

BUREAU OF RECLAMATION SMALL CONDUIT HYDRO-  
POWER DEVELOPMENT AND RURAL JOBS ACT OF 2011

DECEMBER 1, 2011.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural  
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2842]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2842) to authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011”.

**SEC. 2. AUTHORIZATION.**

Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) is amended—

(1) by striking “The Secretary is authorized to enter into contracts to furnish water” and inserting “(1) The Secretary is authorized to enter into contracts to furnish water”;

(2) by striking “(1) shall” and inserting “(A) shall”;

(3) by striking “(2) shall” and inserting “(B) shall”;

(4) by striking “respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects” and inserting “respecting the sales of elec-

tric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development”; and

(5) by adding at the end the following:

“(2) When carrying out this subsection, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred work, or to the irrigation district or water users association receiving water from the applicable reserved work. The Secretary shall determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege offer.

“(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to small conduit hydropower development, excluding siting of associated transmission on Federal lands, under this subsection.

“(4) The Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.

“(5) Nothing in this subsection shall obligate the Western Area Power Administration, the Bonneville Power Administration, or the Southwestern Power Administration to purchase or market any of the power produced by the facilities covered under this subsection and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

“(6) Nothing in this subsection shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved, nor shall it create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation district or legally organized water users association operating the transferred work in advance of offering the lease of power privilege and shall prescribe such terms and conditions that will adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.

“(7) Nothing in this subsection shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

“(8) In this subsection:

“(A) CONDUIT.—The term ‘conduit’ means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

“(B) IRRIGATION DISTRICT.—The term ‘irrigation district’ means any irrigation, water conservation or conservancy district, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.

“(C) RESERVED WORK.—The term ‘reserved work’ means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.

“(D) TRANSFERRED WORK.—The term ‘transferred work’ means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.

“(E) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(F) SMALL CONDUIT HYDROPOWER.—The term ‘small conduit hydropower’ means a facility capable of producing 1.5 megawatts or less of electric capacity.”.

#### PURPOSE OF THE BILL

The purpose of H.R. 2842, as ordered reported, is to authorize all Bureau of Reclamation conduit facilities for hydropower development under federal Reclamation law.

#### BACKGROUND AND NEED FOR LEGISLATION

Congress established the Bureau of Reclamation (Reclamation) in 1902 to “make the desert bloom.” To this day, Reclamation’s water projects play a significant role in the settlement of the West by pro-

viding a reliable source of water and power for irrigated agriculture and rural and urban communities. While the larger, multi-purpose projects such as Grand Coulee and Hoover Dams are relatively well-known, Reclamation has a number of much smaller projects that significantly contribute to the agency's original mission.

Many of these smaller, single-purpose water supply projects were either authorized by Congress or created administratively over the last century. At the time of their creation, hydropower was usually not envisioned as a project component due to economics, lack of technology and other factors. Today, with the improved ability to harness the energy of moving water in canals and pipelines (collectively known as "conduits"), many are looking at hydropower development on these smaller projects. Combined with non-federal conduits, there is enormous potential to develop vast amounts of hydropower at existing water supply infrastructure. For example, in the State of Colorado alone, over 1,400 megawatts—or the equivalent of the hydropower output of Glen Canyon Dam on the Colorado River—could be produced from conduit hydropower development.

H.R. 2842, as amended, seeks to jumpstart hydropower development on Reclamation conduits by reducing unnecessary and duplicative administrative and regulatory costs while protecting the original Congressionally-authorized purposes of these facilities from any unmitigated financial or physical impacts as a result of such development. The legislation makes it clear that hydropower is explicitly authorized at Reclamation's conduits. This authorization would allow Reclamation to issue a "lease of power privilege," which would give a non-federal entity the right to generate hydropower and pay a rental fee to the federal government for such generation at a specific Reclamation facility. The legislation requires Reclamation to offer the lease of power privilege first to the entity operating the conduit or the conduit's direct beneficiaries. Most Reclamation water supply projects have an arrangement where operation and maintenance activities are transferred to the local water beneficiary as a way to reduce paperwork and other costs. This would significantly decrease conduit hydropower planning and study time by reducing staffing costs and time affiliated with analyzing competing and multiple conduit development applications. If the irrigation district refuses development, Reclamation could consider other proposals.

