completed in FY 2018 as part of the Administration's Federal Drought Action Plan. The Reservoir Operations Pilot Initiative is a high priority action under Reclamation's Climate Change Adaptation Strategy with a goal to increase water management flexibility in light of changing conditions. These activities are critical to understanding where flexibilities may be increased through identifying trends in



historic and projected climate, hydrology, sedimentation, and conjunctive groundwater management.

Section 102 would amend the Colorado River Storage Project Act (Public Law 84-485) to authorize Reclamation to increase the active capacity and, as a result, the amount of water developed by Fontenelle Reservoir in Wyoming. Reclamation appreciates the efforts of Senator Barrasso and his staff to work with Reclamation to address our concerns identified in our June 18, 2015 testimony on similar legislation (S. 1305) before this Committee. With the subsequent amendment to S. 1305, the Department can now support this provision.

Section 103 would require the Department and the U.S. Department of Agriculture to enter into an arrangement with National Academy of Sciences to conduct a study on the impact of salt cedar control efforts in increasing water supply and improving riparian habitat. The Departments of the Interior and Agriculture would then have 180 days to submit a report to Congress that describes a feasible plan to implement a tamarisk control plan, including a description of applicable timelines and costs.

The U.S. Geological Survey conducted an authoritative study on the effectiveness of the removal of salt cedar, which found that the removal of salt cedar from floodplain areas along rivers leads can lead to replacement by other vegetation that consumes roughly equal amounts of water. The study found that removing salt cedar from these areas is unlikely to produce measurable water savings once replacement vegetation becomes established. We look forward to working with the bill sponsor and the Committee to ensure that the previous report's conclusions are considered, and any new reporting requirements add value to our current understanding of salt cedar impacts.

Section 104 would amend Section 206 of the 2015 Appropriations Act and provide additional statutory direction on Colorado River operations. The Department fully recognizes the severity of the ongoing historic drought in the Colorado River basin and the importance of proactive, consensus-based efforts to conserve the limited, and declining, water resources of the Colorado River Basin. Subsection 206(a)(1), as amended, would continue Congressional direction to fund or participate in projects to increase storage of Colorado River water in Lake Mead and upstream reservoirs constructed under the 1956 Colorado River Storage Project Act. The Department supports these continued efforts.

Subsection (a)(2) would add a new provision that would preclude release of Colorado River water from Lake Mead pursuant to a 2014 Memorandum of Understanding and the ongoing efforts pursuant to the Pilot System Conservation program. While the Department recognizes that the provisions of subsection (a)(2) are narrow in scope, the Department does not believe this section is necessary for the successful implementation of these efforts and is duplicative of currently applicable provisions of Departmental

policies and agreements already in force. Additionally, the language of this subsection does not appear to currently have consensus support among all seven Colorado River Basin States. We recognize that interstate cooperation is particularly essential in a time of increased risk of shortages on the Colorado River. We are currently investing significant effort to find solutions that will generate consensus support in the Basin, and suggest that subsection (a)(2) may distract from the ongoing efforts to identify consensus tools and mechanisms to contribute to conservation of water in the Colorado River system with broad stakeholder support.

We believe Subsections (b) through (e) are intended to enhance the Department's efforts to conserve additional water in the Colorado River system in a manner consistent with current efforts. The Department supports the goals of addressing ongoing drought in portions of the western United States and the reservoir elevations in Lakes Powell and Mead. The Department continues to monitor the situation and has taken a number of steps to address these issues. The Administration is still reviewing the full implications that these sections would have and does not have a position on these sections at this time.

#### TITLE I, SUBTITLE B—PROTECTING CRITICAL WATER SUPPLY WATERSHEDS

Title I, Subtitle B of S. 2902 contains provisions of interest to the Bureau of Land Management (BLM). (We defer to the U.S. Forest Service on provisions of this Subtitle affecting National Forest System lands.) This subtitle seeks to exclude certain vegetation treatments conducted for specific purposes from the environmental analysis and public involvement requirements in the National Environmental Policy Act (NEPA). These treatments may range from hazardous fuels reduction and treatment for invasive species to timber harvest, and the bill sets out specific purposes (e.g., increase water yield) and administrative criteria (e.g., treatment proposed by a Resource Advisory Council) for these treatments. Under the bill, if the BLM's proposed activity is for one of the enumerated purposes, the agency could remove vegetation under an exclusion from NEPA, on up to 5,000 acres. If the proposed activity also meets the administrative criteria of the bill, the BLM would be authorized to remove vegetation, under an exclusion from NEPA, on up to 15,000 acres. The Department opposes this provision because of the scale of these treatments without environmental analysis and public involvement as required in NEPA.

