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GRIFFITH PROJECT PREPAYMENT AND CONVEYANCE ACT

OCTOBER 6, 1999.—Ordered to be printed

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

REPORT

[To accompany S. 986]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 986) to direct the Secretary of the Interior to convey the Griffith Project to the Southern Nevada Water Authority, 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 "Griffith Project Prepayment and Conveyance Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) The term "Authority" means the Southern Nevada Water Authority, organized under the laws of the State of Nevada.

(2) The term "Griffith Project" means the Robert B. Griffith Water Project, authorized by and constructed pursuant to the Southern Nevada Water Project Act, Public Law 89–292, as amended (commonly known as the "Southern Nevada Water Project Act") (79 Stat. 1068), including pipelines, conduits, pumping plants, intake facilities, aqueducts, laterals, water storage and regulatory facilities, electric substations, and related works and improvements listed pursuant to "Robert B. Griffith Water Project (Formerly Southern Nevada Water Project), Nevada: Southern Clark County, Lower Colorado Region Bureau of Reclamation," on file at the Bureau of Reclamation and all interests in land acquired under Public Law 89–292, as amended.

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

(4) The term "Acquired Land(s)" means all interests in land, including fee title, right(s)-of-way, and easement(s), acquired by the United States from non-Federal sources by purchase, donation, exchange, or condemnation pursuant to Public Law 89–292, as amended for the Griffith Project.

(5) The term "Public Land" means lands which have never left Federal ownership and are under the jurisdiction of the Bureau of Land Management.

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(6) The term "Withdrawn Land" means Federal lands which are withdrawn from settlement, sale, location of minerals, or entry under some or all of the general land laws and are reserved for a particular public purpose pursuant to Public Law 89–292, as amended, under the jurisdiction of the Bureau of Reclamation, or are reserved pursuant to Public Law 88–639 under the jurisdiction of the National Park Service.

SEC. 3. CONVEYANCE OF GRIFFITH PROJECT.

IN GENERAL.—(a) In consideration of the Authority assuming from the United States all liability for administration, operation, maintenance, and replacement of the Griffith Project and subject to the prepayment by the Authority of the federal repayment amount of $121,204,348 (which amount shall be increased to reflect any accrued unpaid interest and shall be decreased by the amount of any additional principal payments made by the Authority after September 15, 1999 prior to the date on which prepayment occurs), the Secretary shall, pursuant to the provisions of this Act:

(1) convey and assign to the Authority all of the right, title, and interest of the United States in and to improvements and facilities of the Griffith Project in existence as of the date of this Act; and

(2) convey and assign to the Authority all of the right, title, and interest of the United States to Acquired Lands that were acquired for the Griffith Project; and

(3) convey and assign to the Authority all interests reserved and developed as of the date of this Act for the Griffith Project in lands patented by the United States.

(b) Pursuant to the authority of this section, from the effective date of conveyance of the Griffith Project, the Authority shall have a right of way at no cost across all Public Land and Withdrawn Land,

(1) on which the Griffith Project is situated; and

(2) across any other federal lands as reasonably necessary for the operation, maintenance, replacement, and repair of the Griffith Project, including existing access routes.

Rights of way established by this section shall be valid for as long as they are needed for municipal water supply purposes and shall not require payment of rental or other fee.

(c) Within twelve months after the effective date of this Act,

(1) the Secretary and the Authority shall agree upon a description of the land subject to the rights of way established by subsection (b) of this section; and

(2) the Secretary shall deliver to the Authority a document memorializing such rights of way.

(d) REPORT.—If the conveyance under subsection (a) has not occurred within twelve months after the effective date of this Act, the Secretary shall submit to Congress a report on the status of the conveyance.

SEC. 4. RELATIONSHIP TO EXISTING CONTRACTS.

The Secretary and the Authority may modify Contract No. 7–07–30–W0004 and other contracts and land permits as necessary to conform to the provisions of this Act.

SEC. 5. RELATIONSHIP TO OTHER LAWS AND FUTURE BENEFITS.

(a) If the Authority changes the use or operation of the Griffith Project, the Authority shall comply with all applicable laws and regulations governing the changes at that time.

