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Accelerated Repayment of Bureau of Reclamation Construction Costs

Title IX of H.R. 2898, the Western Water and American Food Security Act of 2015, includes provisions that would potentially alter construction repayment for Bureau of Reclamation (Reclamation) projects. The potential changes are discussed below.

Background

Since the passage of the Reclamation Act of 1902, reclamation law has been based on the concept of project repayment—reimbursement of federal construction costs—by project water and power users. Agreements between the federal government (through Reclamation) and water users for delivering water are generally governed by one of two contract types: water service contracts or repayment contracts. There are 860 such contracts currently in effect in the 17 western states.

The terms of repayment and water service contracts differ. Repayment contracts are generally made for terms of 40 years, with capital costs amortized over the long-term period and repaid in annual installments (without interest for irrigation investments and with interest for municipal and industrial [M&I] investments). Costs are repaid annually in fixed amounts to the U.S. Treasury by project beneficiaries (contractors), along with costs for project operations and maintenance. For water service contracts, contractors pay a combined capital repayment and operations and maintenance (O&M) rate for each acre-foot of water actually delivered (i.e., water service). This water service payment is different from repayment contracts in that under repayment contracts, the annual repayment bill is due regardless of how much water is used in a given year.

Repayment contracts tend to be the norm outside of California; however, some other projects in these areas have water service contracts. Because the California Central Valley Project (CVP) includes many multipurpose facilities benefiting different contractors that were built over many decades, most CVP contractors operate under water service contracts (and under a law unique to the CVP, water service contracts terms are 25 years, not 40 years).

Another early tenet of reclamation law still in existence is a limit on how much land one can irrigate with water provided from federal reclamation projects. The idea behind the limitation was to prevent speculation and monopolies in western land holdings and to promote development and expansion of the American West through establishment of family farms. Over time, several attempts were made to increase the acreage limitation. In 1982, pursuant to the Reclamation Reform Act (RRA; P.L. 97-293), the original acreage limitation of 160 acres was raised to 960 acres. Scholars and others have written extensively on enforcement issues resulting from the 960-acre limit. It has remained, on one hand, an unpopular provision among large landholders who do not want limits on their land, particularly in the Central Valley, where large industrial farms are more common than other areas of the West. On the other hand, it has been a key rallying point for taxpayer groups, environmentalists, and others who have opposed using federally subsidized water to irrigate large swaths of land.

Under current law, once a repayment contract is paid out, contractors continue to receive project benefits but are no longer subject to the 960-acre limit or to other provisions of RRA (e.g., full-cost pricing for water under certain circumstances). However, under water service contracts, the acreage limitation and other requirements of reclamation law continue, unless otherwise exempted by law.

Summary of Repayment Provisions in H.R. 2898

Contract Conversion, Prepayment

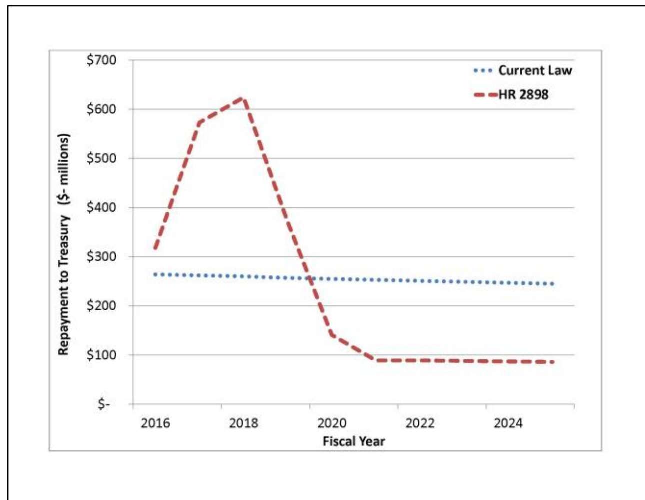
Title IX of H.R. 2898, as passed by the House, would allow for the conversion of agricultural and municipal water service contracts to repayment contracts to allow for prepayment of allocable construction costs. The bill specifically would authorize prepayment (also referred to as accelerated repayment) of outstanding construction cost obligations through a lump sum or in installments. It would allow repayment contractors to pay, upon request, their remaining construction repayment obligations, either in a single lump sum or over three years (i.e., three equal payments). Under the legislation, contractors would be required to pay the current value of their remaining contract payments, discounted at one-half of the 20-year maturity rate for Treasury securities. The bill reiterates that once contractors have satisfied their repayment obligations, they would no longer be subject to the acreage limitations and full-cost pricing (as well as other associated requirements) of the RRA. The bill would authorize M&I contractors to similarly convert to repayment contractors and/or repay their outstanding balances through prepayment.