Title I, Subtitle B also would limit public input through the NEPA process by requiring the BLM to analyze only the proposed action and a "no-action" alternative when a BLM proposed vegetation treatment project meets the administrative criteria set out in the bill. This provision would limit the breadth and value of NEPA analysis to decision-makers.

The Department shares the sponsor's goals of efficient and effective procedures. Indeed, one of the priorities under Secretarial Order 3336 on Rangeland Fire Prevention, Management, and Restoration (Jan 5, 2015) is to encourage efforts to expedite processes, streamline procedures and promote innovations that can improve overall rangeland fire prevention, suppression and restoration efficiency and effectiveness. We would be glad to discuss these objectives further with the bill's sponsor.

TITLE I, SUBTITLE C—BUREAU OF RECLAMATION  
TRANSPARENCY ACT

Subtitle C, the Bureau of Reclamation Transparency Act, requires the Secretary of the Interior to submit to Congress a report on the efforts of Reclamation to manage its infrastructure assets. As stated in our June 18, 2015, testimony on similar legislation (S. 593), Reclamation recognizes the value in obtaining additional information on the status of our infrastructure. The Bureau of Reclamation Transparency Act is consistent with a draft Infrastructure Investment Strategy and process Reclamation has initiated proactively; therefore, the Department supports this provision.

TITLE I, SUBTITLE D—WATER SUPPLY PERMITTING ACT

Subtitle D mirrors language in HR 2898 (Title VII), which with some modifications, largely consists of language from S. 1533 (114th), the Water Supply Permitting Coordination Act. Reclamation expressed concern in our October 8, 2015, testimony on HR 2898 before this Committee that there is already ample basis for review of projects and coordination among federal agencies involved in water supply planning, remain regarding the language in this current bill.

TITLE I, SUBTITLE E—BUREAU OF RECLAMATION PROJECT  
STREAMLINING ACT

Subtitle E aims to facilitate and streamline Reclamation's process for creating or expanding surface water storage under Reclamation law. As we testified on Title VIII of HR 2898 before this Committee, this provision would restrict the time available to establish the merits of a surface water storage project and to consider a project's potential environmental effects. Constraining or circumventing project environmental reviews and permits impedes the opportunity to consider alternatives with potential impacts on communities and the environment which may be less adverse. Such constraints could make favorable recommendations for project construction less likely and increase the potential for delay as a result of litigation, which, I would note, would have the opposite effect of the provisions' intentions. The Department does not support this provision.

## TITLE II—PROTECTING EXISTING WATER RIGHTS

Title II of S. 2902 resembles S. 982 (Barrasso), for which the Department provided testimony before this Subcommittee in June of 2015. While we are still analyzing the new language in view of the recent introduction of S. 2902, in the Department's June statement, we continue expressed concern that the Water Rights Protection Act legislation as drafted was overly broad, drafted in ambiguous terms, and would if enacted likely have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements. We are working to ascertain the extent to which the Department's previously stated concerns may or may not apply to Title II of S. 2902.

## TITLE III—COMPLETING AND MAINTAINING RURAL WATER SUPPLY INFRASTRUCTURE

Title III of S. 2902 incorporates S. 438, the Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Their Economies Act, which creates a steady stream of funding to repair, replace and maintain certain Indian irrigation projects. As stated before the Senate Committee on Indian Affairs' March 4, 2015, hearing on S. 438, the Department supports the goals of working with tribes to address the maintenance of irrigation projects, and we look forward to working with you to address the best means of doing so given current budget constraints and the ability of irrigation projects to financially sustain themselves in the long run.