The bill also attempts to reduce duplicative regulatory costs and paperwork while protecting the environment. A substantial regulatory barrier to future conduit hydropower development is duplicative environmental analysis. The hydropower units envisioned in H.R. 2842 would be installed on already disturbed ground within existing man-made facilities that do not contain endangered fish and wildlife. In addition, the water projects in which the hydropower units would be contained have already gone through federal environmental review. Despite these facts, another National Environmental Policy Act (NEPA) analysis must still be done under existing federal regulations. This has created a chilling effect on hydropower investment. For example, at a Water and Power Subcommittee hearing earlier this year, one witness indicated that installing 15 very small hydropower units on a nearby Reclamation canal system in Arizona would cost over \$450,000—or \$30,000 per

unit—for additional NEPA reviews that would ultimately conclude no environmental impacts. These paperwork costs would be greater than the actual capital cost of the hydropower units.

These costs and their time-consuming nature help make most conduit hydropower installations cost prohibitive. Reclamation has failed to exempt these facilities from NEPA, despite the fact that the Federal Energy Regulatory Commission (FERC) provides for such exemptions. For this reason, H.R. 2842 exempts “small conduit hydropower” (1.5 megawatts or less) from NEPA, while retaining NEPA application for larger installations and for transmission siting on federal land. Each facility would still be subject to environmental laws such as the Clean Water Act and other applicable federal and state laws that could require permits. The Minority unsuccessfully offered an amendment to remove the bill’s NEPA exemption and replace it with an unworkable and more expensive NEPA regulatory arrangement and one different from FERC’s NEPA exemption guidelines. That amendment was defeated on a bipartisan basis.

The net effect of H.R. 2842 is that federal conduit hydropower will now be a cost-effective means to produce renewable and emissions-free energy that will empower local economic development and jobs while generating federal revenue and protecting the environment.

#### COMMITTEE ACTION

H.R. 2842 was introduced on September 6, 2011, by Congressman Scott Tipton (R-CO). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On September 14, 2011, the Subcommittee on Water and Power held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. Congressman Tom McClintock (R-CA) offered en bloc amendment designated .072 to the bill; the amendment was adopted by voice vote. Congressman Ed Markey (D-MA) offered amendment designated .001 to the bill; the amendment was not adopted by a bipartisan roll call vote of 10 to 28, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: October 5, 2011

Recorded Vote #: 3

Meeting on / Amendment: **H.R. 2842** – An amendment offered by Mr. Markey.001 was **NOT AGREED TO** by a roll call vote of 10 yeas and 28 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>		X		<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>	X			<b>Mr. Benishek, MI</b>		X	
<b>Mr. Young, AK</b>		X		<i>Mr. Lujan, NM</i>			
<i>Mr. Kildee, MI</i>	X			<b>Mr. Rivera, FL</b>		X	
<b>Mr. Duncan of TN</b>		X		<i>Mr. Sarbanes, MD</i>			
<i>Mr. Defazio, OR</i>				<b>Mr. Duncan of SC</b>		X	
<b>Mr. Gohmert, TX</b>		X		<i>Ms. Sutton, OH</i>			
<i>Mr. Faleomavaega, AS</i>				<b>Mr. Tipton, CO</b>		X	
<b>Mr. Bishop, UT</b>		X		<i>Ms. Tsongas, MA</i>			
<i>Mr. Pallone, NJ</i>	X			<b>Mr. Gosar, AZ</b>		X	
<b>Mr. Lamborn, CO</b>		X		<i>Mr. Pierluisi, PR</i>			
<i>Mrs. Napolitano, CA</i>	X			<b>Mr. Labrador, ID</b>		X	
<b>Mr. Wittman, VA</b>		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			<b>Ms. Noem, SD</b>		X	
<b>Mr. Broun, GA</b>		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			<b>Mr. Southerland, FL</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Ms. Bordallo, GU</i>	X			<b>Mr. Harris, TX</b>		X	
<b>Mr. Coffman, CO</b>		X		<b>Mr. Landry, LA</b>		X	
<i>Mr. Costa, CA</i>		X		<b>Mr. Fleischmann, TN</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mr. Runyan, NJ</b>		X	
<i>Mr. Boren, OK</i>				<b>Mr. Johnson, OH</b>		X	
<b>Mr. Thompson, PA</b>		X					
<i>Mr. Sablan, CNMI</i>	X						
<b>Mr. Denham, CA</b>		X					
				<b>TOTALS</b>	10	28	

