105TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 105–8

OROVILLE-TONASKET CLAIM SETTLEMENT AND CONVEYANCE ACT

MARCH 10, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 412]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 412) to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District, having considered the same, report favorably thereon with an amendment and recommend 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 "Oroville-Tonasket Claim Settlement and Conveyance Act".

SEC. 2. PURPOSES.

The purposes of this Act are to authorize the Secretary of the Interior to implement the provisions of the negotiated Settlement Agreement including conveyance of the Project Irrigation Works, identified as not having national importance, to the District, and for other purposes.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Reclamation" means the United States Bureau of Reclamation.

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(3) The term "District" or "Oroville-Tonasket Irrigation District" means the project beneficiary organized and operating under the laws of the State of Washington, which is the operating and repayment entity for the Project.

(4) The term "Project" means the Oroville-Tonasket unit extension, Okanogan-Similkameen division, Chief Joseph Dam Project, Washington, constructed and rehabilitated by the United States under the Act of September 28, 1976 (Public Law 94–423, 90 Stat. 1324), previously authorized and constructed under the Act of October 9, 1962 (Public Law 87–762, 76 Stat. 761), under the Federal reclamation laws (including the Act of June 17, 1902 (ch. 1093, 32 Stat. 388), and Acts supplementary thereto or amendatory thereof).

(5) The term "Project Irrigation Works" means—

(A) those works actually in existence and described in subarticle 3(a) of the Repayment Contract, excluding Wildlife Mitigation Facilities, and depicted on the maps held by the District and Reclamation, consisting of the realty with improvements and real estate interests;

(B) all equipment, parts, inventories, and tools associated with the Project Irrigation Works realty and improvements and currently in the District's possession; and

(C) all third party agreements.

(6)(A) The term "Basic Contract" means Repayment Contract No. 14–06–100–4442, dated December 26, 1964, as amended and supplemented, between the United States and the District;

(B) the term "Repayment Contract" means Repayment Contract No. 00–7–10–W0242, dated November 28, 1979, as amended and supplemented, between the United States and the District; and

(C) the term "third party agreements" means existing contractual duties, obligations, and responsibilities that exist because of all leases, licenses, and easements with third-parties related to the Project Irrigation Works, or the lands or rights-of-way for the Project Irrigation Works, but excepting power arrangements with the Bonneville Power Administration.

(7) The term "Wildlife Mitigation Facilities" means—

(A) land, improvements, or easements, or any combination thereof, secured for access to such lands, acquired by the United States under the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e); and

(B) all third party agreements associated with the land, improvements, or easements referred to in subparagraph (A).

(8) The term "Indian Trust Lands" means approximately 61 acres of lands identified on land classification maps on file with the District and Reclamation beneficially owned by the Confederated Tribes of the Colville Reservation (Colville Tribes) or by individual Indians, and held in trust by the United States for the benefit of the Colville Tribes in accordance with the Executive Order of April 9, 1872.

(9) The term "Settlement Agreement" means the Agreement made and entered on April 15, 1996, between the United States of America acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, and the Oroville-Tonasket Irrigation District.

(10) The term "operations and maintenance" means normal and reasonable care, control, operation, repair, replacement, and maintenance.

SEC. 4. AGREEMENT AUTHORIZATION.

The Settlement Agreement is approved and the Secretary of the Interior is authorized to conduct all necessary and appropriate investigations, studies, and required Federal actions to implement the Settlement Agreement.

SEC. 5. CONSIDERATION AND SATISFACTION OF OUTSTANDING OBLIGATIONS.

