CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 9, 2004

H.R. 4794
A bill to amend the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes

As ordered reported by the House Committee on Transportation and Infrastructure on July 21, 2004

SUMMARY

The International Boundary and Water Commission (IBWC), composed of a U.S. section and a Mexican section, is responsible for applying the boundary and water treaties between the United States and Mexico and settling any differences that may arise out of such treaties. Enacting H.R. 4794 would indefinitely extend the authority of the U.S. section of the IBWC to enter into a contract to build and operate a wastewater treatment facility in Mexico. Under current law, such authority is available through 2005 and is contingent on the negotiation and conclusion of a new treaty between the governments of the United States and Mexico.

On February 20, 2004, a new treaty between the two governments was negotiated, establishing a framework for the development of the wastewater treatment facility. Under this contract, the plant owner would treat wastewater to certain U.S. standards, and the federal government would make annual payments over a 20-year period to cover the costs of developing, financing, constructing, operating, and maintaining the facility. This new facility would be designed to address the problem of untreated or partially treated sewage flowing over the border from Tijuana, Mexico, to San Diego, California.

H.R. 4794 would authorize the appropriation of $230 million for the wastewater treatment contract. We expect that implementing the contract would constitute a federal lease-purchase of the new treatment facility. CBO estimates, however, that implementing this legislation would require appropriations of $295 million over the 2005-2009 period. In addition, CBO estimates that appropriations of $316 million would be needed after 2009 to cover the costs associated with operating and maintaining the facility through the remainder of the contract period.

Enacting this bill would not affect direct spending or receipts because the IBWC could not enter into a contract to build the plant until the full amount necessary to implement the contract is provided in advance in an appropriation act.

H.R. 4794 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The bill would benefit California, the City of San Diego, and other local and tribal governments in that state by reauthorizing and increasing federal support of a wastewater treatment project along the U.S.-Mexico border.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2005 and that the estimated amounts necessary to build and maintain the wastewater treatment plant will be appropriated. Estimated outlays are based on historical spending patterns for other similar construction projects. The estimated budgetary impact of H.R.4794 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

	By Fiscal Year, in Millions of Dollars					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law to Build and Operate Wastewater Treatment Facility						
Authorization Level[a]	0	0	0	0	0	0
Estimated Outlays	0	0	0	0	0	0
Proposed Changes						
Estimated Authorization Level	0	263	0	0	16	16
Estimated Outlays	0	66	118	79	16	16
Spending Under H.R. 4794 to Build and Operate Wastewater Treatment Facility						
Estimated Authorization Level	0	263	0	0	16	16
Estimated Outlays	0	66	118	79	16	16

a. Current law authorizes the appropriation of $156 million over the 2001-2005 period. To date no funding has been provided.

BASIS OF ESTIMATE

This cost estimate is based on information from the U.S. section of the IBWC and a firm that is interested in constructing the new facility and has performed limited design work for such a facility. Because a new treaty was agreed to by the governments of Mexico and the United States on February 20, 2004, CBO expects that design of the wastewater treatment facility would begin in 2005. In total, CBO estimates that implementing H.R. 4794 would cost $295 million over the next five years and $316 over the 2010-2025 period. The budgetary treatment of those costs as well as the various components are described below.

Budgetary Treatment of Lease-Purchases

CBO expects that the contract for wastewater treatment services authorized by H.R. 4794 would meet the criteria of a federal lease-purchase contract, meaning that the government is effectively purchasing—not leasing—the wastewater treatment plant. CBO bases this conclusion on the fact that the wastewater treatment plant would be built for the special purpose of the U.S. government, and there would be little or no private-sector market for this particular facility. Furthermore, the 20-year term of the lease would extend through most of the plant's expected economic life, and the lease payments over this period would pay for nearly all of the facility's cost.

Despite the fact that the U.S. federal government would provide the funding to develop, finance, construct, operate, and maintain the facility, the legislation would require the facility to be conveyed to "an appropriate governmental entity" (apparently, a Mexican governmental entity) in the event that either the IBWC or the plant operator fails to meet its contractual obligations to operate the plant. CBO, however, assumes that because the U.S. government would be providing the necessary funding to support the facility, the U.S. government effectively controls the facility and directs its transfer to a Mexican governmental entity at the end of the contract period.

Funds to execute federal lease-purchase contracts receive a special budgetary treatment (see Office of Management and Budget Circular A-11). When the government enters into lease-purchase contracts, the present value of all expected future lease payments (excluding annual operating and maintenance costs) must be provided in an appropriation act in the first year of the contract. Because the cost of a lease-purchase contract that involves substantial financial risk for the government is accounted for over the project's construction period rather than the term of the lease, the outlays associated with the appropriation would follow the three-year construction schedule assumed for the project.

Construction Cost

CBO estimates that implementing this bill would require an appropriation of $263 million in 2005. At this estimated level of funding, CBO assumes that the new facility would treat up to about 59 million gallons per day of sewage (which is the capacity level identified in EPA's Master Plan for the Tijuana region), construction of the facility would cost about $159 million in 2005, that the private builder would seek a 15-percent rate of return under the lease terms to cover financing and other costs, and that the present value of the expected future lease payments would be discounted using CBO's projection of Treasury's long-term borrowing rate of 5.43 percent. To the extent that different assumptions are used to estimate the net present value associated with the cost of the proposed project, the estimates for appropriations to support the project could vary.

Operation and Maintenance Cost

In addition, after construction is completed, funding for operating and maintaining the facility during the remainder of the 20-year contract period could be required. While current law would allow for such costs to be offset by payments the owner of the facility might receive through the sale of treated water, there is no guaranty that such an agreement would be negotiated, according to the firm interested in designing the facility. As a result, CBO estimates that additional appropriations of $16 million annually could be necessary beginning in fiscal year 2008. Adjusting for anticipated inflation, such costs could reach as high as $23 million by 2025.

Total Costs

CBO estimates that enacting this legislation would require a total appropriation of $295 million over the next five years and $316 million in subsequent years. This estimated cost would exceed the amount specifically authorized by the bill by a total of $381 million over the 2005-2025 period. CBO estimates that the amount specifically authorized to be appropriated by the bill would be insufficient to implement the 20-year lease-purchase contract authorized by the legislation.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4794 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would benefit California, the city of San Diego, and other local and tribal governments in that state by reauthorizing and increasing federal support of a wastewater treatment project along the U.S.-Mexico border.

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