The bill was then ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 30 to 12, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: October 5, 2011

Recorded Vote #: 4

Meeting on / Amendment: **H.R. 2842** – Favorably reported to the House of Representatives by a roll call vote of 30 yeas and 12 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>	X			<i>Mr. Heinrich, NM</i>		X	
<i>Mr. Markey, MA Ranking</i>		X		<b>Mr. Benishek, MI</b>	X		
<b>Mr. Young, AK</b>	X			<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>		X		<b>Mr. Rivera, FL</b>	X		
<b>Mr. Duncan of TN</b>	X			<i>Mr. Sarbanes, MD</i>		X	
<i>Mr. Defazio, OR</i>				<b>Mr. Duncan of SC</b>	X		
<b>Mr. Gohmert, TX</b>	X			<i>Ms. Sutton, OH</i>			
<i>Mr. Faleomavaega, AS</i>		X		<b>Mr. Tipton, CO</b>	X		
<b>Mr. Bishop, UT</b>	X			<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Pallone, NJ</i>		X		<b>Mr. Gosar, AZ</b>	X		
<b>Mr. Lamborn, CO</b>	X			<i>Mr. Pierluisi, PR</i>			
<i>Mrs. Napolitano, CA</i>		X		<b>Mr. Labrador, ID</b>	X		
<b>Mr. Wittman, VA</b>	X			<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>		X		<b>Ms. Noem, SD</b>	X		
<b>Mr. Broun, GA</b>	X			<i>Ms. Hanabusa, HI</i>			
<i>Mr. Grijalva, AZ</i>		X		<b>Mr. Southerland, FL</b>	X		
<b>Mr. Fleming, LA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Ms. Bordallo, GU</i>		X		<b>Mr. Harris, TX</b>	X		
<b>Mr. Coffman, CO</b>	X			<b>Mr. Landry, LA</b>	X		
<i>Mr. Costa, CA</i>	X			<b>Mr. Fleischmann, TN</b>	X		
<b>Mr. McClintock, CA</b>	X			<b>Mr. Runyan, NJ</b>	X		
<i>Mr. Boren, OK</i>				<b>Mr. Johnson, OH</b>	X		
<b>Mr. Thompson, PA</b>	X						
<i>Mr. Sablan, CNMI</i>		X					
<b>Mr. Denham, CA</b>	X						
				<b>TOTALS</b>	30	12	

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This Act may be cited as the “Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011.”

*Section 2. Authorization*

Section 2 amends Section 9(c) of the Reclamation Project Act of 1939 to authorize “power” as a function at all Bureau of Reclamation conduits. This authorization will allow the agency to pursue hydropower development on conduits under its exclusive jurisdiction and within the framework of federal reclamation law.

This section further amends Section 9(c) of the Reclamation Project Act of 1939 by adding a number of new provisions as it relates to small conduit hydropower development. Given the exclusive hydropower authorization, subsection 2 added by this bill requires the Bureau of Reclamation to offer the “lease of power privilege” (lease) first to the entity operating the conduit or the conduit’s direct water user beneficiaries. This provision, based on legislative precedent, reinforces and strengthens Reclamation’s current arrangement of giving irrigation districts the preference to lease hydropower projects on canals that the districts operate and maintain on behalf of the federal government. The Committee understands that these longtime operators/beneficiaries know the operating intricacies and primary water supply features of the respective Reclamation facility, as opposed to some outside, non-local interests not invested in water supply delivery. As such, the Committee expects Reclamation to work cooperatively and communicate directly with these operators/beneficiaries prior to and during the lease process, especially because a conduit’s primary purpose is to deliver water. This provision does not prohibit the operators/beneficiaries of the conduit facility from participating with any third-party interest in the hydropower development on the respective conduit. The Committee also expects Reclamation to undergo a good faith effort to allow the operators/beneficiaries a reasonable and justifiable time frame to accept or reject a conduit lease of power privilege offer. Such time frames would factor in the complexity of the facility, prior communication with, any stated concerns of the operators/beneficiaries and other matters.

This section also streamlines the duplicative federal regulatory process impacting hydropower development covered in the bill. As referenced above, the facilities are man-made canals that have already gone through the National Environmental Policy Act (NEPA) process. Unlike the Federal Energy Regulatory Commission, Reclamation does not categorically exempt these facilities from additional NEPA analysis. As a result, this subsection exempts only “small conduit hydropower” (1.5 megawatt or less), while retaining NEPA application for transmission siting on federal land.