(a) CONSIDERATION TO UNITED STATES.—Consideration by the District to the United States in accordance with the Settlement Agreement approved by this Act shall be—

(1) payment of $350,000 by the District to the United States;

(2) assumption by the District of full liability and responsibility and release of the United States of all further responsibility, obligations, and liability for removing irrigation facilities constructed and rehabilitated by the United States under the Act of October 9, 1962 (Public Law 87–762, 76 Stat. 761), or referenced in section 201 of the Act of September 28, 1976 (Public Law 94–423, 90 Stat. 1324), and identified in Article 3(a)(8) of the Repayment Contract;

(3) assumption by the District of sole and absolute responsibility for the operations and maintenance of the Project Irrigation Works;

(4) release and discharge by the District as to the United States from all past and future claims, whether now known or unknown, arising from or in any way

related to the Project, including any arising from the Project Irrigation Works constructed pursuant to the 1964 Basic Contract or the 1979 Repayment Contract;

(5) assumption by the District of full responsibility to indemnify and defend the United States against any third party claims associated with any aspect of the Project, except for that claim known as the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement; and

(6) continued obligation by the District to deliver water to and provide for operations and maintenance of the Wildlife Mitigation Facilities at its own expense in accordance with the Settlement Agreement.

(b) RESPONSIBILITIES OF UNITED STATES.—In return the United States shall—

(1) release and discharge the District's obligation, including any delinquent or accrued payments, or assessments of any nature under the 1979 Repayment Contract, including the unpaid obligation of the 1964 Basic Contract;

(2) transfer title of the Project Irrigation Works to the District;

(3) assign to the District all third party agreements associated with the Project Irrigation Works;

(4) continue power deliveries provided under section 6 of this Act; and

(5) assume full responsibility to indemnify and defend the District against any claim known as the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed against the United States as of the date of the Settlement Agreement.

(c) PROJECT CONSTRUCTION COSTS.—The transfer of title authorized by this Act shall not affect the timing or amount of the obligation of the Bonneville Power Administration for the repayment of construction costs incurred by the Federal government under section 202 of the Act of September 28, 1976 (90 Stat. 1324, 1326) that the Secretary of the Interior has determined to be beyond the ability of the irrigators to pay. The obligation shall remain charged to, and be returned to the Reclamation Fund as provided for in section 2 of the Act of June 14, 1966 (80 Stat. 200) as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707, 714).

SEC. 6. POWER.

Nothing in this Act shall be construed as having any affect on power arrangements under Public Law 94–423 (90 Stat. 1324). The United States shall continue to provide to the District power and energy for irrigation water pumping for the Project, including Dairy Point Pumping Plant. However, the amount and term of reserved power shall not exceed, respectively—

(1) 27,100,000 kilowatt hours per year; and

(2) 50 years commencing October 18, 1990.

The rate that the District shall pay the Secretary for such reserved power shall continue to reflect full recovery of Bonneville Power Administration transmission costs.

SEC. 7. CONVEYANCE.

(a) CONVEYANCE OF INTERESTS OF UNITED STATES.—Subject to valid existing rights, the Secretary is authorized to convey all right, title, and interest, without warranties, of the United States in and to all Project Irrigation Works to the District. In the event a significant cultural resource or hazardous waste site is identified, the Secretary is authorized to defer or delay transfer of title to any parcel until required Federal action is completed.

(b) RETENTION OF TITLE TO WILDLIFE MITIGATION FACILITIES.—The Secretary will retain title to the Wildlife Mitigation Facilities. The District shall remain obligated to deliver water to and provide for the operations and maintenance of the Wildlife Mitigation Facilities at its own expense in accordance with the Settlement Agreement.

(c) RESERVATION.—The transfer of rights and interests pursuant to subsection (a) shall reserve to the United States all oil, gas, and other mineral deposits and a perpetual right to existing public access open to public fishing, hunting, and other outdoor recreation purposes, and such other existing public uses.

SEC. 8. REPAYMENT CONTRACT.

Upon conveyance of title to the Project Irrigation Works notwithstanding any parcels delayed in accordance with section 7(a), the 1964 Basic Contract, and the 1979 Repayment Contract between the District and Reclamation, shall be terminated and of no further force or effect.

