Calendar No. 612

105TH CONGRESS, 2d Session | SENATE | REPORT 105–370

CARLSBAD IRRIGATION PROJECT ACQUIRED LAND TRANSFER ACT

OCTOBER 6 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

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

REPORT

[To accompany S. 736]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 736) to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District, 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 "Carlsbad Irrigation Project Acquired Land Transfer Act".

SEC. 2. CONVEYANCE.

(a) LANDS AND FACILITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject subsection (c), the Secretary of the Interior (in this Act referred to as the "Secretary") may convey to the Carlsbad Irrigation District (a quasi-municipal corporation formed under the laws of the State of New Mexico and in this Act referred to as the "District"), all right, title, and interest of the United States in and to the lands described in subsection (b) (in this Act referred to as the "acquired lands") and all interests the United States holds in the irrigation and drainage system of the Carlsbad Project and all related lands including ditch rider houses, maintenance shop and buildings, and Pecos River Flume.

(2) LIMITATION.—

(A) RETAINED SURFACE RIGHTS.—The Secretary shall retain title to the surface estate (But not the mineral estate) of such acquired lands which are located under the footprint of Brantley and Avalon dams or any other project dam or reservoir diversion structure.

(B) STORAGE AND FLOW EASEMENT.—The Secretary shall retain storage and flow easements for any tracts located under the maximum spillway elevations of Avalon and Brantley Reservoirs.

(b) ACQUIRED LANDS DESCRIBED.—The lands referred to in subsection (a) are those lands (including the surface and mineral estate) in Eddy County, New Mexico, described as the acquired lands in section (7) of the "Status of Lands and Title Report: Carlsbad Project" as reported by the Bureau of Reclamation in 1978.

(c) TERMS AND CONDITIONS OF CONVEYANCE.—Any conveyance of the acquired lands under this Act shall be subject to the following terms and conditions:

(1) MANAGEMENT AND USE, GENERALLY.—The conveyed lands shall continue to be managed and used by the District for the purposes for which the Carlsbad Project was authorized, based on historic operations and consistent with the management of other adjacent project lands.

(2) ASSUMED RIGHTS AND OBLIGATIONS.—Except as provided in paragraph (3), the District shall assume all rights and obligations of the United States under—

(A) the agreement dated July 28, 1994, between the United States and the Director, New Mexico Department of Game and Fish (Document No. 2–LM–40–00640), relating to management of certain lands near Brantley Reservoir for fish and wildlife purposes; and

(B) the agreement dated March 9, 1977, between the United States and the New Mexico Department of Energy, Minerals, and Natural Resources (Contract No. 7–07–57–X0888) for the management and operation of Brantley Lake State Park.

(3) EXCEPTIONS.—In relation to agreement referred to in paragraph (2)—

(A) the District shall not be obligated for any financial support agreed to by the Secretary, or the Secretary's designee, in either agreement; and

(B) the District shall not be entitled to any receipts for revenues generated as a result of either agreement.

(d) COMPLETION OF CONVEYANCE.—If the Secretary does not complete the conveyance within 180 days from the date of enactment of this Act, the Secretary shall submit a report to the Congress within 30 days after that period that includes a detailed explanation of problems that have been encountered incompleting the conveyance, and specific steps that the Secretary has taken or will take to complete the conveyance.

SEC. 3. LEASE MANAGEMENT AND PAST REVENUES COLLECTED FROM THE ACQUIRED LANDS.

(a) IDENTIFICATION AND NOTIFICATION OF LEASEHOLDERS.—Within 120 days after the date of enactment of this Act, the Secretary of the Interior shall—

(1) provide to the District a written identification of all mineral and grazing leases in effect on the acquired lands on the date of enactment of this Act; and

(2) notify all leaseholders of the conveyance authorized by this Act.