(b) On conveyance of the Griffith Project under section 3 of this Act, the Act of June 17, 1902 (43 U.S.C. 391 et seq.), and all Acts amendatory thereof or supplemental thereto shall not apply to the Griffith Project. 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 Act of June 17, 1902, and all Acts amendatory thereof or supplemental thereto attributable to their status as a federal Reclamation Project, and the Griffith Project shall no longer be a federal Reclamation Project.

(c) Nothing in this Act shall transfer or affect federal ownership, rights, or interests in Lake Mead National Recreation Area associated lands, nor affect the authorities of the National Park Service to manage Lake Mead National Recreation Area including lands on which the Griffith Project is located consistent with the Act of August 25, 1916 (39 Stat. 535), Public Law 88–639, October 8, 1964 (78 Stat. 1039), or any other applicable legislation, regulation, or policy.

(d) Nothing in this Act shall affect the application of Federal reclamation law to water delivered to the Authority pursuant to any contract with the Secretary under section 5 of the Boulder Canyon Project Act.

(e) Effective upon conveyance of the Griffith Project and acquired interests in land under section 3 of this Act, the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence based on its prior ownership of the conveyed property.

PURPOSE OF THE MEASURE

The purpose of S. 986 is to direct the Secretary of the Interior to convey title to the Griffith Project to the Southern Nevada Water Authority once certain conditions, including payment of the current repayment obligations, are met.

BACKGROUND AND NEED

The Robert B. Griffith Water Project is a single-purpose project, authorized in 1965 (Public Law 89–292 as amended by Public Law 89–510) and constructed by the Secretary of the Interior to deliver Colorado River water from Lake Mead for municipal and industrial use within Clark County, Nevada. In November 1971, the first-stage facilities were substantially complete and by the time the project was fully completed in February 1988, the project cost, including capitalized interest, totaled approximately $198.6 million. The project diverts up to 299,000 acre feet annually (AFA) of Nevada's consumptive use allocation of 300,000 AFA from the Colorado River.

The Griffith project is an integral part of the Southern Nevada Water System (the System), which currently supplies over 80 percent of the public water supply for the Las Vegas metropolitan area. The federally financed Griffith project is a very small part of the System that was designed, financed, and constructed by the Southern Nevada Water Authority (the Authority) and the Colorado River Commission of Nevada. Because certain reaches of pipelines and other facilities are in the name of the United States, project sponsors believe it is increasingly burdensome for the Authority to manage operations and maintenance of the System.

Upon completion of certain conditions, including the payment of the remaining repayment obligation (currently estimated at approximately $121.2 million), the Secretary of the Interior is directed to convey title to the Griffith Project to the Authority. Created in 1991 by a cooperative agreement among seven public agencies, including the five water purveyors that serve all of southern Nevada, the Authority is a political subdivision of the State of Nevada. The Authority is responsible for acquiring additional water supplies for the region and operating, maintaining, expanding, and ultimately acquiring the Southern Nevada Water System.

In June of 1999, the Authority and the Bureau of Reclamation entered into a Memorandum of Agreement relating to the proposed title transfer and negotiations continue between the Bureau and the Authority regarding details of the transfer.

LEGISLATIVE HISTORY

S. 986 was introduced by Senators Reid and Bryan on May 6, 1999 and a subcommittee hearing was held on July 28, 1999. At the business meeting on September 22, 1999, the Committee on

Energy and Natural Resources ordered S. 986, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 22, 1999, by unanimous vote of a quorum present, recommends that the Senate pass S. 986, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 986, the Committee adopted a substitute amendment that reflects both technical and substantive changes to resolve the concerns of the National Park Service, the Bureau of Land Management and the Bureau of Reclamation. Additional amendments have been made at the request of the Southern Nevada Water Authority. Specifically, technical changes were made to several definitions relating to interests being conveyed and at the request of the Authority, the specific prepayment amount has been added which will be adjusted to reflect unpaid accrued interest and prospective principal payments to be made by the Authority. Section 3 has been revised to establish, effective upon prepayment and conveyance, rights of way for the Authority on federal land where the Griffith project is located. Specific deadlines imposed upon the Secretary for a report to Congress if the project has not been conveyed and completion of the document which memorializes the location of the rights of way have been extended to occur within twelve months after enactment.

The requirement for repayment of net present value of repayment obligation has been replaced with a specific dollar amount.