SEC. 9. INDIAN TRUST RESPONSIBILITIES.

The District shall remain obligated to deliver water under appropriate water service contracts to Indian Trust Lands upon request from the owners or lessees of such land.

SEC. 10. LIABILITY.

Upon completion of the conveyance of Project Irrigation Works under this Act, the District shall—

(1) be liable for all acts or omissions relating to the operation and use of the Project Irrigation Works that occur before or after the conveyance except for the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement;

(2) absolve the United States and its officers and agents of responsibility and liability for the design and construction including latent defects associated with the Project; and

(3) assume responsibility to indemnify and defend the United States against all claims whether now known or unknown and including those of third party claims associated with, arising from, or in any way related to, the Project except for the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement.

SEC. 11. CERTAIN ACTS NOT APPLICABLE AND TERMINATION OF MANDATES.

(a) RECLAMATION LAWS.—All mandates imposed by the Reclamation Act of 1902, and all Acts supplementary thereto or amendatory thereof, including the Reclamation Reform Act of 1982, upon the Project Irrigation Works shall be terminated upon the completion of the transfers as provided by this Act and the Settlement Agreement.

(b) RELATIONSHIP TO OTHER LAWS.—The transfer of title authorized by this Act shall not—

(1) be subject to the provisions of chapter 5 of title 5, United States Code (commonly known as the "Administrative Procedure Act"); or

(2) be considered a disposal of surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and the Surplus Property Act of 1944 (50 U.S.C. App. 1601 et seq.).

(c) DEAUTHORIZATION.—Effective upon transfer of title to the District under this Act, that portion of the Oroville-Tonasket Unit Extension, Okanogan-Similkameen Division, Chief Joseph Dam Project, Washington, referred to in section 7(a) as the Project Irrigation Works is hereby deauthorized. After transfer of title, the District shall not be entitled to receive any further Reclamation benefits pursuant to the Reclamation Act of June 17, 1902, and Act supplementary thereto or amendatory thereof.

PURPOSE OF THE BILL

The purpose of H.R. 412 is to approve a settlement agreement between the Bureau of Reclamation, an agency of the Department of the Interior, and the Oroville-Tonasket Irrigation District of Washington.

BACKGROUND AND NEED FOR LEGISLATION

The Oroville-Tonasket Unit Extension Project is located in north-central Washington, near the towns of Oroville and Tonasket. The Project begins at the Canadian border north of Oroville, Washington, and extends south on both sides of the Okanogan River about 26 miles, providing irrigation water to about 10,000 acres.

The original canal and the flume system serving the Oroville-Tonasket Irrigation District were built in increments by the District starting in the early 1900s. The old Works Progress Administration (WPA) conducted a major rehabilitation of the works between 1940 and 1942. At that time, the WPA renewed and replaced sections of the wood flume, earth sections of the delivery system were concrete lined, and the WPA constructed some tunnels and concrete flumes.

In 1952, legislation was enacted that provided for studying of the prospects of irrigation near Chief Joseph Dam. Based upon these studies, the Congress approved legislation in 1962 (Public Law 87–762) authorizing the rehabilitation of the original Project system and the construction of new works. This provided an additional and supplemental water supply to 8,450 acres of the Project. In 1964, the District and the Bureau of Reclamation entered into a repayment contract for rehabilitation of the irrigation project. Work under this contract included rehabilitation of the headworks structure, reaches of the main canal, the Upper Okanogan siphon, and installation of three auxiliary pumping plants along the Okanogan River. Construction was completed in 1968.

Even while this rehabilitation work was being conducted, the distribution system continued to deteriorate to the point that failure of the system was imminent. This prompted the District to request and Congress to enact legislation in 1966 directing the Bureau of Reclamation to undertake a feasibility investigation of the Project. In 1976, Congress authorized Reclamation to construct the Oroville-Tonasket Unit Extension under Public Law 94–423, the Reclamation Authorizations Act of 1976. The Oroville-Tonasket Unit Extension was to be constructed substantially in accordance with the feasibility report, and consists of a pressurized pipe irrigation distribution system and enhancement of fish resources. The District entered into a repayment contract with Reclamation for the work in 1979, and construction began in 1980.