This section also designates the Power Resources Office in Reclamation’s Denver headquarters as the lead office for small conduit development. Unfortunately, a number of irrigation districts pursuing hydropower have been unable to receive uniform answers from Reclamation on conduit development. This provision will set up a centralized location for uniform policy and procedure-setting



purposes, yet does not prohibit area offices from implementing specific conduit development.

Section 2 clarifies that the Western Area Power Administration, the Bonneville Power Administration and the Southwestern Power Administration are not obligated to purchase or market the conduit hydropower generated at Reclamation facilities and that none of the costs associated with the generation shall be assigned to these agencies' power rates. This provision intends to allow the free market to decide who will purchase the conduit hydropower.

This section also provides a number of water supply savings. These provisions specifically ensure conduit hydropower development will not harm or impact existing water supplies and water deliveries and acknowledges that water used for conduit hydropower generation is incidental to water supply purposes. This incidental purpose specifically means hydropower development is subordinate to the original Congressionally-authorized water supply project purposes.

The provisions also make clear that Reclamation shall notify and consult with the applicable water users benefitting from the conduit. The Committee expects the agency to communicate in written and verbal form with the operators and beneficiaries of a Reclamation conduit facility prior to issuing any lease of power privilege or when identifying a conduit for potential hydropower development. These operators/beneficiaries are acutely aware of facility operations and would provide valuable knowledge and experience to determine the feasibility of the contemplated small-scale hydropower development.

The provisions also require the federal government to completely protect the planning, design, construction, operation, maintenance and other interests of the federally owned conduit. The Committee expects Reclamation to work with the applicable conduit operator/beneficiary on these terms and conditions prior to issuance. The Committee also expects that such terms and conditions will be written and detailed in nature, mandatory for the conduit hydropower developer, and shall be enforced by Reclamation. The Committee is aware that Reclamation has come under significant and justified criticism for not adequately communicating with operators/beneficiaries on existing conduit hydropower projects. H.R. 2842 seeks to improve the current process.

Section 2 also ensures that nothing in the bill shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

Finally, the section provides definitions for terms used in the bill.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in car-

rying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 2842—Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011*

Summary: CBO estimates that enacting H.R. 2842 would increase offsetting receipts to the government by \$5 million over the 2012–2021 period by authorizing the Bureau of Reclamation to permit all nonfederal development of hydropower at facilities owned by the bureau. Pay-as-you-go procedures apply to this legislation because it would increase offsetting receipts (a credit against direct spending). Enacting the bill would not affect revenues.

H.R. 2842 would authorize the Bureau of Reclamation to permit private entities to develop small hydropower units on all irrigation canals and conduits under the agency’s jurisdiction. Under current law, the bureau or the Federal Energy Regulatory Commission (FERC) has jurisdiction over hydropower development at such facilities. H.R. 2842 would clarify that the jurisdiction for small hydropower development on all bureau irrigation canals and conduits lies solely with the bureau. CBO expects that the change would increase agency receipts from hydropower development because the federal government collects no funds from project developers if a project is authorized by FERC. CBO estimates that additional annual lease payments to the bureau would reach almost \$1 million by 2018 and increase to \$2 million by 2021.

H.R. 2842 contains no intergovernmental or private-sector mandates as defined in Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2842 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority .....	0	0	0	0	*	*	-1	-1	-1	-2	0	-5
Estimated Outlays .....	0	0	0	0	*	*	-1	-1	-1	-2	0	-5

Note: \* = between -\$500,000 and zero.

Basis of estimate: For this estimate we assume H.R. 2842 will be enacted before the end of calendar year 2011. Based on information from the Bureau of Reclamation, CBO estimates that enacting the bill would result in additional collections to the federal government under the bureau’s authority to share in the receipts from electricity sales that are generated at certain water projects that the

agency controls. (FERC has no such authority to share receipts from projects it authorized.)

Typically the bureau’s agreements with developers of hydropower facilities on small conduits generate annual receipts to the federal government ranging from \$15,000 to a few hundred thousand dollars depending on the capacity of the facility. Selecting the lessee, negotiating the leasing contract, and constructing new facilities takes anywhere from three to five years depending on the size of the project. Under the legislation, CBO expects that the federal government would receive some additional receipts beginning four years after enactment. We estimate that new facilities would begin to pay lease fees to the federal government beginning in 2016 and reach about \$2 million by the end of 2021.

