

Calendar No. 606

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-320

LEADVILLE MINE DRAINAGE TUNNEL ACT

SEPTEMBER 27, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 3404]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3404) to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to require the Secretary of the Interior, acting through the Bureau of Reclamation, to take actions to improve environmental conditions in the vicinity of the Leadville Mine Drainage Tunnel in Lake County, Colorado, 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 thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Leadville Mine Drainage Tunnel Act of 2010.”.

SEC. 2. TUNNEL MAINTENANCE; OPERATION AND MAINTENANCE.

Section 703 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4656) is amended to read as follows:

“SEC. 703. TUNNEL MAINTENANCE; OPERATION AND MAINTENANCE.

“(a) LEADVILLE MINE DRAINAGE TUNNEL.—The Secretary shall take any action necessary to maintain the structural integrity of the Leadville Mine Drainage Tunnel—

- “(1) to maintain public safety; and
- “(2) to prevent an uncontrolled release of water.

“(b) WATER TREATMENT PLANT.—

“(1) IN GENERAL.—Subject to section 705, the Secretary shall be responsible for the operation and maintenance of the water treatment plant authorized under section 701, including any sludge disposal authorized under this title.

“(2) AUTHORITY TO OFFER TO ENTER INTO CONTRACTS.—In carrying out paragraph (1), the Secretary may offer to enter into 1 or more contracts with any

appropriate individual or entity for the conduct of any service required under paragraph (1).”.

SEC. 3. REIMBURSEMENT.

Section 705 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4656) is amended—

- (1) by striking “The treatment plant” and inserting the following:
 - “(a) IN GENERAL.—Except as provided in subsection (b), the treatment plant”; and
 - (2) by adding at the end the following:
 - “(b) EXCEPTION.—The Secretary may—
 - “(1) enter into an agreement with any other entity or government agency to provide funding for an increase in any operation, maintenance, replacement, capital improvement, or expansion cost that is necessary to improve or expand the treatment plant; and
 - “(2) upon entering into an agreement under paragraph (1)—
 - “(A) make any necessary capital improvement to or expansion of the treatment plant; and
 - “(B) treat flows that are conveyed to the treatment plant, including any—
 - “(i) surface water diverted into the Leadville Mine Drainage Tunnel; and
 - “(ii) water collected by the dewatering relief well installed in June 2008.”.

SEC. 4. USE OF LEADVILLE MINE DRAINAGE TUNNEL AND TREATMENT PLANT.

Section 708(a) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4657) is amended—

- (1) by striking “(a) The Secretary” and inserting the following:
 - “(a) IN GENERAL.—
 - “(1) AUTHORIZATION.—The Secretary”;
 - (2) by striking “Neither” and inserting the following:
 - “(2) LIABILITY.—Neither”;
 - (3) by striking “The Secretary shall have” and inserting the following:
 - “(3) FACILITIES COVERED UNDER OTHER LAWS.—
 - “(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall have”;
 - (4) by inserting after “Recovery Act.” the following:
 - “(B) EXCEPTION.—If the Administrator of the Environmental Protection Agency proposes to amend or issue a new Record of Decision for operable unit 6 of the California Gulch National Priorities List Site, the Administrator shall consult with the Secretary with respect to each feature of the proposed new or amended Record of Decision that may require any alteration to, or otherwise affect the operation and maintenance of—
 - “(i) the Leadville Mine Drainage Tunnel; or
 - “(ii) the water treatment plant authorized under section 701.
 - “(4) AUTHORITY OF SECRETARY.—The Secretary may implement any improvement to, or new operation of, the Leadville Mine Drainage Tunnel or water treatment plant authorized under section 701 as a result of a new or amended Record of Decision only upon entering into an agreement with the Administrator of the Environmental Protection Agency or any other entity or government agency to provide funding for the improvement or new operation.”; and
 - (5) by striking “For the purpose of” and inserting the following:
 - “(5) DEFINITION OF UPPER ARKANSAS RIVER BASIN.—In”.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 708(f) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4657) is amended by striking “sections 707 and 708” and inserting “this section and sections 703, 705, and 707”.

SEC. 6. CONFORMING AMENDMENT.

The table of contents of title VII of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4601). is amended by striking the item relating to section 703 and inserting the following:

“Sec. 703. Tunnel maintenance; operation and maintenance.”.

PURPOSE

The purpose of S. 3404 is to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to require the Secretary of the Interior, acting through the Bureau of Reclamation, to take ac-

tions to improve environmental conditions in the vicinity of the Leadville Mine Drainage Tunnel in Lake County, Colorado, and for other purposes.