(b) MANAGEMENT OF MINERAL AND GRAZING LEASES, LICENSES, AND PERMITS.—The District shall assume all rights and obligations of the United States for all mineral and grazing leases, licenses, and permits existing on the acquired lands conveyed under section 2, and shall be entitled to any receipts from such leases, licenses, and permits accruing after the date of conveyance. All such receipts shall be used for purposes for which the Project was authorized and for financing the portion of operations, maintenance, and replacement of the Summer Dam which, prior to conveyance, was the responsibility of the Bureau of Reclamation, with the exception of major maintenance programs in progress prior to conveyance which shall be funded through the cost share formulas in place at the time of conveyance. The District shall continue to adhere to the current Bureau of Reclamation mineral leasing stipulations for the Carlsbad Project.

(c) AVAILABILITY OF AMOUNTS PAID INTO RECLAMATION FUND.—

(1) EXISTING RECEIPTS.—Receipts in the reclamation fund on the date of enactment of this Act which exist as construction credits to the Carlsbad Project under the terms of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359) shall be deposited in the General Treasury and credited to deficit reduction or retirement of the Federal debt.

(2) RECEIPTS AFTER ENACTMENT.—Of the receipts from mineral and grazing leases, licenses, and permits on acquired lands to be conveyed under section 2, that are received by the United States after the date of enactment and before the date of conveyance—

(A) not to exceed $200,000 shall be available to the Secretary for the actual costs of implementing this Act with any additional costs shared equally between the Secretary and the District; and

(B) the remainder shall be deposited into the General Treasury of the United States and credited to deficit reduction or retirement of the Federal debt.

SEC. 4. VOLUNTARY WATER CONSERVATION PRACTICES.

Nothing in this Act shall be construed to limit the ability of the District to voluntarily implement water conservation practices.

SEC. 5. LIABILITY.

Effective on the date of conveyance of any lands and facilities authorized by this Act, 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 conveyed property, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors, prior to conveyance. Nothing in this section shall be considered to increase the liability of the United States beyond that provided under chapter 171 of title 28, United States Code, popularly known as the Federal Tort Claims Act.

SEC. 6. FUTURE BENEFITS.

Effective upon transfer, the lands and facilities transferred pursuant to this Act shall not be entitled to receive any further Reclamation benefits pursuant to the Reclamation Act of June 17, 1902, and Acts supplementary thereof or amendatory thereto attributable to their status as part of a Reclamation Project.

PURPOSE OF THE MEASURE

The purpose of S. 736, as reported is to authorize the transfer of the Carlsbad Project to the Carlsbad Irrigation District.

BACKGROUND AND NEED

In the 104th Congress, the Committee held hearings on legislation (S. 620) that would have provided generic authority for the transfer of certain Reclamation projects to project beneficiaries as well as legislation specific to individual projects. The generic legislation was introduced following the Department of the Interior's statement, as part of the Reinventing Government Initiative, that it would seek to transfer title to appropriate projects where there were no overriding concerns.

S. 620 would have directed the Secretary of the Interior to transfer title to all federal property associated with fully paid out Bureau of Reclamation projects to the project beneficiaries in those instances where the beneficiaries have already assumed responsibility for operation and maintenance. The legislation would have provided that the transfer would be without cost and would have made all revenues previously collected from project lands and placed in the reclamation fund available to the beneficiaries under the formula set forth in subsection I of the Fact Finders Act of 1924. The Fact Finders Act provides generally that when water users take over operation of a project, the net profits from operation of project power, leasing of project lands (for grazing or other purposes), and sale or use of town sites are to be applied first to construction charges, second to operation and maintenance (O&M) charges, and third "as the water users may direct".

Proposals to transfer title to selected reclamation facilities have been advanced before. Some have already been authorized by Congress. (See most recently: Pub. L. No. 102–575, title XXXIII transferring facilities to the Elephant Butte Irrigation District, New Mexico, and title XIV, dealing with the Vermejo Project, New Mexico.) Other title transfer proposals, such as ones advanced in 1992 for the Central Valley Project and in the late 1980s for the Solano Project and the Sly Park Unit, have been quite controversial.