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. H.R. 2842 would increase offsetting receipts (a credit against direct spending) beginning in 2016 (receipts in 2016 and 2017 would not be significant). The budgetary changes that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2842 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON OCTOBER 5, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	0	0	0	0	0	0	–1	–1	–1	–2	0	–5

Intergovernmental and private-sector impact: H.R. 2842 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Aurora Swanson. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that enacting H.R. 2842 would increase offsetting receipts to the government by \$5 million over the 2012–2021 period by authorizing the Bureau of Reclamation to permit all nonfederal development of hydropower at facilities owned by the bureau. Pay-as-you-go procedures apply to this legislation because it would increase offsetting receipts (a credit against direct spending). Enacting the bill would not affect revenues.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to authorize all Bureau of Rec-

lamation conduit facilities for hydropower development under federal Reclamation law.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the 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):

**SECTION 9 OF THE RECLAMATION PROJECT ACT OF 1939**

SEC. 9 (a) \* \* \*

\* \* \* \* \*

(c) **【**The Secretary is authorized to enter into contracts to furnish water**】** (1) *The Secretary is authorized to enter into contracts to furnish water* for municipal water supply or miscellaneous purposes: *Provided*, That any such contract either **【**(1)**】** (A) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or **【**(2)**】** (B) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary

deems proper: *Provided further*, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection [respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects] *respecting the sales of electric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development.* No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

(2) *When carrying out this subsection, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred work, or to the irrigation district or water users association receiving water from the applicable reserved work. The Secretary shall determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege offer.*

(3) *The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to small conduit hydropower development, excluding siting of associated transmission on Federal lands, under this subsection.*

(4) *The Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.*

(5) *Nothing in this subsection shall obligate the Western Area Power Administration, the Bonneville Power Administration, or the Southwestern Power Administration to purchase or market any of the power produced by the facilities covered under this subsection and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.*

(6) *Nothing in this subsection shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved, nor shall it create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation district or legally organized water users association operating the transferred work in advance of offering the lease of power privilege and shall prescribe such terms and conditions that will adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.*

(7) *Nothing in this subsection shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.*

(8) *In this subsection:*

(A) *CONDUIT.*—*The term “conduit” means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.*

(B) *IRRIGATION DISTRICT.*—*The term “irrigation district” means any irrigation, water conservation or conservancy district, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.*

(C) *RESERVED WORK.*—*The term “reserved work” means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.*

(D) *TRANSFERRED WORK.*—*The term “transferred work” means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.*

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

(F) *SMALL CONDUIT HYDROPOWER.*—*The term “small conduit hydropower” means a facility capable of producing 1.5 megawatts or less of electric capacity.*

\* \* \* \* \*

## DISSENTING VIEWS

H.R. 2842 would amend the Reclamation Project Act of 1939 to allow for the development of small conduit hydropower at Bureau of Reclamation (Reclamation) facilities. The legislation clarifies the question of whether the Federal Energy Regulatory Commission (FERC) or Reclamation has jurisdiction over private hydropower development at Reclamation facilities by authorizing Reclamation to develop power at all such facilities. The Power Marketing Administrations are not obligated to purchase or market the power produced. Small conduit hydropower projects are defined as projects producing 1.5-megawatts or less.

H.R. 2842 includes a controversial provision that exempts small conduit hydropower from National Environmental Policy Act (NEPA) compliance. Proponents of the legislation argue that NEPA compliance for small conduit hydropower is unnecessary and hinders developers from pursuing small conduit hydropower projects. However, FERC's licensing process for small conduit hydropower shows that compliance with NEPA need not hinder responsible development. FERC categorically exempts small conduit projects from NEPA. This approach works: from 2006–2010, 13 conduit exemptions were completed in less than a year. Of the 11 conduit exemptions that were issued in 2011, orders regarding the nine conduit exemptions that presented no substantive issues were issued on average 40 days after the comment deadline established in the public notice.

During the Committee's markup of H.R. 2842, Ranking Member Markey offered an amendment that would have given Reclamation the option to either do a programmatic Environmental Impact Statement or a categorical exemption similar to the FERC process. Unfortunately, our amendment was not adopted. For this reason, and because the legislation expands Reclamation's authority to develop small conduit hydropower without requiring them to develop a consistent regulatory process for developers, we oppose this legislation.

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