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**Memorandum**

June 27, 2006

**TO:** Senate Energy and Natural Resources Committee  
Attention: Joshua Johnson and Michael Connor

Senator Feinstein  
Attention: John Watts

**FROM:** Betsy A. Cody, Specialist in Natural Resources Policy  
Nicole T. Carter, Analyst in Environmental Policy  
Resources, Science, and Industry Division

**SUBJECT:** Section-by-Section Description of Draft 2006 Title XVI Amendments

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This memorandum responds to your request for a description of the June 22 discussion draft of the Reclaiming the Nation's Water Act (RENeW), a proposal to amend the Reclamation Wastewater and Groundwater Study and Facilities Act (Title XVI of P.L. 102-575).

I hope that this information satisfies your request. Please call me at 7-7229 if you have any questions or comments.

## Summary

The RENEW Act would amend Title XVI of P.L. 102-575 to clarify Title XVI program purposes and to provide standards and procedures for federal review of demonstration and permanent water reclamation and reuse projects. The Act would establish a new purpose and definitions section for Title XVI, as well as establish a new process for review of project proposals. The Act would strike existing provisions providing for appraisal investigations and feasibility studies and replace them in part with a new planning and assistance program for non-federal project sponsors electing to seek help in developing project proposals. The Act would further clarify that projects must be authorized for construction by the Congress before funds may be expended by the Secretary of the Interior for project construction. It also would limit the federal cost-share for projects to the lesser of 20% or \$20 million of total project costs, excluding operations and maintenance costs. (The current limit is 25% or \$20 million.)

## Section 1. Short Title

Reclaiming the Nation's Water Act (RENeW)

## Section 2. Purpose & Definitions

The RENEW Act would establish a purpose and definitions section for the Title XVI program. Title XVI currently has no purpose or definition section.

**Purposes.** There has been some confusion in recent years whether the program is primarily a demonstration program or was intended to finance permanent reclamation and reuse facilities. New §1602(a) clarifies the purposes of the Title XVI program by stating that the purposes of the Title are: 1) to assist in the development of permanent local and regional water reclamation and reuse projects; and 2) to further improve water reclamation and reuse technologies through research and demonstration activities.

**Definitions.** New §1602(b) includes eight definitions of terms used in the bill, including: 1) financially capable project sponsor; 2) non-federal project sponsor; 3) federal reclamation laws; 4) reclaim and reclamation; 5) reclamation states; 6) Secretary; 7) technically and financially viable project; and 8) technically viable project. Several terms relate to the new standards and procedures established for federal review of project proposals; others relate to methods of reclamation and what geographic areas are eligible for participation in the program. For example, *reclaim* and *reclamation* are defined as including recycling and desalination, and *reclamation states* are defined to refer to existing law — the 17 western states, and territories named in §1 of the Reclamation Act of 1902 (43 U.S.C. §391) and the State of Hawaii (3 Hawaii projects were authorized in 2005).

## Section 3. General Authority

The RENEW Act would authorize the Secretary to *participate* in opportunities for water reclamation and reuse, including water recycling and desalination activities in reclamation states. The Act would delete the Secretary's explicit authority to "investigate and identify" opportunities for water reclamation and reuse, consistent with provisions that delete existing project appraisal investigation and feasibility study processes.

## Section 4. Review of Proposals Submitted by Non-Federal Project Sponsors

Section 4 would delete existing §1604 (feasibility studies) and replace it with new authority for the Secretary of the Interior to review non-federal water reclamation and reuse project proposals (§1604(a)), and new standards and procedures for such review (new §1604(b)). Under §1604(a)(1)(B), non-federal project sponsors may independently submit or resubmit a proposal for Department of the Interior review — the first step in securing authorization of financial assistance for project construction. New standards would include providing sufficient evidence to the Secretary that the project: 1) is technically viable and 2) has a financially capable project sponsor.

New §1604(c) would provide a new process for the Secretary to determine financial and technical viability. First, the Secretary would have 30 days to review a project and inform the non-federal project sponsor whether the proposal includes items (enumerated in a checklist) necessary for the Secretary to move forward with a determination of the project's technical and financial viability. If the information included in the proposal is insufficient, the Secretary would be required to notify the non-federal project sponsor in writing and identify information needed to make the determination. Non-federal project sponsors would be allowed to resubmit their proposals, at which point the Secretary would have 21 days to respond to the sponsor regarding the sufficiency of documents provided.

Under new §1604(d), once the Secretary determined that a project proposal included sufficient information to make a determination on whether the project is technically and financially viable, the Secretary would be required within 180 days to submit to Congress: 1) a statement and explanation of the project's technical and financial viability, and 2) a recommendation on whether the project should be authorized for construction based on several specific factors. Factors to be considered would range from items related to project costs and benefits, to whether the project would help serve an identified federal interest (e.g., reduce water conflicts, help drought resiliency, benefit federally listed threatened or endangered species). Both the viability determination and recommendation submitted under this section would be made available to the public via the Federal Register and submission to Congress.

New §1604(e) notes the Secretary would not be required to conduct further analysis of a project's merits if it has been determined to be not technically or financially viable, until new information is provided to the Secretary. Costs for developing new information for re-submission would be born by the non-federal project sponsor.

New §1604(f) would clarify that Congress may make the determination on whether a project is technically and financially viable if the Secretary submits his designation, or if the Secretary fails to act on the project proposals within the times allotted under §§1604(c) and 1604(d). The section also notes that nothing in the section would preclude Congress from authorizing a project under the title.

New §1604(g) would include transition provisions for non-federal project sponsors that have submitted feasibility studies for review prior to enactment of RENEW. The non-federal project sponsor would be able to submit a new proposal for review under this title, or notify the Secretary in writing that it wants to use the previously submitted feasibility study. The provision would include paragraphs describing the review process for such submissions, including a 90-day review of technical and financial viability.

## **Section 5. Authorization of Appropriations.**

Existing §1631 would be amended to state that funds may not be expended by the Secretary for the design or construction of any project authorized by the Title until Congress has authorized the construction of the project, the Secretary has determined that the project has a financially capable project sponsor, and the Secretary has approved a cost-sharing agreement with the non-federal project sponsor (this latter requirement is in existing law). The section would further limit the federal cost-share to 20% of total project costs for

projects authorized after the date of enactment of RENEW; the federal cost-share for most projects authorized after 1996 is currently \$20 million or 25%.

Section 5 also would add a sunset clause, which would effectively de-authorize projects that do not receive federal funding within 10 years of the enactment of RENEW.

## **Section 6. Reuse Planning Assistance Program.**

Section 6 would add a new §1639, which would authorize the Secretary to cooperate with project sponsors to prepare a water reclamation and reuse project plan (including, but not limited to project proposals). The section would essentially provide a substitute process for the existing appraisal and feasibility process for non-federal project sponsors desiring federal assistance in developing a project plan or proposal. This section also would provide authority for the Secretary, at the request of the non-federal project sponsor, to prepare a project proposal for review under 1604(a) and would require that these proposals be subject to National Environmental Policy Act review. This provision would provide an opportunity for communication with federal agencies (e.g., U.S. Fish and Wildlife Service) during the planning process. The section would authorize \$4.4 million annually for planning assistance, of which up to \$0.5 million could be spent for any one area (yet to be defined (e.g. city, county, etc.)) and up to \$1.0 million for any given project. The federal share of project planning costs would be limited to 50%.

## **Section 7. Technical and Conforming Amendments.**

Section 7 would make numerous technical and conforming amendments.