Calendar No. 724

108TH CONGRESS, 2d Session | SENATE | REPORT 108–365

PROVO RIVER PROJECT TRANSFER ACT

SEPTEMBER 28, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 1876]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1876) to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project, 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 "Provo River Project Transfer Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the contract numbered 04–WC–40–8950 and entitled "Agreement Among the United States, the Provo River Water Users Association, and the Metropolitan Water District of Salt Lake & Sandy to Transfer Title to Certain Lands and Facilities of the Provo River Project".

(2) ASSOCIATION.—The term "Association" means the Provo River Water Users Association, a nonprofit corporation organized under the laws of the State.

(3) DISTRICT.—The term "District" means the Metropolitan Water District of Salt Lake & Sandy, a political subdivision of the State.

(4) PLEASANT GROVE PROPERTY.—

(A) IN GENERAL.—The term "Pleasant Grove Property" means the 3.79-acre parcel of land acquired by the United States for the Provo River Project, Deer Creek Division, located at approximately 285 West 1100 North, Pleasant Grove, Utah, as in existence on the date of enactment of this Act.

(B) INCLUSIONS.—The term "Pleasant Grove Property" includes the office building and shop complex constructed by the Association on the parcel of land described in subparagraph (A).

(5) PROVO RESERVOIR CANAL.—The term "Provo Reservoir Canal" means the canal, and any associated land, rights-of-way, and facilities acquired, constructed, or improved by the United States as part of the Provo River Project, Deer Creek Division, extending from, and including, the Murdock Diversion Dam at the mouth of Provo Canyon, Utah, to and including the Provo Reservoir Canal Siphon and Penstock, as in existence on the date of enactment of this Act.

(6) SALT LAKE AQUEDUCT.—The term "Salt Lake Aqueduct" means the aqueduct and associated land, rights-of-way, and facilities acquired, constructed, or improved by the United States as part of the Provo River Project, Aqueduct Division, extending from, and including, the Salt Lake Aqueduct Intake at the base of Deer Creek Dam to and including the Terminal Reservoirs located at 3300 South St. and Interstate Route 215 in Salt Lake City, Utah, as in existence on the date of enactment of this Act.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(8) STATE.—The term "State" means the State of Utah.

SEC. 3. CONVEYANCE OF LAND AND FACILITIES.

(a) CONVEYANCES TO ASSOCIATION.—

(1) PROVO RESERVOIR CANAL.—

(A) IN GENERAL.—In accordance with the terms and conditions of the Agreement and subject to subparagraph (B), the Secretary shall convey to the Association, all right, title, and interest of the United States in and to the Provo Reservoir Canal.

(B) CONDITION.—The conveyance under subparagraph (A) shall not be completed until the Secretary accepts future arrangements entered into by the Association, the District, the Central Utah Water Conservancy District, and the Jordan Valley Water Conservancy District providing for the operation, ownership, financing, and improvement of the Provo Reservoir Canal.

(2) PLEASANT GROVE PROPERTY.—In accordance with the terms and conditions of the Agreement, the Secretary shall convey to the Association, all right, title, and interest of the United States in and to the Pleasant Grove Property.

(b) CONVEYANCE TO DISTRICT.—

(1) IN GENERAL.—In accordance with the terms and conditions of the Agreement, the Secretary shall convey to the District, all right, title, and interest of the United States in and to the Salt Lake Aqueduct.

(2) EASEMENTS.—

(A) IN GENERAL.—As part of the conveyance under paragraph (1), the Secretary shall grant to the District permanent easements to—

(i) the National Forest System land on which the Salt Lake Aqueduct is located; and

(ii) land of the Aqueduct Division of the Provo River Project that intersects the parcel of non-Federal land authorized to be conveyed to the United States under section 104(a) of Public Law 107–329 (116 Stat. 2816).