BACKGROUND AND NEED

The Bureau of Mines (BOM) constructed the Leadville Mine Drainage Tunnel (LMDT) in the 1940s and 1950s to drain water from mines in the Leadville, Colorado area. In 1959, the Bureau of Reclamation, (“Reclamation”) took “full custody, accountability, and future responsibility” for the LMDT. Reclamation’s original purpose in acquiring the LMDT was to obtain additional water for the Fryingpan-Arkansas Reclamation Project, which was authorized in 1962, but this plan never materialized.

In 1992, to implement a settlement of litigation involving Clean Water Act violations related to discharge from the LMDT, through title VII of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575), Congress authorized Reclamation to construct a treatment plant to clean up discharge from the LMDT. The 1992 law specified that Reclamation’s treatment plant shall be constructed to treat the quantity and quality of effluent “historically discharged” from the LMDT.

In 1983, a significant portion of the Leadville area, known as the California Gulch National Priority List Site, was designated as a Superfund site. The LMDT is hydraulically connected to certain Superfund units within the site. In 2003, the Environmental Protection Agency (“EPA”) issued a Record of Decision for one of the Superfund units that implicated the operations of the treatment plant and led to uncertainty with respect to Reclamation’s authority to treat additional water at the plant. EPA is in the process of developing a revised water management plan and Record of Decision that may reduce the long term need to utilize the treatment plant and drainage tunnel.

In 2008, Reclamation and EPA developed a short-term plan to drill a relief well to dewater the LMDT and treat the pooled water at Reclamation’s existing treatment plant. S. 3404 would clarify Reclamation’s authority to treat water delivered through the LMDT and to maintain and expand the existing treatment plant. During the legislative hearing on the bill the Bureau of Reclamation indicated a commitment to ensuring that the facility remain safe, but was opposed to moving forward with legislation prior to development of the new Record of Decision and expressed the need to avoid expanding Reclamation’s potential liability under CERCLA.

LEGISLATIVE HISTORY

Senator Mark Udall introduced S. 3404 on May 24, 2010. The House companion measure, H.R. 3123, sponsored by Representative Lamborn, passed the House of Representatives by voice vote on September 29, 2009. The Subcommittee on Water and Power held a hearing on S. 3404 on June 9, 2010. At its business meeting on August 5, 2010, the Committee on Energy and Natural Resources ordered S. 3404 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on August 5, 2010, by voice vote of a quorum present, recommends that the Senate pass S. 3404, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 3404, the Committee adopted an amendment. The amendment clarifies that the Secretary of the Interior is authorized to improve or expand the treatment plant as necessary to treat additional water above historical flows that are being conveyed to and treated by the existing treatment plant only if the secretary has entered into a funding agreement with another entity or governmental agency. The amendment also provides that the EPA shall consult with the Secretary regarding a proposed new or amended Record of Decision that affects the operation and maintenance of the drainage tunnel or treatment plant.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the bill.

Section 2 amends section 703 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575) to specify that the Secretary of Interior shall take any action necessary to maintain the structural integrity of the Leadville Mine Drainage Tunnel to maintain public safety and prevent an uncontrolled release of water. Section 2 also provides authority to the Secretary of Interior to operate and maintain a water treatment plant to contract for such services subject to certain requirements.

Section 3 amends section 705 of Public Law 102–575 to specify that the Secretary may enter into an agreement with any other entity or government agency to provide funding for increased operation, maintenance, replacement, capital improvement, or expansion cost that is necessary to improve or expand the treatment plant. Upon entering into such agreement, the Secretary may make necessary capital improvements or expansions and may treat flows conveyed to the water treatment plant that are in excess of the quantities historically discharged into the tunnel, including surface water diverted into the tunnel and water collected by the dewatering relief well installed in June 2008.

Section 4 amends section 708 of Public Law 102–575 to require the Administrator of the EPA to consult with Reclamation on a new or amended Record of Decision that affects the operation and maintenance of the drainage tunnel or the water treatment plant. Section 4 also specifies that the Secretary may implement any improvement to or new operation of the tunnel or treatment plant only upon entering into an agreement with the EPA or other entity or agency to provide funding for the improvement or new operation.

Section 5 adds additional appropriation authority.