In addition, a section has been added which clarifies that once the project is transferred, it will cease to be a reclamation project eligible to receive benefits under the reclamation law and the United States is released from all future liability with respect to the operation and maintenance of the project. Lastly, a provision has been added to clarify the relationship of the project to the Lake Mead National Recreation Area and to clarify that reclamation law will continue to apply only as it relates to the Colorado River water being delivered through the project under section 5 of the Boulder Canyon Project Act.

SECTION-BY-SECTION

Section 1 is a short title.

Section 2 is a definitions section.

Section 3 describes the conditions that must be met prior to conveyance and what interests shall be transferred to the Authority upon conveyance. A specific dollar amount is designated as the repayment amount. Upon conveyance of the Griffith Project and the acquired interests in land under the United States shall no longer be liable for damages of any kind arising out of any act, omission, or occurrence based on is prior ownership of the conveyed property.

Section 4 provides authority to modify existing contracts as necessary.

Section 5 provides that once the Griffith Project is conveyed to the Southern Nevada Water Authority, the Project will no longer be considered to be a federal reclamation project subject to the benefits or obligations pursuant to reclamation law. This section also clarifies that nothing in S. 986 shall affect the application of Federal reclamation law to water delivered to the Authority pursuant to any contract with the Secretary under section 5 of the Boulder Canyon Project Act and the Southern Nevada Water Authority remains obligated to the terms and provisions of its section 5 water contracts with the Secretary for Colorado River water.

Section 5 also provides that if the Authority changes the use or operation of the Griffith Project, the Authority shall comply with all applicable laws and regulations governing the changes at that time. Section 5 clarifies that the project's transfer shall not affect federal ownership, rights, or interests in Lake Mead National Recreation Area or the lands associated with the Recreation Area. In addition, S. 986 does not affect the authorities of the National Park Service to manage Lake Mead National Recreation Area including lands on which the Griffith Project is located consistent with the Act of August 25, 1916 (39 Stat. 535), Public Law 88–639, October 8, 1964 (78 Stat. 1039), or any other applicable legislation, regulation, or policy.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

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. 986. 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. 986, as ordered reported.

EXECUTIVE COMMUNICATIONS

On July 19, 1999, 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. 986. These reports had not been received at the time the report on S. 986 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 testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF STEVEN RICHARDSON, CHIEF OF STAFF, U.S. BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

My name is Steve Richardson. I am Chief of Staff for the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on S. 986, to direct the Secretary of the Interior to convey the Griffith Project to the Southern Nevada Water Authority (SNWA).

Mr. Chairman, the Robert B. Griffith Project (authorized by P.L. 89–292) is a single purpose municipal and industrial project originally capable of supplying 299,000 acre feet of supplemental water annually from Lake Mead to Henderson, Las Vegas, North Las Vegas, Boulder City and Nellis Air Force Base in southeastern Nevada. In addition to the Federal facilities, SNWA has significantly expanded the project, at its own expense, in order to meet the growing need for water in the region.

For several months, the Bureau of Reclamation (Reclamation), the Bureau of Land Management (BLM), the National Park Service (NPS), and SNWA have been working to identify the issues of concern as well as to initiate the process required under the National Environmental Policy Act (NEPA). I am pleased to report that on June 21, 1999, Reclamation and SNWA entered into an agreement, which I have attached for the record, to set forth a process to accomplish the transfer of title to the facilities and acquired lands to SNWA and to grant or assign perpetual rights-of-way over applicable federal public and withdrawn lands and to facilitate SNWA's future operation, maintenance and replacement of the Griffith Project. In addition, we have a funding agreement which SNWA's Board of Directors has endorsed and they are up-front funding the activities under the agreement.

Furthermore, we have begun the NEPA process and hope to have public scoping meetings in mid August.

Unfortunately, S. 986 does not reflect all of the good work and progress that has been made and is underway. As such, the Administration opposes S. 986 as introduced. We are, however, working closely with Senator Reid, SNWA, and Representative Gibbons, who introduced a similar bill in the House of Representatives, to develop a substitute to S. 986 which we hope will address the Department's concerns.

Background

Before I address the Department's concerns on S. 986 as introduced, I would like to give the Committee a short update on Reclamation's title transfer efforts across the Western United States.

