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THE LEWIS AND CLARK RURAL WATER SYSTEM ACT OF 1999

JULY 30, 1999.—Ordered to be printed

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

REPORT

[To accompany S. 244]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 244) to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water system, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu therefor the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Lewis and Clark Rural Water System Act of 1999”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **ENVIRONMENTAL ENHANCEMENT.**—The term “environmental enhancement” means the wetland and wildlife enhancement activities that are carried out substantially in accordance with the environmental enhancement component of the feasibility study.

(2) **ENVIRONMENTAL ENHANCEMENT COMPONENT.**—The term “environmental enhancement component” means the proposals described in the report entitled “Wetlands and Wildlife Enhancement for the Lewis and Clark Rural Water System”, dated December 1994.

(3) **FEASIBILITY STUDY.**—The term “feasibility study” means the study entitled “Feasibility Level Evaluation of a Missouri River Regional Water Supply for South Dakota, Iowa and Minnesota”, dated September 1993, that includes a water conservation plan, environmental report, and environmental enhancement component.

(4) **INCREMENTAL COST.**—The term “incremental cost” means the cost of the savings to the project were the city of Sioux Falls not to participate in the water supply system.

(5) **MEMBER ENTITY.**—The term “member entity” means a rural water system or municipality that meets the requirements for membership as defined by the Lewis and Clark Rural Water System, Inc. bylaws, dated September 6, 1990.

(6) **PROJECT CONSTRUCTION BUDGET.**—The term “project construction budget” means the description of the total amount of funds needed for the construction of the water supply project, as contained in the feasibility study.

(7) **PUMPING AND INCIDENTAL OPERATIONAL REQUIREMENTS.**—The term “pumping and incidental operational requirements” means all power requirements that are necessary for the operation of intake facilities, pumping stations, water treatment facilities, reservoirs, and pipelines up to the point of delivery of water by the water supply system to each member entity that distributes water at retail to individual users.

(8) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(9) **WATER SUPPLY PROJECT.**—

(A) **IN GENERAL.**—The term “water supply project” means the physical components of the Lewis and Clark Rural Water Project.

(B) **INCLUSIONS.**—The term “water supply project” includes—

- (i) necessary pumping, treatment, and distribution facilities;
- (ii) pipelines;
- (iii) appurtenant buildings and property rights;
- (iv) electrical power transmission and distribution facilities necessary for services to water systems facilities; and
- (v) such other pipelines, pumping plants, and facilities as the Secretary considers necessary and appropriate to meet the water supply, economic, public health, and environment needs of the member entities (including water storage tanks, water lines, and other facilities for the member entities).

(10) **WATER SUPPLY SYSTEM.**—The term “water supply system” means the Lewis and Clark Rural Water System, Inc., a nonprofit corporation established and operated substantially in accordance with the feasibility study.

SEC. 3. FEDERAL ASSISTANCE FOR THE WATER SUPPLY SYSTEM.

(a) **IN GENERAL.**—The Secretary shall make grants to the water supply system for the planning and construction of the water supply project.

(b) **SERVICE AREA.**—The water supply system shall provide for the member entities safe and adequate municipal, rural, and industrial water supplies, environmental enhancement, mitigation of wetland areas, and water conservation in—

- (1) Lake County, McCook County, Minnehaha County, Turner County, Lincoln County, Clay County, and Union County, in southeastern South Dakota;
- (2) Rock County and Nobles County, in southwestern Minnesota; and
- (3) Lyon County, Sioux County, Osceola County, O’Brien County, Dickinson County, and Clay County, in northwestern Iowa.

(c) **AMOUNT OF GRANTS.**—Grants made available under subsection (a) to the water supply system shall not exceed the amount of funds authorized under section 9.

(d) **LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.**—The Secretary shall not obligate funds for the construction of the water supply project until—

- (1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met; and
- (2) a final engineering report and a plan for a water conservation program are prepared and submitted to Congress not less than 90 days before the commencement of construction of the water supply project.

SEC. 4. FEDERAL ASSISTANCE FOR THE ENVIRONMENTAL ENHANCEMENT COMPONENT.

