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HOUSE OF REPRESENTATIVES

REPORT
106–260

CARLSBAD IRRIGATION PROJECT ACQUIRED LAND CONVEYANCE ACT

JULY 26, 1999.—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

ADDITIONAL VIEWS

[To accompany H.R. 1019]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1019) to direct the Secretary of the Interior to convey lands and interests comprising the Carlsbad Irrigation Project to the Carlsbad Irrigation District, New Mexico, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1019 is to direct the Secretary of Interior to convey lands and interests comprising the Carlsbad Irrigation Project to the Carlsbad Irrigation District, New Mexico.

BACKGROUND AND NEED FOR LEGISLATION

Bureau of Reclamation (BOR) facility transfers has been of particular interest to the Congress, local irrigation districts, and the Administration in recent years. Facility transfers represent an effort to shrink the federal government and shift the responsibilities for ownership into the hands of those who can more efficiently operate and maintain them. As a result of the National Performance Review (Reinventing Government II), BOR, which is part of the Department of the Interior, initiated a program in 1995 to transfer

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ownership of some of its facilities to non-federal entities. However, to date, the Administration has not presented a legislative proposal for project transfers. During the 105th Congress, two legislatively initiated BOR transfers bills were signed into law that directed the Secretary of the Interior to convey all right, title, and interest of the United States in and to specified project facilities.

Much of the momentum for these transfers comes from local irrigation districts that are seeking title to these projects. The federal government holds title to more than 600 BOR water projects throughout the West. A growing number of these projects are now paid out and operated and maintained by local irrigation districts. The districts seek to have the facilities transferred to them since many of the districts now have the expertise needed to manage the systems and can do so more efficiently then the federal government. BOR has already transferred operation and maintenance responsibilities for about 400 of the projects to local irrigation districts. Under the provisions of Section VI of the Reclamation Act of 1902, title to project facilities remain with the United States unless otherwise provided by Congress, even if project beneficiaries have completed their repayment obligation. Section VI of the Reclamation Act of 1902 states:

> The Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided,* That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any 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, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided,* That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

32 Stat. 389; 43 U.S.C. §§ 491, 498

Many of these projects were constructed in remote locations and at a time when there were no local communities and utilities near the BOR project. Furthermore, many of the States in which the projects were built did not have a sufficient tax base to fund them. However, as the West became more populated, and with the urbanization of these areas, the BOR now owns and operates public facilities that would be owned, operated, and funded by private corporations or local government agencies if they were constructed today.

Legislative initiatives to transfer the title of BOR facilities have been in play for many years. Two bills enacted during the 105th Congress and signed into law directed the Secretary of Interior to convey all right, title, and interest of the United States in and to selected project features to the Burley Irrigation District and the Canadian River Project. See Public Law 105–351 and Public Law

105–316. In addition, Title XIV of Public Law 102–575 directed the Secretary to transfer the Rio Grande Project in New Mexico to the local irrigation district, once the local irrigation district consented to amend a contract.

Background of the Carlsbad Irrigation Project

The Carlsbad Project is a paid-out, single purpose irrigation project delivering stored water to approximately 25,000 acres of farm land in southeastern New Mexico. 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 Act 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.

Mineral leases for the acquired lands in the project were issued under the Mineral Leasing Act for Acquired Lands, and until the project indebtedness was repaid in 1991, were credited toward indebtedness on the project. These receipts continue to be paid into the Reclamation Fund and exist as credits to the Carlsbad Project.

It is contemplated that the Carlsbad project facilities transferred by this legislation would be maintained and managed after the transfer so that there would be no significant changes in operation and maintenance or in land and water use in the reasonably foreseeable future. Once transfer takes place, the future management of the facility will be the responsibility of the new owners with any changes made pursuant to all then applicable laws.

COMMITTEE ACTION

H.R. 1019 was introduced on March 4, 1999, by Congressman Joe Skeen (R–NM). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On March 11, 1999, the Subcommittee met to mark up the bill. No amendments were offered and the bill was ordered favorably reported to the Full Committee by voice vote. On March 17, 1999, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of the bill is the "Carlsbad Irrigation Project Acquired Land Conveyance Act."

Section 2. Definitions

This section defines three terms used in the Act.