With the initial operation of the Project in 1984, problems were encountered with the inability of the project facilities to cope with substantial amounts of silt in the Okanogan River, and reauthorization was sought to increase the cost ceiling to modify some of the pumping plants and reduce the silt entering the irrigation system. Congressional reauthorization was provided in 1987, and the cost ceiling was increased by about $17.5 million, to $88 million.

The District was notified that the project was substantially complete in 1990, which usually initiates repayment under federal reclamation laws. The District's first annual payment was due June 15, 1991. However, the District disputes the project's substantial completion and has refused to initiate repayment.

The District alleges that the irrigation system still does not work as projected and that the annual operation and maintenance costs are much higher than the Bureau of Reclamation projected in the design phase. The District unsuccessfully sought legislative relief from its repayment obligations in 1993. In 1994, the District filed a lawsuit with the Court of Federal Claims (Fed.Cl. No. 94-779C). The complaint sought damages in excess of $44 million for alleged contract breaches; necessary remedial construction; and unfinished contractual obligations for which Reclamation allegedly remains responsible. The District also sought be to relieved of its repayment obligation to the United States in an amount of at least $12.9 million. The complaint and the United States' counterclaim were dismissed in 1995, without prejudice, upon the determination that the court lacked jurisdiction without a Contracting Officer's Decision pursuant to the Contract Disputes Act.

Therefore, in April 1995, the District submitted a claim under the Contract Disputes Act seeking $51 million in damages, recision

of its $13 million repayment obligation, and a reduction of and a cap on power rates. The Contract Disputes Act and the Bureau of Reclamation's own policies promote negotiated settlements, so Reclamation considered various options to litigating the disputed claim. An agreement to negotiate was signed by the parties on December 1, 1995, which included a provision giving the parties until April 1, 1996, to reach a negotiated settlement. Otherwise, a Contracting Officer's Decision would be issued unilaterally by the Bureau of Reclamation with respect to the disputed claim.

On December 26, 1995, the parties executed a conceptual agreement which defined the broad areas of agreement. The parties reached a settlement agreement on April 1, 1996, and executed the settlement agreement on April 15, 1996. The Settlement Agreement includes transfer of the title to the Project Irrigation Works to the District. The United States will also be relieved of financial liability for needed pipe repairs on the Project, estimated to cost around $14 million. Although this action is independent of the Bureau of Reclamation's Title Transfer Initiative, Reclamation officials have stated that the asset valuation was calculated pursuant to procedures in that initiative.

Under the settlement agreement, the District agrees to: release and discharge all past and future claims against the United States associated with the Project; assume full responsibility to indemnify and defend the United States against any third-party claims associated with the Project; makes a cash payment of $350,000 to the United States (this condition has been met); and release the United States from its obligation to remove existing dilapidated facilities.

The United States, under the terms of the settlement agreement, agrees to: release and discharge the District's construction charge obligation under the 1979 Repayment Contract; limit power for irrigation water pumping not to exceed 27.1 million kilowatt-hours per year for 50 years from October 18, 1990; and transfer title to the Project Irrigation Works to the District at no additional cost to the District. With respect to the power agreement, it should be noted that Public Law 94-423 authorized power to be made available to the District without limits on quantity and in perpetuity.

The responsibilities for the protection of the cultural and historical archaeological sites are being defined through a separate agreement that has been negotiated between the Confederated Tribes of the Colville Reservation, the District, and the Bureau of Reclamation.

