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SENATE

{ REPORT
104-386

BURLEY IRRIGATION DISTRICT TRANSFER

SEPTEMBER 30, 1996.—Ordered to be printed

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

REPORT

[To accompany S. 1921]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1921) to authorize the Secretary of the Interior to transfer certain facilities at the Minidoka project to the Burley Irrigation District, 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. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") shall, subject to paragraph (d), convey by quitclaim deed or patent all right, title and interest of the United States in and to the withdrawn and acquired lands and rights-of-way of the Southside Pumping Division (Division) of the Minidoka Project, Idaho, together with the canals, drains, laterals, roads, pumps, checks, headgates, transformers, substations, buildings, transmission lines and other improvements or appurtenances located thereon and used for the delivery of water from Lake Walcott reservoir to the lands within Burley Irrigation District, including all facilities used in conjunction therewith including the electric transmission lines used for the operation of the pumping facilities of the project for which the allocable construction costs have been fully repaid, to Burley Irrigation District (District). The cost of transfer of title and related activities shall be shared equally between the United States and the District up to a total cost of Eighty Thousand Dollars (\$80,000) at which time the United States shall pay all remaining costs incurred.

(b) The Secretary shall also transfer to the District, in accordance with and subject to state law, all natural flow and ground water rights held by the Secretary for the benefit of and for the use on the land within the District; and the allocation of storage space in Minidoka, American Falls and Palisades reservoirs to the District in accordance with the terms of contracts Nos. 14-06-100-2455 and 14-06-W-48 of the District is hereby affirmed, subject to the requirement that the District continue to assume its allocable costs of operation and maintenance associated with such storage facilities.

(c) The Secretary shall also provide the District with a permanent right to project reserve power from the Minidoka, Palisades Black Canyon, and Anderson Ranch reclamation power plants at the cost of production in accordance with understandings and commitments made by the Secretary in acquiring such plants, the Reclamation Act and the existing contracts for such electrical power. Upon the decision of the Federal Government to transfer operation and maintenance or title of the Minidoka Power Plant, the Secretary shall grant to those entities entitled to storage water in Lake Walcott under spaceholder contracts with the United States a right of first refusal to acquire the power plant and related facilities at such reasonable cost and subject to such terms and conditions as may be mutually agreed between spaceholders and the Secretary.

(d) The District shall continue to recognize the right of Minidoka Irrigation District to the joint use of the gravity portion of the Southside canal being transferred to the District, subject to its compliance with those terms and conditions of that certain contract between the District and Minidoka Irrigation District, and any amendments or changes hereafter made by agreement of said irrigation districts.

(e) Effective on the date of conveyance of the title of the distribution and related works of the Division, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the transferred works, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

(f) The United States shall complete the transfer, including such action as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) within 24 months of the passage of this Act.

(g) If the transfer is not completed by January 1, 1999, the title and interest of the United States cited in this section are conveyed to the District on that date by operation of law. Upon the request of the District the Secretary shall provide evidence of the transfer.

PURPOSE OF THE MEASURE

S. 1921, as ordered reported, would direct the transfer of facilities of the Minidoka project in Idaho located within the service area of the Burley Irrigation District to the District together with associated water rights and an allocation of project power and storage space.

BACKGROUND AND NEED

On May 23, 1995, the Subcommittee conducted a hearing on S. 620, legislation to provide general authority to the Bureau for transfer of title to projects which had been fully repaid. It became obvious at the hearing that general authority would be difficult to draft given the differences between projects and because individual transfer should proceed independently. The Burley situation is one of the easiest to address. The Minidoka project was the first Reclamation project in Idaho and was constructed under the authority of the 1902 Act. All construction contracts and costs for the canal system, pumping plants, power house, transmission lines, and other elements have been fully repaid as well as all contracts for storage and maintenance. Since 1926, the District has been responsible for all operations and maintenance of the system. The legislation does not transfer title to the dam or major works, only to the distribution system managed by the District. Discussions have continued with the Region since the introduction of the legislation and it is likely that some modifications will be recommended to the legislation.

SUMMARY OF MAJOR PROVISIONS

As ordered reported, S. 1921 will allow for the transfer of the existing facilities currently used by the Burley Irrigation District within the Minidoka Project, Idaho, from the Bureau of Reclamation to the Burley Irrigation District.

The facilities have either been paid for by the District or were constructed by the District. The transfer falls within the Bureau's guidelines for the transfer of paid out projects.

Any costs of the transfer will be equally shared by the District and the United States up to a maximum of \$80,000. Discussions with the Bureau indicate this limit should more than meet any anticipated cost of the transfer.

The substitute states that natural flows of water and groundwater currently held by the Secretary for the District and storage rights that are now under contract will be transferred to the District. The District will continue to pay operation and maintenance costs for the storage facilities.

Power shall continue to be made available at the cost of production (the current situation) and if the United States were to sell the power producing facility, the District would be offered the first right of refusal.

The substitute clarifies that this legislation in no way will interfere with the facilities currently shared with the Minidoka District.

Finally, the substitute directs a NEPA analysis to be completed within two years of enactment. If the transfer is not completed by January 1, 1999, it will occur by operation of law.

LEGISLATIVE HISTORY

On May 23, 1995, the Subcommittee conducted a hearing on S. 620, legislation to provide general authority to the Bureau for transfer of title to projects which had been fully repaid. It became obvious at the hearing that general authority would be difficult to draft given the differences between projects and because individual transfers should proceed independently. Consequently, Senator Craig introduced S. 1921 on June 27, 1996. A hearing was held by the Subcommittee on Forests and Public Land Management on September 5, 1996.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 12, 1996, by a unanimous voice vote of a quorum present, recommended that the Senate pass S. 1921 as described herein.