Section 3. Conveyance of project

With the Carlsbad Irrigation District's repayment obligation completed, the bill directs the Secretary of Interior to convey the ac-

quired lands and the drainage and distribution system from the BOR to the District.

The Committee expects that title transfer should occur in an open and fair public process within the affected community. The Committee does not want to establish a one size fits all statutory procedure that would limit a State or community from developing a process to address issues surrounding each individual project, and how it should be conveyed. Furthermore, it is not the intent of the Committee to use the National Environmental Policy Act as a means to stall, or halt a project from transferring to a local entity, as this action is essentially a quiet title action. If environmental documentation is needed to facilitate a conveyance, it is the intent of the Committee to have it done in a timely manner. For example, this H.R. 1019 provides that if no changes in Project operations are expected following the conveyance of title then the Secretary shall complete the conveyance expeditiously, but not later than 180 days after the date of the enactment of the Act. If the District proposes to change Project operations as a result of conveyance of the Project, the Secretary shall take that into consideration and complete the conveyance within two years. If the Secretary fails to meet the conveyance deadlines the Committee expects the full costs of administrative action and environmental compliance for the conveyance to be borne by the Secretary. If the Secretary completes the conveyance before the 180-day deadline, up to $200,000 of the post enactment/prior conveyance mineral, grazing, licence and permit receipts may be applied to pay the Secretary's and District's cost of conveyance.

Section 4. Relationship to existing operations

The Committee expects the Secretary to allow the District to continue its participation in programs which involve Carlsbad Project lands and facilities that are not conveyed under this Act.

Section 5. Relationship to certain contract obligations

This section clarifies the obligations of the District and the United States regarding certain contract obligations.

Section 6. Lease management and past revenues collected from the acquired lands

H.R. 1019 stipulates that the amounts existing in the Reclamation Fund over $2,300,000, as of the date of enactment, will be deposited into the Treasury. Thereafter, up to $200,000 of the receipts collected before conveyance will be set aside to cover conveyance costs. Once conveyance is complete, future revenues shall be made available to the District for maintenance and improvements to the project facilities after transfer.

The appropriate use of the existing funds in the Reclamation Fund, as well as those which will continue to accrue after transfer have been controversial issues with the Administration. However, during 1998 the District and the BOR came to an agreement on how to treat the Reclamation Fund. The agreement remedies this problem by turning over the operation and management of Sumner Dam, from the BOR to the District.

Section 7. Water conservation practices

This section clarifies that nothing in this Act shall limit the ability of the District to voluntarily conserve water.

Section 8. Liability

Once title is conveyed, the responsibility for the conveyed property fully resides with the District. For all decisions and liabilities that may arise subsequently, the District assumes all financial risks and benefits.

Section 9. Future reclamation benefits

After conveyance of the Project facilities to the District under this Act, the District is no longer eligible for any emergency loan from BOR for the maintenance or replacement of any facility conveyed.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII 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 grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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 this bill. However, clause 3(d)(3)(B) 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 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office estimates that enactment of this bill would reduce discretionary spending by $100,000 over the 2000–2004 period and increase direct spending by $200,000 a year beginning in 2000 based on the use of the receipts collected for mineral and grazing leases by the Bureau of Reclamation and later by the District.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII 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 on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Com-

mittee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 18, 1999.

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. 1019, the Carlsbad Irrigation Project Acquired Land Conveyance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gary Brown (for federal costs), and Majorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1019—Carlsbad Irrigation Project Acquired Land Conveyance Act

Summary: H.R. 1019 would direct the Secretary of the Interior, acting through the Bureau of Reclamation (the bureau), to convey the irrigation and drainage system of the Carlsbad Project, New Mexico, and related lands and property, including most of the surface and mineral estates, to the Carlsbad Irrigation District (the district).

CBP estimates that implementing the bill would reduce discretionary spending over the 2000–2004 period by $100,000, assuming appropriations are reduced correspondingly. CBO estimates that enacting H.R. 1019 would increase direct spending by $200,000 annually beginning in 2000; therefore, pay-as-you-go procedures would apply.

H.R. 1019 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Local governments might incur some costs as a result of the bill's enactment, but these costs would be voluntary.