During the Committee markup, there was opposition expressed to the discharge of the District's repayment obligation. However, the Committee agreed with the position of the federal negotiators, and with the Administration on this issue. While federal negotiators did not recognize the validity of all of the $51 million in claims filed by the District, they did recognize the legitimacy of claims totaling slightly more than the present value of the District's $13.3 million repayment obligation, which is payable over the next 45 years. At the time of the negotiations, the present value of this revenue stream to the United States was estimated at $4.2 million. This was calculated using 6.71 percent, the average 30-year Treasury rate in August and September 1995, when the calculations were performed.

It is the understanding of the Committee regarding this legislation that the amount of Oroville-Tonasket Project irrigation assistance that the Bonneville Power Administration will repay is not expected to exceed $75 million, and that the repayment is now scheduled to be made in the year 2042.

The Committee further notes that the settlement terms approved in H.R. 412 were based on negotiations to resolve litigation over the Oroville-Tonasket Unit. While the Committee has approved the terms for transferring the project to the Oroville-Tonasket Irrigation District, H.R. 412 should not be regarded as Congressional ratification of any of the judicial decisions underlying the settlement negotiations. In particular, the Committee has not approved the court order in *Oroville-Tonasket Irrigation District* v. *United States* holding that the Contract Disputes Act should govern disputes of this kind with the Bureau of Reclamation. The Committee finds that decision troubling, and possibly contrary to the underlying purposes of the Contract Disputes Act.

H.R. 412 also should not be regarded as a precedent for legislative action to transfer Bureau of Reclamation facilities at other projects. The litigation problems surrounding the transfer of the Oroville-Tonasket Unit and continued provision of power at low project power rates are unique. While the Committee will consider transferring other Reclamation facilities to local project beneficiaries under appropriate circumstances, the terms of this transfer will not serve as precedent for future transfers.

Similar legislation, H.R. 3777, was introduced by Congressman Richard "Doc" Hastings (R-WA) in the 104th Congress. H.R. 3777 was the subject of a legislative hearing in the Subcommittee on Water and Power Resources on September 26, 1996. At that time, the Administration took no position on the bill. However, on March 3, 1997, Chairman Don Young of the Committee on Resources received a letter from the Commissioner of Reclamation stating that the Administration could only support H.R. 412 if certain specified amendments were adopted. All of those amendments were adopted by the Committee during consideration of the bill.

COMMITTEE ACTION

H.R. 412 was introduced on January 9, 1997, by Congressman Richard "Doc" Hastings (R–WA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On March 5, 1997, the Full Committee met to consider H.R. 412, which was discharged from the Subcommittee by unanimous consent. Congressman John T. Doolittle offered an en bloc amendment to: stipulate that the transfer of title does not affect the obligation of the power customers for construction costs incurred that have been determined to be beyond the ability of the irrigators to pay; stipulate that the electric transmission rate paid by the District will continue to reflect full cost recovery; deauthorize that portion of the Oroville-Tonasket Unit Extension referred to as the Project Irrigation Works as a federal reclamation project; and to make several technical corrections to the bill as introduced. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact H.R. 412.

COST OF THE LEGISLATION

Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 412. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 412 does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Enactment of H.R. 412 could affect direct spending, as described in the Congressional Budget Office cost estimate contained in this report.

2. With respect to the requirement of clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 412.

3. With respect to the requirement of clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 412 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 7, 1997.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 412, the Oroville-Tonasket Claim Settlement and Conveyance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gary Brown.

Sincerely,

PAUL VAN DE WATER
(For June E. O'Neill, Director).

Enclosure.

Summary

H.R. 412 would approve a Settlement Agreement between the United States Bureau of Reclamation (the Bureau) and the Oroville-Tonasket Irrigation District (the District). The agreement would settle litigation over disputes arising from the construction of the Oroville-Tonasket Unit Extension, an irrigation delivery unit. Under the Settlement Agreement, the District would release and discharge all past and future claims against the United States associated with the project, make a cash payment of $350,000 to the United States (this condition has already been met), and release the United States from its obligation to remove existing dilapidated facilities. In exchange, the Secretary of the Interior would release and discharge the District's annual construction charge obligation of roughly $300,000 under the 1979 Repayment Contract, transfer title to the irrigation works to the District at no additional cost to the District, and continue to provide power for the pumping of irrigation water.