(B) PURPOSE.—The easements conveyed under subparagraph (A) shall be for the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

(C) LIMITATION.—The United States shall not carry out any activity on the land subject to the easements conveyed under subparagraph (A) that would materially interfere with the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

(D) BOUNDARIES.—The boundaries of the easements conveyed under subparagraph (A) shall be determined by the Secretary, in consultation with the District.

(E) REVOCATION OF WITHDRAWALS.—On conveyance of the easement to the land described in subparagraph (A)(i), the Secretary, subject to the easement and any terms and conditions of the Agreement, shall revoke any public land orders withdrawing National Forest System land for the Aqueduct Division of the Provo River Project.

(F) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(i) IN GENERAL.—On conveyance of the easement to the land described in subparagraph (A)(ii), the Secretary, subject to the easement, shall transfer to the Secretary of Agriculture administrative jurisdiction over the land.

(ii) ADMINISTRATIVE SITE.—The land transferred under clause (i) shall be administered by the Secretary of Agriculture as an administrative site.

(G) ADMINISTRATION.—The easements conveyed under subparagraph (A) shall be administered by the Secretary of Agriculture in accordance with section 501(b)(3) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(b)(3)).

(c) CONSIDERATION.—

(1) ASSOCIATION.—

(A) IN GENERAL.—In exchange for the conveyance under subsection (a)(1), the Association shall pay the Secretary an amount that is equal to the sum of—

(i) the net present value of any remaining debt obligation of the United States with respect to the Provo Reservoir Canal; and

(ii) the net present value of any revenues from the Provo Reservoir Canal that, based on past history—

(I) would be available to the United States but for the conveyance of the Provo Reservoir Canal under subsection (a)(1); and

(II) would be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391), and credited under the terms of Reclamation Manual/Directives and Standards PEC 03–01.

(B) DEDUCTION.—In determining the net present values under clauses (i) and (ii) of subparagraph (A), the Association may deduct from the net present value such sums as are required for the reimbursement described in the Agreement.

(2) DISTRICT.—

(A) IN GENERAL.—In exchange for the conveyance under subsection (b)(1), the District shall pay the Secretary an amount that is equal to the sum of—

(i) the net present value of any remaining debt obligation of the United States with respect to the Salt Lake Aqueduct; and

(ii) the net present value of any revenues from the Salt Lake Aqueduct that, based on past history—

(I) would have been available to the United States but for the conveyance of the Salt Lake Aqueduct under subsection (b)(1); and

(II) would be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391), and credited under the terms of Reclamation Manual/Directives and Standards PEC 03–01.

(B) DEDUCTION.—In determining the net present values under clauses (i) and (ii) of subparagraph (A), the District may deduct from the net present value such sums as are required for the reimbursement described in the Agreement.

(d) PAYMENT OF COSTS.—In addition to amounts paid to the Secretary under subsection (c), the Association and the District shall, in accordance with the Agreement, pay the Secretary—

(1) any necessary and reasonable administrative and real estate transfer costs incurred by the Secretary in carrying out the conveyance; and

(2) ½ of any necessary and reasonable costs associated with complying with—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C)(i) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(ii) any other Federal cultural resource laws.

(e) COMPLIANCE WITH ENVIRONMENTAL LAWS.—

(1) IN GENERAL.—Before conveying land and facilities under subsections (a) and (b), the Secretary shall comply with all applicable requirements under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) any other law applicable to the land and facilities.

(2) EFFECT.—Nothing in this Act modifies or alters any obligations under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 4. EXISTING CONTRACTS.

(a) DEER CREEK DIVISION CONSTRUCTION CONTRACT.—Notwithstanding the conveyances under subsections (a) and (b)(1) of section 3, any portion of the Deer Creek Division, Provo River Project, Utah, that is not conveyed under that section shall continue to be operated and maintained by the Association, in accordance with the contract numbered I1r–874, dated June 27, 1936, and entitled the "Contract Be-

tween the United States and Provo River Water Users Association Providing for the Construction of the Deer Creek Division of the Provo River Project, Utah".

