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FALL RIVER WATER USERS DISTRICT WATER SYSTEM ACT OF 1997

OCTOBER 6 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

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

R E P O R T

[To accompany S. 744]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 744) to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

Page 4, line 14–15, strike "the Interior, acting through the Director of the Bureau of Reclamation." and insert "of Agriculture".

Page 9, line 17, after "Secretary" and before "may" insert "of the Interior, acting through the Director of the Bureau of Reclamation".

PURPOSE OF THE MEASURE

The purpose of S. 744, as reported, is to authorize the Secretary of Agriculture to participate in the construction of a rural water system in South Dakota on an 80–20 cost-share basis with an authorization ceiling of $3,600,000. The legislation also makes Pick-Sloan power available for the system through a preference customer at the firm power rate.

BACKGROUND AND NEED

The Fall River Water Users District is located in southern South Dakota on the South Dakota-Nebraska border in Fall River Coun-

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ty. The District covers about 460,000 acres with a population of 660 persons. In 1990, area homeowners and ranchers formed the Fall River Water Users Association to start the process for development of a rural water system because of severe drought conditions and lack of water for domestic and livestock needs. Currently, residents rely on shallow wells within the District that are not of the quality or quantity required for domestic and livestock use. Portions of the proposed rural water system area have serious quality concerns as the water is high in nitrates, sulfates, and total dissolved solids. Past cycles of severe drought in the southeastern area of Fall River County have left residents without a satisfactory water supply and many residents must haul water for all uses, some as far as 60 miles round trip. An engineering report that included an income survey was completed in 1992 to qualify for the Rural Development Water and Waste Disposal grant and loan program. The project, however, does not meet some of the criteria for programs under the Department of Agriculture and applications for assistance have been rejected twice. According to a Government Accounting Office report (GAO/RCED–98–204R Rural Water Projects), the second application, which was submitted under the "Water 2000" initiative in 1996, was rejected when the Department of Agriculture determined that the project was not feasible and would result in monthly fees more than double the highest user fees in South Dakota. The report commented that the Director of the Rural Business Program at the Department of Agriculture stated that the project would need a direct appropriation from the Congress with very high grant percentages in order to be feasible in today's economic environment. This legislation would provide that assistance.

LEGISLATIVE HISTORY

S. 744 was introduced on May 14, 1997 by Senators Johnson and Daschle. A similar measure, H.R. 1212, was introduced by Congressman Thune on March 21, 1997. A hearing was held by the Subcommittee on Water and Power on June 10, 1997.

At the business meeting on September 23, 1998, the Committee on Energy and Natural Resources ordered S. 744, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 23, 1998, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 744, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 744, the Committee adopted an amendment to authorize grant funding from the Secretary of Agriculture rather than the Secretary of the Interior through the Bureau of Reclamation. The Committee was aware that the District had originally sought assistance from the rural water program at the Department of Agriculture, but did not meet all program criteria. The Committee also was aware of the comments from officials at the Department of Agriculture obtained by the Government

Accounting Office that direct appropriations would be needed at a high cost-share to make the system economic. The Committee believes that direct assistance from the Secretary of Agriculture is appropriate in these circumstances with the role of the Bureau of Reclamation limited to construction oversight.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title.

Section 2 provides a series of findings related to water quality and availability and states the purposes of the Act.

Section 3 provides a series of definitions.

Section 4 authorizes the Secretary of Agriculture to make grants for the Federal share of the planning and construction of the water supply system, describes the service area, requires compliance with the National Environmental Policy Act (NEPA) and the submission of a final engineering report to Congress. The Committee notes that the requirement to comply with NEPA is not intended to suggest that such compliance would not be required in the absence of the provision, nor to indicate that the Committee believes that a full Environmental Impact Statement or even an Environmental Assessment is necessary.

Section 5 contains standard language on mitigation.

Section 6 provides for the use of Pick-Sloan power from May 1–October 31 through a preference customer at the firm power rate. It also requires that the water supply system be operated on a not-for-profit basis.

Section 7 provides that this legislation shall not limit the authorization for other projects in South Dakota.

Section 8 contains a series of disclaimers relating to water rights.

Section 9 provides that the Federal share will be 80% of the costs.

Section 10 provides that the local share will be 20% of the costs.

Section 11 authorizes the Secretary of the Interior, through the Bureau of Reclamation to provide construction oversight and limits the administrative costs to 3% of the total project construction budget.

Section 12 authorizes $3,600,000 in appropriations with appropriate indexing.

COST AND BUDGETARY CONSIDERATIONS

An estimate of the cost of this measure has been requested from the Congressional Budget Office, but has not been received as of the date of filing of this report. When the estimate is received, the Chairman will have it printed in the Congressional Record for the advice of the Senate.

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. 744. 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. 744, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 10, 1997 the Commissioner of the Bureau of Reclamation, Department of the Interior, testified before the Subcommittee on Water and Power and presented the Administration's views on S. 744. The pertinent portions of his testimony follow:

STATEMENT OF ELUID MARTINEZ, COMMISSIONER, U.S. BUREAU OF RECLAMATION

S. 744, FALL RIVER WATER USERS DISTRICT RURAL WATER SYSTEM ACT OF 1997

S. 744 would direct the Secretary of the Interior to grant monies to the Fall River Water Users District Water System for the purpose of planning and constructing a water supply system. The water supply system would provide water to meet the domestic and livestock water needs of 660 residents in Fall River County, South Dakota, and would assist in the mitigation of wetland areas. Under terms of the legislation, the Western Area Power Administration would be directed to make available energy and capacity to meet the pumping and incidental requirements of the water supply system at the firm power rate. S. 744 would authorize $3.6 million for the planning and construction of the system.

The Administration opposes this legislation. Long-standing Reclamation policy for municipal, rural, and industrial water supply projects requires that non-Federal interests repay, at current interest rates, 100 percent of project costs. In contrast, S. 744 would require the Federal government to pay 80 percent of the planning and construction costs.

The Administration opposes the authorization of new single-purpose municipal and industrial water supply projects for rural areas through the Reclamation program, unless the needs of Native American communities justify Department of the Interior involvement. The rural development mission area at the U.S. Department of Agriculture (USDA) is dedicated to the issues facing rural communities. Congress has authorized three Federal agencies within USDA to accomplish this task (the Rural Utilities Service, the Rural Housing Service, and the Rural Business-Cooperative Service). For example the Rural Utilities Service provides grants and low interest loans for rural water and wastewater systems. If Congress wishes to consider authorizing additional water development assistance for rural areas, such projects should be authorized within the framework of USDA's rural development mission area. We believe this would be more appropriate than making it a Department of the Interior responsibility.

Although feasibility reports were prepared by private sector firms, the feasibility reports do not meet Reclamation standards for determining project feasibility. The cost estimates shown in the reports do not appear to include funding for meeting National Environmental Policy Act requirements, as well as cultural resources and environmental mitigation activities.

In addition, the bill is silent on which entity would take title to the project once it is constructed and does not ensure that the United States will have no liability associated with the project.

This concludes my remarks. I would be happy to answer any questions you may 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. 744, as ordered reported.

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