CBO expects that the federal government would probably save money if this bill were enacted. However, we have no clear basis for estimating the amount of such savings because they would result from the release of the United States from future legal claims against it by the District. CBO cannot estimate the amount or timing of any potential judgments that might occur if H.R. 412 is not enacted.

Because enacting the bill could affect direct spending, pay-as-you-go procedures would apply. The legislation does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995.

Estimated cost to the Federal Government

Direct spending

Enacting the legislation would settle claims pending against the United States under the Contract Disputes Act. Thus, the bill would allow the United States to avoid future costs that could result from claims brought against it by the Oroville-Tonasket Irrigation District. The District alleges that the irrigation system does not work as anticipated and that the annual operation and maintenance costs are much higher than the Bureau of Reclamation projected in the design phase of the project. The potential liability of the United States under pending claims exceeds $51 million, but CBO cannot predict the outcome of court proceedings of future negotiations that might occur if the claims are not dropped. Any payments that might be made under current law would be likely to occur after 1997.

Other provisions of the Settlement Agreement would have no budgetary impact. Discharging the district of its obligation to repay

the cost of the Oroville-Tonasket Unit Extension would not result in a loss of receipts that would otherwise have accrued to the United States. The District has refused to repay this cost since 1991, the first year in which repayment was required, and is unlikely to begin repaying with or without the proposed Settlement Agreement or in the absence of successful legal action on the part of the United States. The District has already made the separate $350,000 payment to the United States that would be required under the agreement. Finally, the agreement provides for the Secretary of the Interior to continue providing power for irrigation pumping, just as he would under current law.

For purposes of this estimate, CBO assumes that the legislation will be enacted before April 15, 1997, the date on which the District will proceed with litigation if the Settlement Agreement has not been approved. The statute of limitations for pursuing a legal claim expires in June of 1997.

Spending subject to appropriation

Based on information provided by the Bureau, CBO expects that enacting the bill would not have a significant impact on discretionary spending. The cost of transferring title to the facility would be less than $500,000. Enacting the bill would release the Bureau from certain obligations and expenses, including the cost of removing dilapidated facilities from the property to be transferred, likely legal fees, and annual contract administration costs, but CBO estimates that eliminating these costs would save less than $500,000 each year.

Pay-as-you-go considerations

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 412 could affect direct spending, but it is unclear whether direct spending would be affected by 1998, if ever. CBO estimates that there would be no effect on 1997 spending and that any potential effect on 1998 spending would be a savings relative to current law because enacting H.R. 412 would eliminate the possibility of judgments against the United States. CBO cannot predict the likelihood or the timing of any judgment payments that might occur if H.R. 412 is not enacted.

Estimated impact on State, local, and tribal governments

H.R. 412 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), and would impose no costs on state, local, or tribal governments. Any costs resulting from the Settlement Agreement covered by this bill would be incurred voluntarily by the District as a party to the agreement. The obligations of the District and of the United States under this agreement are discussed in detail in other sections of this estimate.

In addition to releasing the United States from future and pending legal claims, the District has agreed to make (and has already made) a cash payment to the United States and to assume respon-

sibility for removing dilapidated facilities. We estimate that the cost of this latter obligation would be about $300,000.

Estimated impact on the private sector

The bill would impose no new private-sector mandates as defined in Public Law 104–4.

Estimate prepared by: Federal cost: Gary Brown; impact on State, local, and tribal governments: Marjorie Miller; and impact on the private sector: Lesley Frymeir.

Estimated approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 412 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 412 would make no changes to existing law.