(a) **INITIAL DEVELOPMENT.**—The Secretary shall make grants and other funds available to the water supply system and other private, State, and Federal entities, for the initial development of the environmental enhancement component.

(b) **NONREIMBURSEMENT.**—Funds provided under subsection (a) shall be non-reimbursable and nonreturnable.

SEC. 5. MITIGATION OF FISH AND WILDLIFE LOSSES.

Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the water supply project shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction, as provided in the feasibility study.

SEC. 6. USE OF PICK-SLOAN POWER.

(a) **IN GENERAL.**—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, the Western Area Power Administration shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water supply project during the period beginning May 1 and ending October 31 of each year.

(b) **CONDITIONS.**—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water supply system shall be operated on a not-for-profit basis.

(2) The water supply system shall contract to purchase the entire electric service requirements of the project, including the capacity and energy made available under subsection (a), from a qualified preference power supplier that itself purchases power from the Western Area Power Administration.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be the firm power rate schedule of the Pick-Sloan Eastern Division of the Western Area Power Administration in effect when the power is delivered by the Administration to the qualified preference power supplier.

(4) It is agreed by contract among—

- (A) the Western Area Power Administration;
- (B) the power supplier with which the water supply system contracts under paragraph (2);
- (C) the power supplier of the entity described in subparagraph (B); and
- (D) the water supply system;

that in the case of the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water supply system, except that the power supplier of the water supply system shall not be precluded from including, in the charges of the supplier to the water system for the electric service, the other usual and customary charges of the supplier.

SEC. 7. NO LIMITATION ON WATER PROJECTS IN STATES.

This Act does not limit the authorization for water projects in the States of South Dakota, Iowa, and Minnesota under law in effect on or after the date of enactment of this Act.

SEC. 8. WATER RIGHTS.

Nothing in this Act—

- (1) invalidates or preempts State water law or an interstate compact governing water;
- (2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;
- (3) preempts or modifies any Federal or State law, or interstate compact, governing water quality or disposal; or
- (4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

SEC. 9. COST SHARING.

(a) **FEDERAL COST SHARE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary shall provide funds equal to 80 percent of—

(A) the amount allocated in the total project construction budget for planning and construction of the water supply project under section 3; and

(B) such amounts as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after September 1, 1993.

(2) **SIoux FALLS.**—The Secretary shall provide funds for the city of Sioux Falls, South Dakota, in an amount equal to 50 percent of the incremental cost to the city of participation in the project.

(b) **NON-FEDERAL COST SHARE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the non-Federal share of the costs allocated to the water supply system shall be 20 percent of the amounts described in subsection (a)(1).

(2) **SIoux FALLS.**—The non-Federal cost-share for the city of Sioux Falls, South Dakota, shall be 50 percent of the incremental cost to the city of participation in the project.

SEC. 10. BUREAU OF RECLAMATION.

(a) **AUTHORIZATION.**—At the request of the water supply system, the Secretary may allow the Commissioner of Reclamation to provide project construction oversight to the water supply project and environmental enhancement component for the service area of the water supply system described in section 3(b).

(b) **PROJECT OVERSIGHT ADMINISTRATION.**—The amount of funds used by the Commissioner of Reclamation for oversight described in subsection (a) shall not exceed the amount that is equal to 1 percent of the amount provided in the total project construction budget for the entire project construction period.

(c) **OPERATION AND MAINTENANCE.**—The water supply system shall be responsible for annual operation and maintenance of the project.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act \$223,987,700, to remain available until expended, of which not more than \$10,100,000 shall be used for the initial development of the environmental enhancement component under section 4.

PURPOSE OF THE MEASURE

S. 244 authorizes grants for the construction of the Lewis and Clark Rural Water System and authorizes assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes.

BACKGROUND AND NEED

The Lewis and Clark Rural Water System is designed to provide replacement or supplemental water supplies from the Missouri River to areas in southeastern South Dakota, northwestern Iowa, and southwestern Minnesota serving about 180,000 people. The Lewis and Clark system is made up of 22 rural water systems and communities in the three States that have joined together in an effort to cooperatively address the dual problems facing the residents of the region—inadequate quantities of water and the poor quality of that water.