In August, 1995, the Bureau of Reclamation's title transfer efforts began as part of Phase II of the Vice President's National Performance Review (REGO II). It was and is still viewed as an opportunity to create a government that works better and costs less. The purpose of this initiative

is to facilitate the transfer of facilities, that could be more efficiently and appropriately managed by others.

At that time, Reclamation released its Framework for Transfer of Title of Bureau of Reclamation Projects. This framework sets out a consistent, fair and open process for negotiating the transfer of title of appropriate facilities on a voluntary case-by-case basis with the involvement of all interested stakeholders to reach an agreement. Once completed, this agreement would be brought to Congress to be approved and would be supported by all the parties involved.

Soon after the Administration announced its initiative, more than sixty-five entities contacted Reclamation and Expressed their interest in title transfer. Since that time, many others have come forward. Many agreed to pursue the Framework process and we have had some success. This process can lead to an agreement that could be brought to Congress for authorization with Administration support. Others decided not to pursue title transfer at that time, while others opted not to pursue Reclamation's Framework process, opting instead to directly pursue a legislative route. In some cases, attempting to legislate a solution without local participation or negotiation has resulted in delays and raised a number of problems that have limited our progress.

RECENT ACTIVITIES

During the 105th Congress, we came close to getting legislation enacted on several transfer proposals. What is significant about this is that in some cases we were far from an agreement just a few months earlier. However, two pieces of legislation did become law.

First, legislation was adopted to authorize the Canadian River Authority (Authority) in Texas, to prepay its financial obligation to the United States which would result in the conveyance of the Canadian River pipeline and other features of this project to the Authority. We are pleased to report that this prepayment was made on May 25, 1999 and title to these facilities has been transferred.

Second, legislation was adopted to convey the South Side Pumping Division of the Minidoka Project, located in Burley, Idaho to the Burley Irrigation District (BID). Because the legislation envisioned completion of the NEPA process, an environmental assessment is in the process of being prepared and we hope to have a draft completed by September 30, 1999. The legislation also required the completion of an agreement on the terms and conditions for the conveyance of the natural flow water rights that are associated with the project. Under the legislation, completion of this agreement must include BID, the Minidoka Irrigation District, and the Secretary in accordance with Idaho state law.

In addition to these, we continue to work with many districts and other interested stakeholders on title transfer

for water projects and facilities throughout the western United States.

CONCERNS ABOUT S. 986, AS INTRODUCED

As I stated earlier, we have been working with SNWA and others to resolve many issues that need to be addressed. As I also stated, much progress has been made and the NEPA process is well underway. However, that progress is not reflected in S. 986. Our concerns on S. 986 as introduced are as follows:

(1) *Compliance with NEPA and Other Laws and Treaties:* S. 986 as introduced directs rather than authorizes the Secretary to convey the facilities of the Project. This mandate directing the Secretary could severely diminish the value of the NEPA process, as the Secretary's ultimate decision regarding the transfer would be predetermined. The Administration firmly believes that a meaningful NEPA analysis must occur prior to title transfer to allow the Department, the Congress, and the public to fully understand the impacts of the proposed transfer, its alternatives, and potential mitigation measures. While we do not anticipate encountering significant environmental issues in this transfer, the Secretary's authority to condition the transfer in ways that resolve any issues identified during the NEPA process prior to title transfer must also be clear.

(2) *Lands and Rights-of-Way:* While the Administration appreciates the bill's intent to base the Griffith Project title transfer on the general terms of asset transfers set out in the Office of Management and Budget Circular A–129, specific legislative reference may not be appropriate. For instance, the BLM and the National Park Service have brought some very serious concerns with respect to lands and rights-of-way to our attention. Both these agencies have significant interest in the lands associated with the Griffith Project—since the intake structures, a treatment plant, and pipeline are located within the Lake Mead National Recreation Area (LMNRA) and much of the lands associated with the Griffith Project are withdrawn for project purposes from BLM. As presently drafted, S. 986 proposes to transfer all the lands used for the Griffith Project in fee simple title (specifically see section 3(a) regarding conveyance of "all rights, title, and interest"). The Department strongly opposes this provision. Transferring the lands in fee simple, as proposed, raises a number of serious concerns not the least of which are impact on the National Park Service's ability to fulfill the purposes for which the LMNRA was established, the current valid existing rights underlying the rights-of-way, and the potential for ownership conflicts on private property. However, if the bill would change the language to transfer or assign the existing right-of-way, our major concern on this matter would be addressed and the intent of rights of use by SNWA would be protected.