Congress has previously authorized similar contract conversion and repayment provisions for individual Reclamation project units. For instance, in the San Joaquin River Restoration Settlement Act of 2009 (P.L. 111-11; Title X), Congress authorized contract conversion and prepayment for a subset of CVP contractors in the Friant Division, Hidden Unit, and Buchanan Unit. It has authorized similar accelerated repayment for other individual projects. However, no such authority exists for Reclamation projects in general.

The provisions of H.R. 2898 would apply to all Reclamation contractors; that is, all contractors would be eligible (either through optional conversion to repayment contracts and subsequent prepayment for water service contractors or optional prepayment for existing repayment contractors) for prepayment of their obligations to the federal government.

Figure 1. Repayment Projections: H.R. 2898 Compared to Current Law

(estimated total payments to the Treasury for water service contract and repayment contracts)



Source: Congressional Research Service, based on estimates by the Congressional Budget Office.

Figure 1 provides a comparison of how repayment to the Treasury might look under H.R. 2898 compared to current law. The Congressional Budget Office (CBO) estimated that the authority for prepayment would increase incoming receipts by a net of about $721 million over the FY2016-FY2025 period. At the same time, CBO estimated that the bill would decrease net receipts to the Treasury over the long term (because contractors would pay their obligations up front and this amount would be discounted by half the rate for 20-year Treasury securities on the effective date of the contract). CBO estimated that the provisions in Title IX would result in a net loss in offsetting receipts of $540 million over 35 years. The Joint Committee on Taxation has estimated that the bill would reduce federal government tax revenues by $89 million over the next 10 years (because contractors are likely to finance some of their lump-sum repayments through tax-exempt bonds).

Surface Water Storage Enhancement Account

Title IX would also direct that half of the receipts received by the Treasury for repayment under the bill would be authorized for appropriation under a new account (the Surface Water Storage Enhancement Account) intended to fund construction of surface water storage projects, including nonfederal projects. Eligible projects would include both new projects and additions to existing projects. CBO estimated that this change would authorize approximately $360 million over the FY2016-FY2025 period.

Effect on Future Repayment Obligations

Section 902(c)(2) of H.R. 2898 would also exempt contractors from acreage limitations and other RRA provisions (e.g., full-cost pricing) associated with future repayment obligations that might otherwise be incurred by contractors who repay construction costs under the act. Under the bill, it appears that future obligations for prepaid contractors, if any, incurred under new or amended contracts for the construction of new surface storage projects would not be subject to the ownership and full-cost pricing limitations of RRA. (Under current law, these limitations would apply.) In essence, the provision could change reclamation law for certain future repayment obligations once a contractor has repaid the remaining construction balance on the original project feature.

Support and Opposition

Although many users have supported prepayment as an option, other groups have opposed the approach embodied in the current legislation. Supporters have generally argued that costs being repaid under accelerated repayment represent those costs that the federal government has already incurred and that the underlying cost to the Treasury is negligible. Further, they have noted that the reporting requirements and other limitations associated with the RRA are cumbersome and increase operating costs without providing tangible benefits. Users have also expressed support for the concept of "recycling" repayment funds embodied in the bill (in the case of the H.R. 2898, in the form of authorization of appropriations for a new Surface Water Storage account).

In testimony on similar provisions that were proposed (but not enacted) in the 113th Congress, the Obama Administration noted that although it supported authorization for prepayment on a case-by-case basis, it had concerns related to a "one-size-fits-all" approach (as is proposed in H.R. 2898). The Administration noted that such an approach may not account for nuances associated with individual projects, among other things. Others, including taxpayer watchdog groups, have generally argued against elimination of the acreage limitations and other requirements of the RRA. They argue that while prepayment may provide for short-term gains to the Treasury, contractors should not be allowed to "buy their way out" of RRA requirements.

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