Section 6 provides for a conformed table of contents.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 3404—Leadville Mine Drainage Tunnel Act of 2010

CBO estimates that implementing S. 3404 would have no significant impact on the federal budget. The bill would require the Secretary of the Interior to maintain the structural integrity of the Leadville Mine Drainage Tunnel, located one mile north of Leadville, Colorado. Based on information from the Bureau of Reclamation, CBO does not anticipate that any costs would be incurred under the bill beyond what the bureau will spend under current law to repair and maintain the tunnel over the next several years. The bill also would authorize the Secretary, if necessary, to seek reimbursements from private or public entities for the cost of expanding and operating the water treatment plant associated with the Leadville Tunnel to handle any increased water volumes.

Under the bill and subject to the availability of appropriated funds, the Environmental Protection Agency (EPA) also would be authorized to pay for any additional improvements to the tunnel and water treatment plant as well as any increase in associated operations and maintenance costs if such improvements are required as part of EPA's plan to clean up the California Gulch, a Superfund site located near the tunnel. Under current law, any costs to treat and manage contaminated water from the California Gulch would stem from an existing federal responsibility; therefore, this provision would not result in additional federal outlays.

Enacting S. 3404 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 3404 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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. 3404.

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. 3404, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 3404, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairwoman and Members of the Subcommittee, I am Michael Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 3404, the Leadville Mine Drainage Tunnel Act of 2010. The Administration supports the sponsors' intent with this bill to ensure that the Leadville Mine Drainage Tunnel (LMDT) poses no threat to public safety and the environment, and to facilitate the clean-up of a Superfund site in the vicinity. For reasons described below, however, the Administration has both policy and technical concerns about this bill and does not believe that legislation is warranted at this time. We will continue to work with Federal, State, and non-Federal parties on water resource issues at the Leadville Mine Drainage Tunnel (LMDT).

The Department last testified before this Subcommittee on legislation pertaining to the Leadville Mine Drainage Tunnel (LMDT) on April 24, 2008. Since that time, Reclamation completed a Risk Assessment analyzing potential dangers posed by water blockages inside the tunnel, and worked cooperatively with the U.S. Environmental Protection Agency (EPA) and Colorado Department of Public Health and Environment (CDPHE) to install additional drainage capability into the LMDT. We have also held several public meetings with residents living near the Leadville area to convey Reclamation's findings that the LMDT is safe, and have continued an active dialogue with the EPA as it revises the proposed remedy for Operable Unit 6 of the California Gulch National Priority List (Superfund) Site, which lies above the LMDT. We have also had very productive interactions with Senator Udall's office on this legislation, and we appreciate those discussions.

The Department has three principal concerns with the language in S. 3404. First, we do not believe that the requirement in Section 2 of the bill, which calls on the Secretary of the Interior to take "such steps to repair and maintain the structural integrity of the LMDT as may be necessary," takes into consideration Reclamation's 2008 Risk Assessment. The Risk Assessment, completed in the Fall of 2008, is described in greater detail below. Second, a determination by the EPA and CDPHE was made in June of 2009 that portions of the current remedy for Operable Unit 6 of the California Gulch Superfund site are not efficient or sustainable, and the agencies are proposing to change that remedy this year. EPA and CDPHE jointly concluded that "using the mine workings and the [LMDT] to convey water cannot be relied on for the long-term." In view of this ongoing process, the Department also does not believe that Section 3 of the bill, which contemplates new responsibilities for the Secretary of the Interior to treat ad-

ditional flows of water diverted from the surface of Operable Unit 6 into the Leadville Mine Drainage Tunnel, is appropriate. Finally, Section 3 of the bill amends Section 708(a) of Public Law 102-575 in a manner that could be construed as conferring responsibility on the Secretary for facilities which have been listed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or are subject to the Resource Conservation and Recovery Act (RCRA). Reclamation is not a Potentially Responsible Party for contamination at the Leadville Superfund site, and believes that this language serves to create that impression and could be construed as creating liability where none currently exists.

The LMDT is located in Lake County, Colorado, and was originally constructed by the Bureau of Mines from 1943 to 1952. It was intended to remove water from portions of the Leadville Mining District to facilitate the extraction of lead and zinc ore for the WWII and Korean War efforts. Reclamation acquired the LMDT in 1959 with the intention of using the tunnel as a source of water for what was then the proposed Fryingpan-Arkansas project. Due to more senior existing claims on the water, no water rights for the discharge were ever obtained by Reclamation. The LMDT drainage discharges into the East Fork of the Arkansas River.

In 1983, EPA listed the California Gulch Site on the National Priorities List of Superfund sites. The 18-square-mile area was divided into 12 areas called Operable Units (OU). The LMDT is located beneath a portion of a surface unit, OU6, that covers approximately 3.4 square miles in the northeastern quadrant of the Site. Groundwater in the California Gulch area is within a separate operable unit—designated OU12. Reclamation holds title to the LMDT on behalf of the United States, but does not own or operate any sources of contamination on the surface of OU6 (i.e., waste rock or tailings), or any portion of the surface itself.