Subtitle B incorporates S. 1552, the Clean Water for Rural Communities Act, which would authorize construction of the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System in the States of Montana and North Dakota. As stated in our June 18, 2015, testimony before this Committee, the Department cannot support this language at this time, based on constraints on program resources and other rural water project commitments.

## TITLE IV—OFFSET

Title IV includes language from Title IX of HR 2898, the Accelerated Revenue, Repayment and Surface Water Storage Enhancement Act on which Reclamation testified before this Committee on October 8, 2015. The bill contains provisions to enable the conversion of any water service contract to a repayment contract, with allowance for prepayment. While Reclamation's October 2015 testimony identified several programmatic concerns about the bill, it is also noteworthy that current CVP water service contracts already contain language for their eventual conversion to repayment contracts at such time that it is determined that the remaining construction costs of the CVP can be repaid within a specified repayment term and without adversely affecting the operations of the CVP. Addi-

tionally, the bill proposes a one-year timeframe to convert existing contracts, which may not be reasonable given the realities of CVP operations and repayment status.

#### CONCLUSION

We stand ready to work with this Committee and bill sponsors to find common ground on legislation that can complement the Administration's efforts to assist communities impacted by drought. This concludes my written statement. I am pleased to answer questions at the appropriate time.

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STATEMENT OF LESLIE WELDON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) regarding S. 2902, Western Water Supply and Planning Enhancement Act and S. 2524, Bolts Ditch Access and Use Act. I am Leslie Weldon, Deputy Chief for the National Forest System (NFS), USDA Forest Service.

#### S. 2902, TITLE II—PROTECTING EXISTING WATER RIGHTS

Water on National Forest System (NFS) lands is important for many reasons, including fish and wildlife habitat, public recreation, and providing a clean and plentiful supply of water for downstream beneficial uses. Today, water from national forests and grasslands contributes to the economic and ecological vitality of rural and urban communities across the nation, and those lands supply more than 60 million Americans with clean drinking water.<sup>1</sup>

The purposes of the NFS were established by Congress in 1897 and were primarily focused on the protection of water and watersheds and securing a continuous supply of timber. National forests in the arid West typically occupy the very top of critical watersheds, where water is stored in winter snow packs and underground and slowly released through the spring and into the summer. National forests in the East also occupy critical watersheds, preserving water quality for downstream users and moderating floods to protect downstream landowners. Communities, farmers and ranchers, Native American Tribes, and the general public depend on delivery of clean water from the national forests and grasslands. Careful consideration of activities that can have an adverse impact on waters and watersheds on NFS lands is critical to downstream water users and other inhabitants that can be impacted if these watersheds are not protected.

USDA has not had time to fully analyze the effect of this bill. USDA recognizes the fundamental role of States to adjudicate water rights under state law. However, based on

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<sup>1</sup> <http://www.fs.fed.us/publications/policy-analysis/water.pdf>.

an initial review, the bill appears to restrict USDA's ability to protect water resources. USDA maintains its opposition to provisions in any bill that would prohibit the Secretary of Agriculture from regulating uses of NFS lands, or denying authorizations for uses of NFS lands, because these prohibitions have potential to adversely affect water resources on those lands. It is USDA's position that the existing statutory framework protects privately-held water rights in balance with the ability of the Forest Service to protect water resources. An example of the Forest Service work with stakeholders within this framework is the recent publication of final directives for ski areas operating on NFS lands under term special use permits.

For the last 30 years, the Forest Service has required ownership by the United States, either solely or in narrow circumstances jointly with the permit holder, of water rights developed on NFS lands to support operation of ski areas in prior appropriation doctrine states. This policy was motivated by the concern that if water rights used to support ski area operations are severed from a ski area—for example, are sold for other purposes—the Forest Service would lose the ability to offer the area to the public for skiing.

On June 23, 2014, the Forest Service published a notice of a proposed directive in the *Federal Register* to add riparian and prior appropriation doctrine water clauses for ski area permits to the Forest Service's Directive System. The final clauses, published in the *Federal Register* on December 30, 2015, were the result of extensive public input, including input from the ski industry and a wide range of other water rights holders.