Estimated cost to the Federal Government: CBO estimates that implementing the bill would reduce discretionary spending by about $20,000 a year, assuming that appropriations are reduced accordingly, and would increase direct spending by $200,000 annually beginning in 2000. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For purpose of this estimate, CBO assumes that the bill will be enacted by the end of fiscal year 1999. Under current law, about $20,000 is appropriated each year to the Bureau of Reclamation for operation, maintenance, and oversight of land and facilities that would be managed solely by the district if H.R. 1019 is implemented. The bureau would no longer incur these costs if the bill is enacted.

Conveying the lands and property to the irrigation district would also affect federal receipts from mineral and grazing leases at the Carlsbad Project. Direct spending would increase beginning in 2000

because H.R. 1019 would allow the bureau to use receipts collected after the bill is enacted but prior to conveyance to offset the cost of conveying the project. Additionally, the bill would transfer to the irrigation district the right to all receipts after conveyance. As a result, CBO estimates that additional outlays from direct spending would total about $200,000 a year.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 1019 would not affect governmental receipts but would increase outlays from direct spending by about $200,000 a year, beginning in 2000.

Estimated impact on State, local, and tribal government: H.R. 1019 contains no intergovernmental mandates as defined in UMRA. The conveyance authorized by this bill would be voluntary on the part of the district, and any costs incurred as a result of the conveyance would be accepted on that basis. CBO estimates that the additional costs incurred by the district (about $20,000 per year) would be more than offset by the new receipts (about $200,000 per year).

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On March 10, 1999, CBO prepared an estimate for S. 291, the Carlsbad Irrigation Project Acquired Land Transfer Act, as ordered reported by the Senate Committee on Energy and Natural Resources on March 4, 1999. The two bills are similar and the estimates are the same.

Estimate prepared by: Federal Costs: Gary Brown. Impact on State, Local, and Tribal Governments: Marjorie Miller.

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

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill makes no changes in existing law.

ADDITIONAL VIEWS

There are several objectionable provisions in this bill:

• This bill would set a precedent for privatization of federal facilities that would bankrupt the Treasury if applied nationwide. Rather than producing income to the Treasury, H.R. 1019 would provide a sweetheart give-away to the single-interest Carlsbad Irrigation District. The taxpayers cannot afford such largesse.

• In addition to practically giving away facilities owned by the public, the bill would give away public lands, public mineral rights, and even funds from the public Treasury. And this entire give-away would be mandated without any advance evaluation of the environmental impacts of such a transfer.

• The bill clearly provides that the District is "entitled to any receipts" from oil and gas leases associated with this project. The oil and gas leases associated with the mineral rights that the Carlsbad Irrigation District wishes to acquire currently provide a steady income to the Treasury that is credited to the Reclamation Fund in accordance with the terms of the Fact Finders Act of 1924. The money is held in the Treasury, subject to appropriation for further capital investment in the Carlsbad Project. Instead of giving the receipts directly to the District as required by H.R. 1019, why shouldn't we at least consider using this money as credit toward continuing federal obligations for non-reimbursable project purposes like fish and wildlife, flood control, recreation and vegetation control?

• H.R. 1019 mandates that these assets be transferred without any review of the environmental impacts of that mandate. Despite the fact that management of the Carlsbad Project has significant effects on the local environment and recreation, no environmental analysis will be required before the Secretary transfers the project. Although there is no express waiver of the National Environmental Policy Act (NEPA), the bill still leaves the Secretary of the Interior with no alternative but to transfer the designated facilities. This mandated, non-discretionary transfer significant weakens the purposes of NEPA, by making the most significant choice—to transfer the project—without the benefit of environmental analysis. This dramatically constrains the Secretary's decision making options.

However, existing legislative authorities available to the Secretary of the Interior are not repealed by this legislation, and we do not believe this bill totally circumscribes the role of the Bureau of Reclamation in specifying mitigation requirements, if appropriate. If the NEPA process is fairly applied as the Carlsbad transfer is implemented, we expect the Bureau will attach whatever conditions it believes are appropriate to mitigrate environmental damaged and to ensure compliance with applicable laws.

GEORGE MILLER.
PETER DEFAZIO.

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