(b) PROVO RIVER PROJECT AND JORDAN AQUEDUCT SYSTEM CONTRACTS.—Any written contract of the United States in existence on the date of enactment of this Act relating to the operation and maintenance of any division or facility of the Provo River Project or the Jordan Aqueduct System is confirmed and declared to be a valid contract of the United States that is enforceable in accordance with the express terms of the contract.

(c) USE OF CENTRAL UTAH PROJECT WATER.—

(1) IN GENERAL.—Subject to paragraph (2), any entity with contractual Provo Reservoir Canal or Salt Lake Aqueduct capacity rights in existence on the date of enactment of this Act may, in addition to the uses described in the existing contracts, use the capacity rights, without additional charge or further approval from the Secretary, to transport Central Utah Project water on behalf of the entity or others.

(2) LIMITATIONS.—An entity shall not use the capacity rights to transport Central Utah Project water under paragraph (1) unless—

(A) the use is expressly authorized by the entity responsible for operation and maintenance of the Central Utah Project water facility; and

(B) carrying Central Utah Project water through Provo River Project facilities would not—

(i) materially impair the ability of the Central Utah Water Conservancy District or the Secretary to meet existing express environmental commitments for the Bonneville Unit; or

(ii) require the release of additional Central Utah Project water to meet those environmental commitments.

(d) AUTHORIZED MODIFICATIONS.—The Agreement may provide for—

(1) the modification of the 1936 Repayment Contract for the Deer Creek Division of the Provo River Project to reflect the partial prepayment, the adjustment of the annual repayment amount, and the transfer of the Provo Reservoir Canal and the Pleasant Grove Property; and

(2) the modification or termination of the 1938 Repayment Contract for the Aqueduct Division of the Provo River Project to reflect the complete payout and transfer of all facilities of the Aqueduct Divsion.

(e) EFFECT OF ACT.—Nothing in this Act impairs any contract (including subscription contracts) in effect on the date of enactment of this Act that allows for or creates a right to convey water through the Provo Reservoir Canal.

SEC. 5. EFFECT OF CONVEYANCE.

On conveyance of any land or facility under subsection (a) or (b)(1) of section 3—

(1) the land and facilities shall no longer be part of a Federal reclamation project;

(2) the Association and the District shall not be entitled to receive any future reclamation benefits with respect to the land and facilities, except for benefits that would be available to other nonreclamation facilities; and

(3) the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the land and facilities, but shall continue to be liable for damages caused by acts of negligence committed by the United States or by any employee or agent of the United States before the date of conveyance, consistent with chapter 171 of title 28, United States Code.

SEC. 6. REPORT.

If a conveyance required under subsection (a) or (b)(1) of section 3 is not completed by the date that is 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(1) describes the status of the conveyance;

(2) describes any obstacles to completing the conveyance; and

(3) specifies an anticipated date for completion of the conveyance.

PURPOSE

The purpose of S. 1876, as ordered reported, is to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project.

BACKGROUND AND NEED

The Bureau of Reclamation holds title to the Provo River Project, which provides approximately 100,000 acre-feet of supplemental ir-

rigation and domestic water supply each year to the counties of Wasatch, Summit, Utah, and Salt Lake in the State of Utah. Up to one million people receive water from the Project. The Project includes Deer Creek Dam and Reservoir on the Provo River, the Salt Lake Aqueduct and Terminal Reservoirs, the Murdock Diversion Dam on the Provo River, the Provo Reservoir Canal, and several transbasin diversion and conveyance facilities. The Aqueduct Division is comprised of the Salt Lake Aqueduct and Terminal Reservoirs; the remaining features are included in the Deer Creek Division.

S. 1876 would transfer the Project's Provo Reservoir Canal and the Pleasant Grove Property to the Provo River Water Users Association ("Association"). The bill would also transfer the Project's Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy, Utah ("District"). The Bureau has been working collaboratively with the Association and the District on this proposed title transfer since November 2002. In August 2003, the parties entered into a Memorandum of Agreement regarding cost-sharing for the proposal.