Furthermore NPS is concerned that the terms for transfer of facilities for their future operations, management and replacement, especially for use and occupancy of public lands (Section 3(b)) needs to be clarified. The Department wants to ensure that the terms are consistent with the purposes for which Lake Mead National Recreation Area was established.

Additionally, the BLM and the Park Service would like the opportunity to discuss additional technical provisions with the Committee. This would include, among other things, the ability to recover costs associated with maintaining and administering rights-of-way permits.

(3) *Deadline:* Section 3(d) of S. 986, as drafted, proposes a deadline which we strongly oppose. It states that if the Secretary completes the conveyance by July 1, 2000, the cost of administrative actions and environmental compliance would be equally split between the Secretary and SNWA. It further states, however, that if the facilities are not transferred in this very short time period, regardless of who is responsible for the delay, that all of these costs would be borne by the Secretary. This provision is problematic and diminishes the NEPA process. Also, it may provide an incentive to delay the completion of the environmental and public reviews, since the United States would be required to pay for all the administrative and environmental costs if there are delays for more than the extremely short time period allowed in the bill.

(4) *Relationship to Existing Operations:* The provisions of Section 4 of S. 986 as introduced have caused considerable concerns and confusion about its intent. Subsection 4(a) states that this Act does not propose to "expand or change the use of the Project," while subsection 4(b) states that if the Authority does change the Project's use in the future, it must comply with applicable laws at the time. Concerns have been raised that these provisions are intended to statutorily exempt this transfer from the provisions of NEPA, but the provisions of 4(b) allow for changes in the use and management of the Project. If this is the intent, the Administration strongly opposes this provision. We suggest that they either be clarified or simply deleted.

(5) *Future Benefits:* Section 6 of S. 986 should be expanded to make clear that once transferred, the lands and facilities should no longer be eligible for further Reclamation benefits pursuant to the Reclamation Act of 1902, and acts supplementary thereof or amendatory thereto. In short, it should be stated that upon transfer, the Griffith Project would no longer be considered a Federal Reclamation Project.

(6) *Secretary as Water Master:* S. 986 needs to be clarified to ensure that after transfer, SNWA will continue to operate within the Secretary's authority as water master of the Colorado River which was delegated to him by Congress in the Boulder Canyon Act of 1928 (45 Stat. 1057)

and strengthened in the March 9, 1964 Supreme Court Decree in *Arizona* v. *California* (376 U.S. 340).

(7) *300-Foot Reservation Around Lake Mead:* S. 986 needs to be clarified to maintain an existing Reservation of the 300-foot zone (all lands within 300 feet landward from the high water mark—1,229 foot elevation of Lake Mead and 655 foot elevation of Lake Mohave) as a Reclamation project area to allow for proper management security, maintenance, and use of Reclamation facilities authorized by law. These uses include necessary flooding, inundation, bank modification, staging, facilities maintenance, and proper management and adjustment of the levels of those bodies of water within the Lake Mead National Recreation Area pursuant to Reclamation's statutory and contractual responsibilities and management of water in the overall public interest.

(8) *Nellis Air Force Base Water Supply:* Under current law and contract, Nellis Air Force Base, located in southern Nevada, receives 4,000 acre-feet of treated Colorado River water through the Griffith system contingent upon their payment of a reasonable amount for operations, maintenance and replacement of the facilities. S. 986 should clarify that this arrangement is guaranteed after title is transferred.

Mr. Chairman, there are a number of other technical issues that the Department has with this proposal which Reclamation, BLM and the Park Service would like to work on with this Committee.

In summary, the Griffith Project is a good candidate for title transfer. We have made a significant amount of progress and continue to work well with SNWA and others to work through other issues that have been identified and on the NEPA process. Furthermore, we are interested in continuing to work with the Committee to develop a substitute to S. 986 which we hope will address the Department's concerns.

That concludes my testimony. I would be pleased to answer any questions.

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. 986, as ordered reported.

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