As of 1990, the Bureau had identified 415 project components—out of a total of 568 facilities—where operation and management

responsibilities had been transferred or were scheduled to be transferred to project users. Section 6 of the Reclamation Act of 1902 (32 Stat. 388, 389) provides in pertinent part that "when the payments required by this act are made for the major portion of the lands irrigated from the waters of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby. * * *" The section concludes with the following proviso: "*Provided,* That the title to and the management and operations of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress." Historically, the Bureau has usually transferred operation and maintenance to local districts in advance of project repayment where the districts have expressed an interest in taking over management and have the capability to assume the responsibility.

A transfer provision was also included in the 1955 Distribution System Loans Act, as amended. This provision differs from the 1902 law in that it allows transfer of title to the lands and facilities upon repayment of the loan. In addition to the operations and management transfer authorization under the Reclamation Act of 1902, several other title transfer provisions are included in individual project acts. These include Section 7 of the 1928 Boulder Canyon Project Act (Act of Dec. 21, 1928, 45 Stat. 1057, 43 U.S.C. 617 et seq.), which authorizes the Secretary to transfer title of the All-American Canal and certain other related facilities after repayment has been completed; provisions in the Act of September 22, 1959 (Pub. L. No. 86–357, 73 Stat. 641), regarding transfer of title for Lower Rio Grande project facilities; and, Pub. L. No. 83–752 (68 Stat. 1045), which directs the Secretary to transfer title to the Palo Verde Irrigation District upon repayment. Under the 1954 Act, the U.S. retained the right to build hydro power facilities at the site and to retain a share in energy production.

The hearings on S. 620 during the 104th Congress demonstrated the generic legislation was not likely to deal with all the possible issues associated with project transfers and that such legislation would wind up being complex and overly burdensome. As a result, discussions began on the potential transfer of several projects, or portions thereof. The Committee considered the transfer of the Collbran project and included language in the Reconciliation measure, H.R. 2491, the Balanced Budget Act of 1995, which was vetoed by the President. The Reconciliation measure also contained language (section 5356) to transfer the Sly Park unit of the Central Valley Project. That language was included in the House amendments and accepted in conference. During the 104th Congress, the Committee also conducted hearings and favorably reported legislation on the Carlsbad project (S. 2015), and the distribution portion of the Minidoka project serving the Burley Irrigation District (S. 1921). The Committee also held hearings on legislation for the transfer of Canadian River, Palmetto Bend and Nueces River projects in Texas (S. 1719). However, none of the measures was enacted into law.

During this Congress, the Committee has considered legislation providing for the transfer of certain features of the Minidoka Project, Idaho (S. 538), which was favorably reported from the

Committee on November 3, 1997 and which passed the Senate on June 25, 1998. The Committee has also considered and favorably reported legislation providing for the transfer of the lands and facilities of the Wellton-Mohawk Division of the Gila Project, Arizona (S. 2087) and the Pine River Project, Colorado (S. 2142). The Committee has also considered and favorably reported legislation that authorizes the prepayment of outstanding obligations on the Canadian River Project, Texas, which would permit the transfer of those facilities as provided in the 1950 legislation authorizing the project.

The Carlsbad Project is located in southeastern New Mexico on the Pecos River near the city of Carlsbad. Project features include Sumner Dam and Lake Sumner (previously Alamogordo Dam and Reservoir), McMillan Dam, Avalon Dam, and a drainage and distribution system. In addition to irrigation benefits, the project facilities also provide flood control and recreation benefits. Irrigation in the area dates to Spanish settlements around 1600 and flourished during the Spanish land grant colonization system in the early 19th century. In 1888, a large ranch was located in the general area of the present Carlsbad Project. The ranch manager initiated the first large-scale irrigation attempt. Since the natural characteristics of the area required a more comprehensive treatment than the enterprise could afford, it failed. For the next 17 years, various private interests attempted to make this project financially profitable, but without success.

During this period, project facilities were built to include McMillan Dam for water storage, Avalon Dam for both storage and diversion, the Main Canal, and a distribution system that irrigated 15,000 acres. Private operation of the project ended in 1904 when a Pecos River flood destroyed the central canal and much of the irrigation system and swept away Avalon Dam. Without water for the land, the project settlers faced complete ruin. Upon their request, in 1905 the Reclamation Service was authorized to purchase the system. Reclamation then began investigations prior to rehabilitating the project.