The final directive contains two ski area water clauses, one for eastern States that follow the riparian doctrine for water rights and one for western States that follow the prior appropriation doctrine for water rights. Under a riparian doctrine system, water rights are appurtenant to the land, whereas under a prior appropriation doctrine system, water rights may be severed from the land. Most ski areas on NFS lands are in western states that adhere to the prior appropriation doctrine.

The final directive does not require that ski area water rights be acquired in the name of the United States. Instead, the final directive focuses on assuring sufficiency of water to operate ski areas on NFS lands. This modified approach for ski area permits was determined to be appropriate given the characteristics of ski area water rights and ski areas. Unlike water rights diverted and used on NFS lands by holders of other types of authorizations, ski area water rights may involve long-term capital expenditures. In western States like Colorado and New Mexico, holders of ski area permits may have to purchase senior water rights at considerable expense to meet current requirements for snowmaking to maintain viability. Holders of ski area permits need to show the value of these water rights as business assets, particularly during refinancing

or sale of a ski area. The value of these water rights is commensurate with the significant investment in privately owned improvements at ski areas. These investments were recognized by Congress in enactment of the National Forest Ski Area Permit Act, which authorizes permit terms of up to 40 years. 16 U.S.C. 497b(b)(1).

In addition to these financial issues, the land ownership patterns at ski areas—particularly the larger ones—often involve a mix of NFS and private lands inside and outside the ski area permit boundary, which makes it difficult to implement a policy of sole Federal ownership for ski area water rights. Much of the development at ski areas is on private land at the base of the mountains. As a result, water diverted and used on NFS lands in the ski area permit boundary is sometimes used on private land, either inside or outside the permit boundary.

With respect to sufficiency of water for ski area operations, the final directive includes a definition for the phrase, “sufficient quantity of water to operate the ski area,” and clarifies when and how the holder must demonstrate sufficiency of water to operate the permitted ski area and new ski area water facilities; addresses availability of Federally owned ski area water rights during the permit term; and addresses availability of holder-owned ski area water rights during the permit term and upon permit revocation or termination.

At this time, ski industry representatives have indicated support for the final directive, and members of Congress have indicated appreciation for the agency’s efforts to work collaboratively on this solution. It is USDA’s position that additional legislation is not necessary to ensure protection of privately-owned water rights.

USDA has not had adequate time to analyze the effects of the bill on Forest Service groundwater policies. However, since the Forest Service published its proposed groundwater directive for notice and comment on May 6, 2014, the Agency has heard from several States and other parties who are concerned about the intent of and language in the proposal. By the end of the comment period, the Agency had received 260 comments from elected officials, States, Tribes, organizations, and individuals from across the country. The House Natural Resources Committee, as well as several States, asked the Agency not to proceed with the proposed draft and to consult with them before moving forward. The Forest Service has heard these concerns and stopped work on the proposed groundwater directive, and the Agency will not move forward with our original proposal. Rather, we have committed to engaging with States, Tribes, and citizens to fully understand concerns and work collaboratively to address them before any future actions or proposals would result. Should the Forest Service choose to move forward with a new proposed directive in the future, it would only be after engaging with States and making sure that the Agency thoroughly understands their concerns in order to address them. The Forest

Service continues to consider improvements to direction to Agency staff on groundwater to maintain its stewardship responsibilities in a consistent, credible, and transparent manner.

S. 2902, TITLE I SUBTITLE B—PROTECTING CRITICAL WATER  
SUPPLY WATERSHEDS

USDA has not had adequate time to analyze the effects of this subtitle but upon initial review opposes NEPA provisions that are beyond the scope of Farm Bill and HFRA authorities. As a general matter, the Forest Service welcomes legislation that incentivizes collaboration and expands the toolset we can use to complete critical work on our nation's forests, without overriding environmental laws.

While we support efforts to provide tools to support improved forest management, capacity constraints due to the present approach to budgeting for wildfire continue to hinder further efforts to improve the health and resiliency of the nation's forests. In fiscal year 1995, the Forest Service spent 16 percent of its budget on firefighting. Today the agency spends more than half of its budget in fire management activities and has seen a corresponding decline in non-fire staffing of 39 percent since 1998. Notwithstanding these challenges, through collaboration, the Forest Service has consistently increased both the number of acres treated annually to improve watershed resilience and timber production—increasing timber harvest by 18 percent since 2008.

