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CARLSBAD IRRIGATION PROJECT ACQUIRED LAND TRANSFER ACT

MARCH 17, 1999.—Ordered to be printed

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

REPORT

[To accompany S. 291]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 291) to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 291, as ordered reported, is to authorize the transfer of the Carlsbad Project in New Mexico to the Carlsbad Irrigation District.

BACKGROUND AND NEED

History of facility transfers

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 full 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

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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: 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 he 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 of the Interior 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 that 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 the 105th Congress, the Committee 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 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 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.

Background of Carlsbad 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 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. 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. 291 was introduced on January 21, 1999 by Senator Domenici (for himself and Senator Bingaman). S. 291 is identical to the version of S. 736 that was passed by the Senate in the 105th Congress. S. 736 was introduced on May 13, 1997 by Senator Domenici. A hearing was held on S. 736 by the Subcommittee on Water and Power on June 10, 1997 and the measure was reported from the Committee with a substitute amendment on September 23, 1998. (Report 105–370.) S. 736 passed the Senate, as amended, on October 7, 1998.

At the business meeting on March 4, 1999, the Committee on Energy and Natural Resources ordered S. 291 favorably reported.

COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on March 4, 1999, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 291, as described herein.

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 purposes 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

The following cost estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 10, 1999.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 291, the Carlsbad Irrigation Project Acquired Land Transfer 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 Marjorie Miller (for the state and local impact).

Sincerely,

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

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 291—Carlsbad Irrigation Project Acquired Land Transfer Act

Summary: S. 291 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).

CBO estimates that implementing the bill would reduce discretionary spending over the 2000–2004 period by $100,000, assuming appropriations are reduced correspondingly. CBO also estimates that enacting S. 291 would increase direct spending by $200,000 annually beginning in 2000; therefore, pay-as-you-go procedures would apply.

S. 291 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 that enacting S. 291 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 purposes 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 S. 291 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 S. 291 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. S. 291 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 governments: S. 291 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 $200,00 per year).

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee make the following evaluation of the regulatory impact which would be incurred in carrying out S. 291. The bill is not a regulatory measure in the sense of improving 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. 291, as ordered reported.

EXECUTIVE COMMUNICATIONS

The following communication was received on March 3, 1999 from the Department of the Interior:

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, DC, March 3, 1999.

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

DEAR MR. CHAIRMAN: I am writing to express the Administration's position on two bills scheduled for consideration by the Committee on Energy and Natural Resources on Wednesday, March 3, 1999, which could result in the transfer of title to projects constructed and owned by the Bureau of Reclamation (Reclamation). The Administration supports S. 291, to convey certain lands and facilities of the Carlsbad Project in New Mexico. In addition, the Administration could support S. 356 to convey certain works and facilities of the Gila Project, and designated lands within or adjacent to the Gila Project, if it were clarified that the District could not use revenues from municipal bonds to finance this transfer.

As you may know, in 1995, Reclamation, as part of the second phase of the Vice President's National Performance Review, undertook an initiative to transfer title for appropriate Reclamation projects and facilities to non-Federal entities. Since that time, Reclamation has been working closely with the water users, the other stakeholders, and the sponsors in both the House and Senate to address the issues of concern. As a result of that hard work on all sides, tremendous progress has been made.

S. 291 is identical to S. 736, as amended, and S. 356 is identifical to S. 2087, as amended, from the 105th Congress. Both these bills passed the Senate but were not considered by the House of Representatives before it adjourned sine die for the 105th Congress. As you may recall, the Administration supported both last year. While these represent very difficult approaches, we view them as good examples of the progress that has been made.

While we were once far apart on the terms of the legislation for both these projects, the Carlsbad Irrigation District and the Wellton Mohawk Irrigation and Drainage District both worked closely with the Administration and the other stakeholders to address the issues of concern and to craft creative proposals which will ensure compliance with Federal environmental laws; protect the interests of the United States, potentially save the taxpayers money in the long term and give responsibility for operational control and management to the local beneficiaries and interests.

Enactment of S. 291 would affect receipts; therefore it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

We look forward to working closely with you and the Committee to complete consideration of these proposals. If I can provide any additional information or assistance, please do not hesitate to contact me.

Sincerely,

ELUID L. MARTINEZ, *Commissioner.*

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. 291, as ordered reported.

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