As part of the implementation of an OU6 remedy proposed in 2003, EPA has been collecting surface runoff from mine waste piles and discharging that surface runoff into the Marion Shaft, where it moves through the mine workings to the LMDT. This water is seasonal and totals approximately 3 to 5 million gallons a year. It has proven to be possible for the Reclamation plant to treat limited amounts of waters from OU6 for EPA pursuant to agreement and EPA's reimbursement. After reviewing technical data suggesting that the remedy proposed in 2003 was neither effective nor sustainable, EPA in June 2009 announced that, in 2010, it planned to revise this proposed 2003 remedy, a process that is nearing completion today.

The new data sheds additional light on the complex site hydrogeology, and suggests that the collection of water at the surface and the diversion of portions of the water into existing shafts, and to the LMDT, is not effective in the long term. Seasonally, groundwater levels fluctuate near the LMDT. Groundwater flows into the LMDT at numer-

ous locations, and flows out of the LMDT at the portal and also into surrounding rock formations. In addition, EPA and CDPHE have determined that the new remedy should prevent the generation of contaminated surface waters in the first instance, thereby alleviating the additional 3 to 5 million gallons of contaminated surface water that is currently diverted through shafts into the LMDT.

These characteristics also heavily influenced the findings of Reclamation's 2008 Risk Assessment. The assessment's purpose was to evaluate the stability and assess the risk associated with the LMDT. Reclamation began its scientific Risk Assessment in 2007, and when initial findings were available, they were independently peer reviewed. The Risk Assessment utilized a similar process to the one Reclamation uses to assess risk at its dams, a model that is an international standard for conducting risk assessments. The independent peer review confirmed Reclamation's analysis that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT, or through the bulkheads installed in the tunnel. Moreover, the assessment concluded that even if an existing natural blockage in the upper part of the LMDT failed rapidly, a sudden release of water through the lower blockage and bulkheads is unlikely.

When the Risk Assessment was published in the early Fall of 2008, it was posted on the Internet and distributed to the media. Reclamation conducted three public meetings and sought public comment on the findings. We remain confident in the value of the Risk Assessment and the validity of its findings.

There are three sources of LMDT water currently entering the treatment plant. First, the natural rate of drainage from the tunnel portal is 500 gallons per minute (gpm), or 1.1 cubic feet per second (cfs). Second, there is a well in the LMDT about 1000 feet in from the portal that pumps about 500 gpm or 1.1 cfs directly to the treatment plant. And third, since June of 2008, Reclamation has been receiving another 700 gpm or 1.6 cfs, accommodating the additional drainage capability via another well installed by EPA about 4,700 feet in from the portal. This well was installed in response to public concern about rising water levels in the vicinity of the LMDT.

Reclamation has a maximum treatment plant capability to process water at a rate of nearly 2,100 gpm from the LMDT or 4.8 cubic feet per second cfs. The NPDES permit for the facility states that the 30-day Average LMDT discharge cannot exceed 1,736 gpm or 3.89 cfs with a Daily Maximum ceiling of 2,313 gpm or 5.2 cfs.

As these actions illustrate, Reclamation is currently managing safely all waters discharged to the LMDT. Nevertheless, Reclamation has an Emergency Action Plan for the LMDT and water treatment facility that has been in place since 2001 and is regularly updated. Water level indicators and other warning systems near the LMDT are tied into the water treatment plant's auto-dialer for em-

ployees, and an audible warning system was installed in 2002 to alert the Village at East Fork residents in the event of an emergency. The system plays an alert message in Spanish and English.

We understand the concern of some in Colorado that Reclamation may one day “walk away” from the work at Leadville. I would like to affirm that Reclamation is committed to assuring that the treatment plant, pumps and pipelines are operated in a manner so as to protect public safety at the LMDT. In addition to these actions, we support the process of CDPHE and EPA to determine a water management portion of the remedy at OU6 that is more effective than actions the agency proposed in 2003. Recent studies conducted by EPA conclude that using the mine workings and the LMDT to convey water cannot be relied on for the long term, and that it is neither cost effective nor efficient to treat diluted acid rock drainage this way in perpetuity. Reclamation is awaiting the publication by EPA of a revised Record of Decision, and believes no legislation should be enacted until that process is complete. As such, the Administration does not believe that S. 3404 is warranted at this time.

At a minimum, if any legislation were to proceed, it should be amended to address the issues raised herein.