This region has seen substantial growth and development in recent years, and studies conducted by project supporters have shown that future water needs will be significantly greater than the current available supply. Most of the residents served by ten of the water utilities in the proposed Lewis and Clark project area currently enforce water restrictions on a seasonal basis. Almost half of the membership has water of such poor quality it does not meet present or proposed standards for drinking water. More than two-thirds of the membership rely on shallow aquifers as the primary source of drinking water—aquifers which are very vulnerable to contamination by surface activities.

The Lewis and Clark system will provide a supplemental source of drinking water for its 22 members, serving as a treated, bulk delivery system. Member utilities' existing systems will continue to deliver water to individual users. According to the bill sponsors, this “regionalization approach” to solving the water supply and quality problems utilizes the Missouri River as source of clean, safe drinking water to more than 180,000 individuals.

The estimated Federal cost of the project is \$223,987,700, with a twenty percent local cost share. Funding for the Sioux Falls component is limited to fifty percent of the incremental cost to the city of participation in the project. Annual operating costs are esti-

mated at \$4.7 million. The Bureau of Reclamation participated in the planning and ability to pay analyses, and agreed with the need for a project to meet both supply and water quality needs. At the Subcommittee hearing on this bill, the Assistant Secretary of the Interior for Water and Science indicated that the Administration supported the concept of the project, but was opposed to the legislation as drafted. The Committee believes this legislation, as amended by the Committee, is an appropriate and useful approach to address the region's water quality and supply needs.

The members of the System collectively provide an average of about 30 million gallons per day (78% in South Dakota) and the proposal would provide an average of 16.5 million gallons of supplemental supply, with a maximum delivery of 23.5 million gallons. The raw water would be diverted from the Missouri River near Vermillion, South Dakota, treated and discharged through 400 miles of piping with a series of storage reservoirs and pumping stations. The project is estimated to take about 8 years to complete.

LEGISLATIVE HISTORY

S. 244 was introduced by Senators Johnson, Daschle, Grams, Wellstone, Grassley and Harkin on January 19, 1999 and a hearing was held in the Water and Power Subcommittee on May 27, 1999. S. 244 is similar to a measure introduced last Congress, S. 777, which had a hearing on October 7, 1997, and was reported out of Committee (S. Rept. No. 105-381). A House companion measure, H.R. 297, was introduced on January 6, 1999. At the business meeting on July 28, 1999, the Committee on Energy and Natural Resources ordered S. 244, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on July 28, 1999, by a unanimous vote of a quorum present, recommends that the Senate pass S. 244, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 244, the Committee adopted a substitute amendment which included the following substantive changes:

- (1) The amendment retains the requirement for a water conservation plan, but deletes the detailed requirements and approval since the responsibility for water management in the three States resides in the three States;
- (2) The authorization for appropriations is reduced by \$2,342,300 to reflect an increase in the Sioux Falls cost share. In addition, spending for the initial development of the environmental enhancement component is limited to not more than \$10,100,000—an increase of \$1,613,000 that reflects recent updates in cost; and
- (3) Language is added to clarify that annual O&M is the responsibility of the System.

The Committee wants to make clear that since this is not a Reclamation project subject to Reclamation law, the Federal govern-

ment does not, and will not, hold title to this project. The Committee understands that Pick-Sloan irrigation-power customers will not be negatively affected by the use of irrigation power for pumping and incidental operational requirements of the water supply project.

SECTION-BY-SECTION ANALYSIS

Section 1 is a short title.

Section 2 provides a series of definitions and is self-explanatory. Section 3 explains the conditions for Federal financial assistance.

Section 4 provides for funding of the initial development of the environmental enhancement component of the system.

Section 5 provides standard language on mitigation for fish and wildlife losses.

Section 6 describes the use of Pick-Sloan Power for the System and is self-explanatory.

Section 7 provides that this legislation does not limit any other authorization for water projects in South Dakota, Iowa, or Minnesota.

Section 8 is a savings clause and is self-explanatory.

Section 9 provides a cost share formula.