The Provo Reservoir Canal is an open canal and is approximately 21.5 miles long. Beginning at the Murdock Diversion Dam at the mouth of Provo Canyon, the canal runs northwest along the Wasatch foothills, to the south end of Salt Lake County. The Canal is currently operated by the Association pursuant to a contract with the Bureau. The transfer will facilitate covering the canal in order to conserve water, improve water quality, and ensure public safety. As private owners, the Association expects to secure tax-free bonds to finance the project.

The Pleasant Grove Property is a 3.79 acre office building site located in north Pleasant Grove, Utah. The Association has completed a new $2 million Office and Shop Complex. The title to the underlying land is held by the Federal Government, and it is the Committee's understanding that no federal dollars have been used in the construction of the new buildings.

The Salt Lake Aqueduct is a 42-mile-long, 69-inch diameter pipeline that runs from the intake structure, located at the base of Deer Creek Dam, to two finished water reservoirs in south Salt Lake City. There is a diversion point near the mouth of Provo Canyon where water can be diverted from the Aqueduct into the Jordan Aqueduct System (JAS) or vice versa. The JAS is a system of Central Utah Project (CUP) water conveyance facilities that serve the Utah Valley Water Treatment Plant, which is owned and operated by Central Utah Water Conservancy District, and the Jordan Valley Water Treatment Plan, which is operated by the Jordan Valley Water Conservancy District. The Aqueduct is currently operated by the District pursuant to a contract with the Bureau. The transfer will allow the District to obtain tax-exempt financing for rehabilitation of the Aqueduct.

During the May 19, 2004 hearing on the measure conducted by the Subcommittee on Water and Power, the Administration testified that it generally supports transferring ownership of certain Reclamation project facilities to non-Federal entities. At that time, the Administration stated that it had several concerns with S. 1876 as introduced, and preferred certain key agreements be completed prior to transfer of title. In the intervening four months, the par-

ties have worked to address the Administration's concerns. It is the Committee's understanding that both the Master Title Transfer Agreement and the 3-Pipe Agreement (also known as the Multi-Party Operating Agreement) are in draft final form. Representatives of the Administration have indicated to the Committee staff that the execution of these agreements is expected in the immediate future and that they support enactment of the legislation at this time.

LEGISLATIVE HISTORY

S. 1876 was introduced by Senator Bennett on November 18, 2003, and referred to the Committee on Energy and Natural Resources. H.R. 3391, the companion measure to this bill, was introduced by Representative Cannon (R–UT) on October 29, 2003, and referred to the House Committee on Resources. The Resources Committee's Subcommittee on Water and Power conducted a hearing on H.R. 3391 on October 30, 2003. A hearing on S. 1876 was conducted by the Energy Committee's Subcommittee on Water and Power on May 19, 2004. The Committee on Energy and Natural Resources, on September 15, 2004, favorably reported S. 1876, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on September 15, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1876, if amended as described herein.

COMMITTEE AMENDMENT

The amendment in the nature of a substitute makes a series of mostly technical changes to S. 1876 as introduced. In addition, the substitute amendment makes the following substantive changes:

1. Conditions the conveyance of the Provo Reservoir Canal on the Secretary of the Interior's acceptance of future arrangements of the Association, the District, the Central Utah Water Conservancy District, and the Jordan Valley Water Conservancy District, governing the operation, ownership, financing, and improvement of the Provo Reservoir Canal.
2. Provides that the boundaries of the easements that are necessary for the conveyance of the Aqueduct to the District are to be determined by the Secretary, in consultation with the District.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2 defines terms used in the Act.

Section 3(a)(1)(A) directs the Secretary of the Interior to convey to the Association all right, title, and interest of the United States in and to the Provo Reservoir Canal.