This concludes my written statement. I am pleased to answer any questions from the Subcommittee.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 3404, as ordered 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):

RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992

Public Law 102-575 (106 Stat. 4663)

AN ACT To authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reclamation Projects Authorization and Adjustment Act of 1992”.

* * * * *

SEC. 2. DEFINITION AND TABLE OF CONTENTS.

For purposes of this Act, the term ‘Secretary’ means the Secretary of the Interior.

TABLE OF CONTENTS

Sec. 1. Short title.

* * * * *

TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

Sec. 701. Authorization.

Sec. 702. Costs nonreimbursable.

[Sec. 703. Operation and maintenance.]

Sec. 703. Tunnel maintenance; operation and maintenance.

* * * * *

TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

* * * * *

SEC. 703. OPERATION AND MAINTENANCE.

[The Secretary shall be responsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.]

SEC. 703. TUNNEL MAINTENANCE; OPERATION AND MAINTENANCE.

(a) LEADVILLE MINE DRAINAGE TUNNEL.—The Secretary shall take any action necessary to maintain the structural integrity of the Leadville Mine Drainage Tunnel—

- (1) to maintain public safety; and*
- (2) to prevent an uncontrolled release of water.*

(b) WATER TREATMENT PLANT.—

(1) IN GENERAL.—Subject to section 705, the Secretary shall be responsible for the operation and maintenance of the water treatment plant authorized under section 701, including any sludge disposal authorized under this title.

(2) AUTHORITY TO OFFER TO ENTER INTO CONTRACTS.—In carrying out paragraph (1), the Secretary may offer to enter into 1 or more contracts with any appropriate individual or entity for the conduct of any service required under paragraph (1).

* * * * *

SEC. 705. LIMITATION.

[The treatment plant] *(a) IN GENERAL.—Except as provided in subsection (b), the treatment plant authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.*

(b) EXCEPTION.—The Secretary may—

- (1) enter into an agreement with any other entity or government agency to provide funding for an increase in any operation, maintenance, replacement, capital improvement, or expansion cost that is necessary to improve or expand the treatment plant; and*
- (2) upon entering into an agreement under paragraph (1)—*

- (A) make any necessary capital improvement to or expansion of the treatment plant; and
- (B) treat flows that are conveyed to the treatment plant, including any—
- (i) surface water diverted into the Leadville Mine Drainage Tunnel; and
- (iii) water collected by the dewatering relief well installed in June 2008.

* * * * *

SEC. 708. WATER QUALITY RESTORATION.

[(a) The Secretary] (a) IN GENERAL—

(1) **AUTHORIZATION.**—*The Secretary is authorized, in consultation with the State of Colorado, the Administrator of the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and impacts attributed to mining-related and other development in the Upper Arkansas River basin, to develop corrective action plans, and to implement corrective action demonstration projects. [Neither*

(2) LIABILITY.—*Neither the Secretary nor any person participating in a corrective action demonstration project shall be liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act for costs or damages as a result of actions taken or omitted in the course of implementing an approved work plan developed under this section; Provided, That this subsection shall not preclude liability for costs or damages which result from negligence on the part of such persons. [The Secretary shall have]*

(3) FACILITIES COVERED UNDER OTHER LAWS.—

(A) IN GENERAL.—*Except as provided in subparagraph (B), the Secretary shall have no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act.*

(B) EXCEPTION.—*If the Administrator of the Environmental Protection Agency proposes to amend or issue a new Record of Decision for operable unit 6 of the California Gulch National Priorities List Site, the Administrator shall consult with the Secretary with respect to each feature of the proposed new or amended Record of Decision that may require any alteration to, or otherwise affect the operation and maintenance of—*

(i) the Leadville Mine Drainage Tunnel; or

(ii) the water treatment plant authorized under section 701.

(4) AUTHORITY OF SECRETARY.—*The Secretary may implement any improvement to, or new operation of, the Leadville Mine Drainage Tunnel or water treatment plant authorized under section 701 as a result of a new or amended Record of Decision only upon entering into an agreement with the Administrator of the Environmental Protection Agency or any other entity or government agency to provide funding for the improvement or new operation. [For the purpose of]*

(5) *DEFINITION OF UPPER ARKANSAS RIVER BASIN.*—*IN* this section, the term 'Upper Arkansas River basin' means the Arkansas River hydrologic basin in Colorado extending from Pueblo Dam upstream to its headwaters.

* * * * *

(f) There is authorized to be appropriated such sums as may be required to fulfill the provisions of [sections 707 and 708] *this section and sections 703, 705, and 707* of this title.

* * * * *