Section 10 defines the role of the Bureau of Reclamation.

Section 11 authorizes \$223,987,700 for the System of which not more than \$10,100,000 shall be used for the initial development of the environmental enhancement component.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate. The legislation authorizes \$223.9 million as the Federal share of the costs of the system.

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. 244. 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. 244, as ordered reported.

EXECUTIVE COMMUNICATIONS

On April 21, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 244. These reports had not been received at the time the report on S. 244 was filed. When the reports become available, the Chairman will request that they

be printed in the Congressional Record for the advice of the Senate. The written testimony provided by the Assistant Secretary for Water and Science from the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF PATRICIA J. BENEKE, ASSISTANT SECRETARY
FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

My name is Patricia J. Beneke, I am Assistant Secretary for Water and Science within the U.S. Department of the Interior. The Bureau of Reclamation is one of the bureaus that I oversee. I am pleased to be here today to provide the Administration's views on S. 244 to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System Inc.

S. 244, the Lewis and Clark Rural Water System Act of 1997, authorizes the Secretary of the Interior to make grants and provide project construction oversight to the Lewis and Clark Rural Water System, Inc. for the planning and construction of a domestic and industrial water supply system that would serve over 180,000 persons in southern South Dakota, including the City of Sioux Falls with a metropolitan population of 153,466 and people in southwestern Minnesota and northwestern Iowa. The project would provide drinking water supply to meet the current and future needs of the project beneficiaries. A small part of the project's construction budget would be dedicated to fish, wildlife, and wetland enhancement features. The Department opposes S. 244 for reasons I will discuss.

The bill would authorize the appropriation of \$226.3 million, of which not less than \$8.4 million would be used for the environmental enhancement component set forth in Section 4. With the exception of the City of Sioux Falls component, the Federal government would fund 80 percent of the project planning and construction costs, and non-Federal interests would provide the remaining 20 percent. For the City of Sioux Falls component, non-Federal interests would provide 50 percent, an increase over the 20 percent specified in a previous version of this bill.

Mr. Chairman, the Bureau of Reclamation has worked closely with proponents of the Lewis and Clark Rural Water System to provide technical assistance on the environmental and economic studies. Reclamation believes the project would meet local and regional water supply needs. However, we cannot support this bill as drafted due to a number of concerns—including cost sharing restrictions on the level of planning expenditures, and the expansion of Reclamation's responsibilities outside of the seventeen western states. Most notably, Section 10 directs the Federal government to provide 80 percent of the design and construction costs through grants (50 percent for the Sioux Falls component). The Department's long-standing policy relative to non-Indian municipal and rural water system development is that non-Federal interests should repay 100 percent of allocated project construction costs at current interest rates, and that they pay 100 percent of operation and maintenance costs. In addition, urban areas like

Sioux Falls should have a sufficient population base and economic resources to finance its own water system.

We are also concerned that Section 11(b) restricts the use of funding for planning and construction by the Bureau of Reclamation to one percent of the amount provided in the construction budget. Recent experience with similar projects in South Dakota (Mni Wiconi and Mid-Dakota) have been that this level of funding is not adequate to provide the necessary oversight and administration activities to ensure compliance with the National Environmental Policy Act and the National Historic Preservation Act, which are necessary activities that are authorized in the legislation. Furthermore, the Feasibility Study that was completed on this project and is referenced in S. 244, provided for three percent of the project's construction budget for these activities. We believe this is a more realistic and appropriate level.

Additionally, this legislation authorized and directs the Bureau of Reclamation to carry out these activities in the non-Reclamation states of Minnesota and Iowa, which are east of the 100 meridian, and therefore are not among the 17 western states where Reclamation has relationships with the states and has other on-going legal and contractual responsibilities.

In summary, Mr. Chairman, Reclamation recognizes that the project authorized by S. 244 would improve the water supply in the region. However, it is difficult to justify this water supply system as a Federal project with its minimal costs sharing. Also, considering the already tight competition for funding of ongoing projects in the region, it will be difficult to fund this project.

That concludes my testimony. I would be happy to answer any questions.

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. 244, as ordered reported.