Subsection 3(a)(1)(B) conditions the Canal's conveyance on the Secretary of the Interior's acceptance of future arrangements governing the operation, ownership, financing, and improvement of the Canal. The parties to such future arrangements will be the Association, the District, the Central Utah Water Conservancy District, and the Jordan Valley Water Conservancy District.

Subsection 3(a)(2) directs the Secretary of the Interior to convey to the Association all right, title, and interest of the United States in and to the Pleasant Grove Property.

Subsection 3(b)(1) directs the Secretary of the Interior to convey to the District all right, title, and interest of the United States in and to the Salt Lake Aqueduct.

Subsection 3(b)(2)(A) directs the Secretary of the Interior to grant permanent easements to the District as part of the Aqueduct's conveyance. The easements are to cover (I) the National Forest System Land where the Aqueduct is located and (ii) the Project's Aqueduct Division land that intersects the parcel of non-Federal land authorized to be conveyed in section 104(a) of Public Law 107–329 (116 Stat. 2816).

Subsection 3(b)(2)(B) provides that these easements are to be conveyed for the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

Subsection 3(b)(2)(c) prohibits the Federal Government from carrying out activities on the lands covered by the easements that materially interfere with the use, operation, maintenance, repair, improvement or replacement of the Salt Lake Aqueduct by the District.

Subsection 3(b)(2)(D) provides that the easements' boundaries are to be determined by the Secretary, in consultation with the District.

Subsection 3(b)(2)(E) directs the Secretary of the Interior, on conveying the easement described in subparagraph (A)(i), to revoke any public land orders withdrawing National Forest System land for the Project's Aqueduct Division. Such action shall be subject to both the governing easement and the terms and conditions of the Transfer Title Agreement.

Subsection 3(b)(2)(F) directs the Secretary of the Interior to transfer administrative jurisdiction over the land covered by the easement described in subparagraph (A)(ii) to the Secretary of Agriculture. The Secretary of Agriculture is directed to administer this transferred land as an administrative site.

Subsection 3(b)(2)(G) directs the Secretary of Agriculture to administer the conveyed easements in accordance with the provisions of the Federal Land Policy and Management Act of 1976.

Subsection 3(c) sets forth the formula for determining the payment owed by both the Association and the District to the Secretary of the Interior for the respective Provo River Project conveyances. The formula requires payment of the net present value of any remaining debt obligation, as well as the net present value of any historical revenues that would have been paid to the Federal Government. The formula further allows a deduction for reimbursements described in the Title Transfer Agreement.

Subsection 3(d) directs both the Association and the District to pay to the Secretary of the Interior the following additional costs: (1) necessary and reasonable administrative and real estate transfer costs associated with the conveyances; and (2) one-half of any necessary and reasonable costs associated with certain applicable environmental and historical preservation laws. These additional costs shall be paid in accordance with the Title Transfer Agreement.

Subsection 3(e) directs the Secretary of the Interior to comply with certain environmental laws and any other law applicable to the land and facilities prior to the conveyance of such land and facilities. The Subsection also confirms that the obligations pursuant to both the National Environmental Policy Act and the Endangered Species Act are in no way altered or modified by S. 1876.

Section 4 confirms that all existing contracts covering parts of the Provo River Project not conveyed by S. 1876 are not in any way impaired. Section 4(a) covers the existing Deer Creek Division Construction Contract and section 4(b) covers the existing Provo River Project and Jordan Aqueduct System Contracts.

Subsection 4(c) confirms that those entities with existing contractual capacity rights to either the Provo Reservoir Canal or Salt Lake Aqueduct may use those rights to transport CUP water on behalf of itself or others. Such use is not subject to additional charge, and further approval from the Secretary is not required. However, such use is limited in that (1) the use must be expressly authorized by the entity responsible for the operation and maintenance of the CUP water facility and (2) the transport of CUP water through the Provo River Project facilities must not materially impair the existing environmental commitment for the Bonneville Unit or require the release of additional CUP water to meet those environmental commitments.