The original Carlsbad Project was authorized by the Secretary of the Interior on November 28, 1905. Sumner Dam was authorized for construction by the President on November 6, 1935, initial funds having been approved on August 14, 1935 under the Emergency Relief Appropriations Ace of 1935. Section 7 of the Flood Control Act of August 11, 1939, declared Sumner Dam and Lake Sumner were to be used first for irrigation, then for flood control, river regulation, and other beneficial uses. Brantley Dam and Reservoir were authorized on October 20, 1972, by Public Law 92–514, to replace the depleted capacity of McMillan Reservoir and provide flood control, fish and wildlife, and recreation benefits. The Carlsbad Irrigation District has also entered into loans under the Rehabilitation and Betterment program of the Bureau of Reclamation for concrete lining and improvement of the irrigation system which have significantly reduced water losses and provided a more efficient delivery of water.

LEGISLATIVE HISTORY

S. 736 was introduced on May 13, 1997 by Senator Domenici. A similar measure, H.R. 1943, was introduced by Congressman Skeen

on June 17, 1997. A hearing was held by the Subcommittee on Water and Power on June 10, 1997.

At the business meeting on September 23, 1998, the Committee on Energy and Natural Resources ordered S. 736, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 23, 1998, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 736, if amended as described herein.

COMMITTEEE AMENDMENT

During the consideration of S. 736, the Committee adopted an amendment in the nature of a substitute to address concerns raised by the Administration during its testimony. The specific provisions of the amendment are discussed in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title.

Section 2 authorizes the conveyance of the project except for the surface estate under the footprint of Brantley and Avalon dams and the retention of storage and flow easements for any tracts located under the maximum spillway elevations of the reservoirs. The District is required to manage all lands for project purpose and will assume all rights and obligations of the United States for the management of certain lands near Brantley for fish and wildlife purposes and the management of Brantley Lake State Park, except that the District will not be obligated for financial support nor entitled to any revenues. The section provides that if the project has not been transferred within 180 days from the date of enactment, the Secretary of the Interior shall submit a report to Congress explaining why the project has not been conveyed and what steps the Secretary will take to complete the conveyance.

Section 3 provides for the District to assume all mineral and grazing leases and requires that any income be used for project purposes and that the District adhere to Bureau of Reclamation leasing stipulations. The section provides for the transfer of existing credits of the Carlsbad Project in the Reclamation Fund to be credited to the General Treasury and provides that the first $200,000 of receipts received after the date of enactment to be used to offset the costs of transfer with all further costs shared equally between the United States and the District.

Section 4 provides that nothing in the Act will constitute a limit on any water conservation measures the District may choose to implement.

Section 5 provides for a limitation on future liability of the United States subsequent to transfer of the project.

Section 6 provides that upon transfer, land and facilities will no longer be eligible for Reclamation benefits available solely as a result of their status as a Reclamation project.

COST AND BUDGETARY CONSIDERATIONS

An estimate of the cost of this measure has been requested from the Congressional Budget Office, but has not been received as of the date of filing of this report. When the estimate is received, the Chairman will have it printed in the Congressional Record for the advice of the Senate. CBO estimated that a similar measure, S. 736, which was reported by the Committee during the last Congress would result in costs of $1.7 million in the year following enactment and $200,000 each year thereafter.

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. 736. 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. 736, as ordered reported.

EXECUTIVE COMMUNICATIONS

On May 15, 1997, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 736. These reports had not been received at the time the report on S. 736 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The pertinent portions of the testimony provided by the Commissioner of the Bureau of Reclamation, Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF ELUID MARTINEZ, COMMISSIONER, U.S. BUREAU OF RECLAMATION

Thank you for the opportunity to appear today to provide the Administration's views on four bills before this Subcommittee. These bills are S. 538, legislation to convey certain facilities of the Minidoka Project to the Burley Irrigation District; S. 736, legislation to convey the acquired lands and the distribution and drainage system of the Carlsbad Irrigation Project to the Carlsbad Irrigation District; and S. 744, the Fall River Water Users District Rural Water System Act of 1997. The Administration also has concerns about S. 439 and will submit a statement for the hearing record.