The frequency and intensity of wildfire, the rising cost of assets needed to deploy against the spread of wildfire, and the way that fire suppression is paid for constrain the agency's capacity to realize additional gains through efficiencies and partnerships alone. The most important action Congress can make now in advancing the pace and scale of forest restoration is to fix the fire funding problem.

The health of the national forests and the communities we serve are our shared priority. The Forest Service is accelerating restoration and management of the national forests through innovative approaches and increased collaboration, though it is clear that more work needs to be done, and we welcome practical legislation that provides for expedient and responsible efficiencies in the execution of that work. USDA defers to the Department of the Interior on provisions that most directly affect their agencies.

This concludes my remarks. I would be happy to answer any questions. Thank you for the opportunity to testify.

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 original bill, as 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):

**CONSOLIDATED AND FURTHER CONTINUING  
APPROPRIATIONS ACT, 2015**

\* \* \* \* \*

[SEC. 206. (a) IN GENERAL.—The Secretary of the Interior may fund or participate in pilot projects to increase Colorado River System water in Lake Mead and the initial units of Colorado River Storage Project reservoirs, as authorized by the first section of the Act of April 11, 1956 (43 U.S.C. 620), to address the effects of historic drought conditions.

[(b) ADMINISTRATION.—Pilot projects under this section are authorized to be funded through—

[(1) grants by the Secretary to public entities that use water from the Colorado River Basin for municipal purposes for projects that are implemented by 1 or more non-Federal entities; or

[(2) grants or other appropriate financial agreements to provide additional funds for renewing or implementing water conservation agreements that are in existence on the date of enactment of this Act.

[(c) LIMITATIONS.—

[(1) Funds in the Upper Colorado River Basin Fund established by section 5 of the Colorado River Storage Project Act (43 U.S.C. 620d) and the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) shall not be used to carry out this section; and

[(2) the authority to fund these pilot projects through grants shall terminate on September 30, 2018.

[(d) REPORT AND RECOMMENDATION.—Not later than September 30, 2018, the Secretary shall submit to the Committees on Appropriations and Natural Resources of the House of Representatives and the Committees on Appropriations and Energy and Natural Resources of the Senate a report evaluating the effectiveness of the pilot projects described in subsection (a) and a recommendation to Congress whether the activities undertaken by the pilot projects should be continued.]

**SEC. 206. COLORADO RIVER SYSTEM.**

*(a) IN GENERAL.—Notwithstanding any other provision of law, as soon as practicable after the date of enactment of the Western Water Supply and Planning Enhancement Act of 2016, the Secretary of the Interior (referred to in this section as the ‘Secretary’) shall fund or participate in projects to increase Colorado River System water in Lake Mead and the initial units of Colorado River Storage Project reservoirs, as authorized by the first section of the Act of April 11, 1956 (commonly known as the ‘Colorado River Storage Project Act’) (43 U.S.C. 620), to address the effects of historic drought conditions.*

*(b) ADMINISTRATION.—Projects under this section may be funded through—*

*(1) grants by the Secretary to public entities that use water from the Colorado River Basin for municipal purposes for*

*projects that are implemented by one or more non-Federal entities; or*

*(2) grants or other appropriate financial agreements to provide additional funds for renewing or implementing water conservation agreements that are in existence on the date of enactment of the Western Water Supply and Planning Enhancement Act of 2016.*

*(c) LIMITATION.—Funds in the Upper Colorado River Basin Fund established by section 5 of the Act of April 11, 1956 (commonly known as the ‘Colorado River Storage Project Act’) (43 U.S.C. 620d), and the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) shall not be used to carry out this section.*

*(d) REPORT AND RECOMMENDATION.—Not later than September 30, 2026, the Secretary shall submit to the Committees on Appropriations and Natural Resources of the House of Representatives and the Committees on Appropriations and Energy and Natural Resources of the Senate a report evaluating the effectiveness of the projects described in subsection (a).*

*(e) APPROPRIATIONS.—There is authorized to be appropriated to the Bureau of Reclamation to carry out this section \$8,000,000 for each of fiscal years 2017 through 2027, to remain available until expended.*