DISSENTING VIEWS

The Oroville-Tonasket Unit of the Bureau of Reclamation's Chief Joseph Dam project was completed in 1990. The local Oroville-Tonasket Irrigation District (OTID) had entered into a contract with the Bureau to receive irrigation water and repay a portion of the project costs—over 80% of the irrigation repayment costs would actually be paid by Northwest power users, because the Bureau concluded that the entire project cost exceeded the irrigators' "ability to pay" under Reclamation law. When the project was completed, OTID became obligated to begin repayment under its contract. But OTID refused to pay. The district cited continuing problems with siltation and project operations, some of which had already been addressed in project modifications. The Bureau continued to deliver water despite the district's failure to pay, and interest accumulated on the mounting debt.

OTID was dissatisfied with the Bureau's performance, and brought suit in the Court of Federal Claims. The court concluded that the dispute should be handled under the procedures specified in the Contract Disputes Act, and dismissed the case without prejudice while the parties pursued that process. Eventually, OTID signed a settlement agreement with the regional director of the Bureau of Reclamation, which would give OTID the project works for free and ensure OTID another 45 years of cheap power supplies from federal power facilities for operating the project. These settlement terms exceeded the authority of the Bureau's regional director, however, so he committed to try to obtain congressional approval for the project transfer.

Despite the claims made by OTID regarding problems with the operation of the Oroville-Tonasket Unit, we must oppose H.R. 412's free transfer of the project to OTID. If the Congress had been given an opportunity to address the project's problems and work out a solution with the irrigation district, we might well have found a way to correct the deficiencies while assuring reasonable project repayment. Instead, we have been presented with a proposal to hand over the project to OTID at no cost, forgiving over $1 million in past-due bills and a $14 million repayment obligation, and providing another 45 years of cheap power for project operations. This proposal has been presented on a take-it-or-leave-it basis; we choose to leave it.

In the past, this Committee and the Congress on occasion have provided relief to Bureau of Reclamation water users whose projects have proved defective. For example, in 1992, we passed legislation forgiving 50% of the costs of replacing defective siphons installed on the Central Arizona Project. If OTID had made its case in the Committee for forgiving some of the project costs, or for federally financed repairs, we would have been more receptive than we can be to the present legislation.

Instead, OTID decided to litigate, and now asks Congress to step into the middle of the judicial process and ratify a settlement that reduces their capital cost repayment obligation to nothing. Over 80% of the project costs will be paid by power customers in the Northwest region, to the tune of $73 million.

OTID has refused to pay its water bills for the last five years, and thus has paid nothing toward project repayment. Now, OTID wants taxpayers to give away the entire project for nothing: the power users will pay 80%, the taxpayers will pay 20%, and the irrigators who actually use the project will pay zero. This deal is simply too good.

Neither OTID nor anyone else can assert that the project is worthless. If it were, OTID would hardly be seeking its transfer to the district. In fact, OTID has received and will continue to receive substantial benefits from the project for decades to come. The project has delivered water for the last 5 years, and the irrigation district is planning on using it for at least another 45 years.

In addition, OTID will continue to profit from a reliable water supply and cheap power provided by the project throughout that period. We cannot justify giving away such a valuable capital asset constructed with the taxpayers' money.

This bill also fails the procedural requirements of the House of Representatives, because it will violate the "Pay As You Go" requirements of the Budget Act. Under this bill, the Treasury will forego annual payments due from OTID, and receive nothing in return. Thus, the bill will contribute to the annual budget deficit in each of the next five years, and beyond.

For all of these reasons, we dissent from the Committee's decision to report H.R. 412 as amended. We do agree with amendments offered by the majority that will ensure that the power users' portion of the repayment obligation will continue to be repaid. We also agree strongly with language in the full Committee report that expresses the view that this bill should not be regarded as a precedent for Bureau of Reclamation transfers generally, or as a ratification of judicial decisions in OTID's litigation.

GEORGE MILLER.
ED MARKEY.
PETER DEFAZIO.
RON KIND.
SAM FARR.
MAURICE HINCHEY.

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