Before I discuss the specifics of each legislative proposal, I would like to talk briefly about Reclamation's title transfer efforts in general.

TITLE TRANSFER

As you may recall, the Bureau of Reclamation's title transfer efforts began as part of Phase II of the Administration's National Performance Review (REGO II). It was and still is viewed as an opportunity to create a government that works better and costs less by transferring certain facilities to state or local units of government or other non-Federal entities.

In August, 1995, Reclamation released its Framework for the Transfer of Title: Bureau of Reclamation Projects. This framework sets out a consistent, fair, and open process for negotiating the transfer of title to appropriate facilities with all the interested stakeholders to develop an agreement that could be brought to Congress and supported by all the parties involved.

Soon after the Administration announced the initiative more than sixty entities—including irrigation districts, municipal authorities, and cities—contacted Reclamation and expressed their interest in title transfer. However, the majority of those entities decided not to pursue title transfer at that time for a variety of reasons—the most common of which was concern about assuming liability for the facilities.

Since that time, Reclamation's five regions have entered into discussions and negotiations with approximately twenty districts—some of those have dropped out, but many remain on-going. Currently, there are three title transfers that are working their way through the Administration's review that we believe will be good models for others interested in title transfer. These include:

(1) Clear Creek, an irrigation facility located in the Central Valley Project in California;

(2) Contra Costa, a municipal district also located in the Central Valley Project; and

(3) San Diego Aqueduct, a municipal facility located in southern California.

The difference between the legislation before this Committee today and the three negotiated transfer mentioned above are important. Each of these three listed above will have gone through a full NEPA review process before coming to Congress, none of them is designed to diminish or circumvent environmental objectives, and all would include terms that protect the financial interests of the United States. And as importantly, each has gone through a public negotiations sessions and have attempted to include any interested stakeholders in the proposal's development.

In the 18 months since this effort began, the most important lesson that we—both Reclamation and the districts—have learned is that there is no such thing as a simple project. Each facility is unique and each has its own set of complexities that neither Reclamation nor the districts anticipated when we began discussions. Let me assure this committee, however, that transferring title to

appropriate Reclamation facilities remains a high priority for me personally and for the Administration.

There has been criticism about Reclamation's process—as being cumbersome and slow. I am sensitive to this concern and we are working to try to streamline the process to make it work better. Frankly, Mr. Chairman, a big part of the problem is that we—again both Reclamation and the entities we are discussing transfers with—are new to this. We don't have a lot of experience and are learning as we go. With each project, we find that we are having to identify new sets of issues that we did not anticipate and work to resolve them in an equitable and thoughtful manner. I firmly believe, however, that we are gaining the experience with each set of negotiations which will enable us to move more quickly in the future.

Regardless of the species of each project and how negotiations proceed—whether it is through our Framework process, some other administrative process or directly through the legislative process—there are a few basic tenets that we need to ensure are a part of every facilities transfer negotiation

First and foremost, the process needs to be open and inclusive of all stakeholders. History has shown that if the process is not inclusive, those who are left out will derail the proposal at the eleventh hour and ultimately it will take even longer. It has been our experience that short cuts take significantly more time than the thorough route.

Second, any proposal must pass the "straight face test." To help clarify how to do that we have established six basic criteria that we believe satisfy that threshold (1) The Federal Treasury and thereby the taxpayers' financial interest, must be protected; (2) there must be compliance with all applicable State and Federal laws; (3) Interstate compacts and agreements must be protected; (4) the Secretary's Native American trust responsibility must be met; (5) Treaty obligations and international agreements must be fulfilled; and (6) the public aspects of the project such as recreation, flood control, fish and wildlife and others must be protected.

Given those broad parameters, I would like to provide our views on the legislation under consideration by the Subcommittee.

S. 736 CARLSBAD IRRIGATION PROJECT ACQUIRED LAND TRANSFER ACT

S. 736 would authorize the Secretary to convey, without cost all right, title and interest of the United States in the irrigation and drainage system of the Carlsbad Project and acquired lands described in the "Status of Lands and Title Report: Carlsbad Project" to the Carlsbad Irrigation District (CID).