SECTION-BY-SECTION ANALYSIS

Subsection 1(a) requires the Secretary of the Interior to convey all right, title and interest of the United States in and to the withdrawn and acquired lands and rights-of-way of the Southside Pumping Division of the Minidoka Project in Idaho, along with the canals, drains, laterals, roads, pumps, checks, headgates, transformers, substations, buildings, transmission lines and other improvements, to Burley Irrigation District ("District"). The cost of the transfer of title and related activities is to be equally shared

by the United States and the District up to a total cost of \$80,000, at which point the United States is to pay all remaining costs.

Subsection 1(b) requires the Secretary to transfer to the District all natural flow and ground water rights held by the Secretary for the benefit of the District and the allocation of storage space in Minidoka, American Falls and Palisades reservoirs to the District, subject to the District continuing to assume its operation and maintenance costs.

Subsection 1(c) requires the Secretary to provide the District with a permanent right to project power from the Minidoka, Palisades Black Canyon, and Anderson Ranch power production plants at the cost of production. The Secretary is required to give those entities entitled to storage water in Lake Walcott under spaceholder contracted with the United States the right of first refusal, if the Government transfers operation and maintenance or title to the Minidoka Power Plant, to acquire the power plant and related facilities at such reasonable cost and subject to such terms and conditions as may be mutually agreed upon among the spaceholders and the Secretary.

Subsection (d) requires the Secretary to continue to recognize the right of Minidoka Irrigation District to the joint use of the gravity portion of the Southside canal being transferred to the District, subject to compliance with the terms and conditions of the contract between the District and the Minidoka Irrigation District.

Subsection (e) provides that, effective on the date of the conveyance of title, the United States shall not be held liable by any court for any damages of any kind arising out of any act, omission, or occurrence relating to the transferred works, except for damages caused by acts of negligence committed by the United States, its employees or agents, or contractors prior to conveyance. Nothing in the Act shall be deemed to increase the liability of the United States pursuant to the Federal Tort Claims Act.

Subsection (f) requires the United States, i.e., Secretary, to complete the transfer, including compliance with the National Environmental Policy Act, within 24 months of passage of the Act.

Subsection (g) declares that, if the transfer is not completed by January 1, 1999, the transfer of title shall occur by operation of law on that date, and that the Secretary shall provide evidence (e.g., title) of such transfer if requested by the District.

COST AND REGULATORY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1921, a bill to authorize the Secretary of the Interior to transfer certain facilities of the

Minidoka Project to the Burley Irrigation District, and for other purposes.

Enacting S. 1921 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you will further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1921.
2. Bill title: To authorize the Secretary of the Interior to transfer certain facilities of the Minidoka Project to the Burley Irrigation District, and for other purposes.
3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on September 16, 1996.
4. Bill purpose: S. 1921 would direct the Secretary of the Interior to:

Transfer land and facilities used by the Burley Irrigation District within the Minidoka Project in Idaho from the Bureau of Reclamation to the district. The cost of the transfer would be shared equally between the bureau and the district up to a total cost of \$80,000. Remaining costs would be paid by the bureau;

Transfer all natural flow and ground water rights to the district and provide the district with permanent storage rights in the Minidoka Project reservoirs on the condition that the district continue to pay all allocable costs of operating and maintaining the storage facilities; and

Provide the district with a permanent right to purchase reserve power from the project at the cost of production, the same rate as under current law. The district would be granted a right of first refusal should the Secretary decide to transfer power generating facilities in the future.

The bill would require the Secretary to complete the transfer, including actions required under the National Environmental Policy Act, within 24 months of enactment or the transfer will become effective automatically as of January 1, 1999.

5. Estimated cost to the Federal Government: CBO estimates that enacting the bill would result in new spending subject to appropriation of about \$40,000 over 1997–1998 period. Enacting the bill would not affect direct spending.

6. Basis of estimate: Based on information provided by the Bureau of Reclamation, CBO expects that the work required to transfer the facilities, including actions required under the National Environmental Policy Act, would cost about \$80,000. The federal government's share would be half this amount.

CBO estimates that completing the transfer of land and facilities would not result in any loss of future receipts because the district already has paid the federal government for the facilities that would be transferred. In addition, under current law the bureau provides this water at no cost to the district and is expected to continue this policy in the future. Finally, the district would continue

to pay all allocable costs for operating and maintaining storage facilities and would continue to pay the rate for power that is required under current law.

7. Pay-as-you-go considerations: None.

8. Estimated impact on State, local, and tribal governments: The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). The bill would require the Burley Irrigation District to pay up to \$40,000 for its share of the cost of the transfer, but the district would incur this cost voluntarily.

9. Estimate impact on the private sector: The bill would impose no new private-sector mandates as defined in Public Law 104-4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal cost estimate—Gary Brown; impact on State, local, and tribal governments—Pepper Santalucia; impact on the private sector—Patrice Gordon.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

FEDERAL MANDATE EVALUATION

The Congressional Budget Office has determined that S. 1921 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). The bill would require the Burley Irrigation District to pay up to \$40,000 for its share of the cost of the transfer, but the district would incur this cost voluntarily.

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 implementing S. 1921. 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.

There are likely to be paperwork requirements for the Department of the Interior.

EXECUTIVE COMMUNICATIONS

A Statement of Administration Position has not been submitted as of the date this report was filed. When the SAP is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1921, as ordered reported.