Since the end of the 104th Congress, Reclamation and CID have continued to discuss and negotiate title transfer of these facilities and lands in the hopes of finding resolu-

tion to the issues raised during the 104th Congress. Although these negotiations and discussions brought us closer together, they have not yet been successful. And, while it will be desirable to transfer title to the irrigation and distribution facilities to CID, the Administration cannot support S. 736 in its current form.

Before identifying our concerns, I would like to note the progress and some areas where we believe improvements have been made from earlier drafts:

(1) S. 736 authorizes the Secretary to convey title rather than directing him to do so as in S. 538 and S. 725. This legislation envisions that actions under NEPA would be carried out. Although we do not anticipate encountering significant environmental issues in this transfer we believe the legislation should provide that the Secretary may establish such conditions for the transfer as he deems appropriate to resolve issues identified during the NEPA process.

(2) Section 2 directs the Secretary to notify CID of all mineral and grazing leases on acquired lands. Under previous draft, such notification was required within 45 days. In testimony presented in the 104th Congress, the Department recommended that 120 days would be appropriate. S. 736 has provided 120 days as requested.

Unfortunately, other provisions of S. 736 do not sufficiently protect the interests of the Treasury and therefore, the Administration cannot support this proposal. Like the other bills under consideration today, Reclamation believes that Carlsbad is a good candidate for title transfer. Furthermore, with some modifications, we believe we could support passage of S. 736. Let me outline the concerns of the Administration:

(1) *Dam Safety.* Section 2 reserves for the Secretary title to the surface estate for lands which are located under the footprint of Brantley and Avalon dams. We recommend an important technical amendment to clarify that no mineral extraction will occur one mile from the center axis of the dam, unless approved by the Secretary.

(2) *Pay-As-You-Go.* Section 3(b) and 3(c) would reduce expected receipts to the Treasury and increase the Federal deficit. As these provisions are not offset, S. 7316 would be subject to the Pay-As-You-Go requirements of the Omnibus Budget Act of 1990.

(1) *Reclamation Fund.* Section 3(b) and 3(c) would require the United States to make available approximately $1.6 million in the Reclamation Fund and all future oil, gas, and grazing revenues to the CID. Under the Mineral Leasing Act for Acquired Lands of 1947, these revenues are placed in the Reclamation Fund and are credited in the Carlsbad construction account towards repayment of any future project construction obligation. However, no additional construction is authorized or contemplated. We are concerned that under the bill the District is not being asked to pay a fair price for the revenue producing assets

that it seeks to acquire considering the value that the lands and mineral estate would have to the Federal government or other potential purchaser.

(4) *Water Conservation.* The Administration recommends the deletion of section 4, as it provides a new authorization for the expenditure of monies. Reclamation needs to retain the flexibility to determine the appropriate Federal share of water conservation costs for this project. In addition, the language if adopted should be clarified to ensure the District's water conservation practices comply with Federal and State laws, and are consistent with the existing management of such lands and other adjacent project lands.

(5) *Liability Language* S. 736 should be amended to contain language to ensure that the recipients accept full liability for the property when it is conveyed. We recommend that S. 736 include the following:

> Effective on the date of conveyance of the lands and facilities described in Section 2(a), 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 conveyed lands and facilities, 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.

(6) Water Rights. Unlike the provisions of the Collbran transfer, the Carlsbad legislation does not attempt to transfer title to any project water rights obtained by the United States by purchase or appropriation for the Carlsbad project. Carlsbad project water is provided to the CID by contract and the District is in agreement with the ownership of title to all project water rights remaining in the name of the United States.

The flowage easement retained by the United States in Section 2(a)(2)(B) needs to include a right of access to the conveyed property to operate and maintain and construct and reconstruct the facilities and lands and interests in lands and facilities retained by the United States. Such an easement will allow the United States access to the dams for safety of dams and other purposes as well as the ability to perform such functions as dredging and other operations in the reservoir.

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. 736, as ordered reported.

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