Subsection 4(d) authorizes any modifications to the applicable repayment contracts that are necessary as a result of the conveyances.

Subsection 4(e) provides that S. 1876 does not impair any existing contract, including subscription contracts, regarding the conveyance of water via the Provo Reservoir Canal.

Section 5(a) provides that the transferred land and facilities are no longer part of a Federal reclamation project.

Subsection 5(b) provides that the Association and the District are no longer entitled to reclamation benefits with respect to the transferred land or facilities, except for benefits that would be available to other non-reclamation facilities.

Subsection 5(c) provides that the United States shall only be liable for damages caused by acts of negligence, committed prior to the conveyance of the land or facilities, by the Federal Government or by an employee or agent of the Federal Government.

Section 6 directs the Secretary of the Interior to submit a report to Congress if the land or facilities covered by subsections (a) or (b)(1) of section 3 are not conveyed within 18 months from the date of the bill's enactment. The report must describe the status of the conveyance and any obstacles to completing the conveyance. The report must also specify a target completion date.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to 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. 1876. The Act is not a regulatory measure in the sense of imposing government-established standards or significant 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. 1876.

EXECUTIVE COMMUNICATIONS

On September 17, 2004, 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 views on S. 1876. These reports had not been received at the time the report on S. 1876 was filed. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

The Department of the Interior (Department) has an active title transfer program and supports transferring ownership of certain Reclamation project facilities to non-Federal entities, particularly in cases where transfers could create opportunities, not just for those who receive title, but for other stakeholders and the public as well. While we believe this transfer has the potential to create such opportunities, the Department has several concerns with S. 1876, as it was introduced. It is our understanding that the proponents of this transfer intend to suggest a number of specific revisions to S. 1876 which could help to resolve some of our concerns.

Background

The Provo River Project stores and delivers water from the Provo River for irrigation and municipal and industrial uses along the Wasatch Front, a highly urbanized area, located within Utah and Salt Lake Counties. The three features of the project under consideration for transfer are the 22-mile-long Provo Reservoir Canal; a 3.79-acre office building site, which would be transferred to the Provo River Water Users Association (Association); and the 42-mile-long Salt Lake Aqueduct, which would be transferred to the Metropolitan Water District of Salt Lake & Sandy (District).

Reclamation began discussing this transfer with the Association and the District in November 2002. Since that time much work has been done and a great deal of progress has been made.

In August 2003, Reclamation, the Association, and the District signed an agreement entitled "Contributed Funds

Act and Memorandum of Agreement" (Contract No. 03–WC–40–8800) which articulated the respective roles, responsibilities, and cost obligations for carrying out the title transfer process. Since that time, several other water user entities, including the Central Utah Water Conservancy District (Central) and the Jordan Valley Water Conservancy District (Jordan Valley) also have become involved. A title transfer work group made up of these entities and Reclamation was formed to discuss the issues of importance to the entities involved, and that work group has been meeting regularly.

In order to initiate the public review process required under the National Environmental Policy Act (NEPA), the title transfer work group assembled a list of more than 2,000 individuals, agencies, and other entities having a potential interest in this transfer. This list includes a large number of owners of private property located adjacent to the transfer facilities. It also includes several State and Federal agencies and environmental and recreational interest groups. On September 29, 2003, an initial scoping letter describing the proposal was mailed to all on this list. Public scoping meetings were held on October 27, 28, and 30, 2003 in Sandy, Lehi, and Provo respectively. Many concerns and issues were raised at these meetings and in subsequent calls, letters and e-mails by interested stakeholders. To enable anyone else with interests and concerns to have an opportunity to voice them, the official public comment period was held open until November 26, 2003.

As the lead agency, Reclamation is in the process of completing a draft environmental assessment. The Department of the Interior's Central Utah Project Completion Act Office, the U.S. Forest Service, and the National Park Service are cooperating agencies. The draft environmental assessment is expected to be released to the public for review and comment by the end of May 2004.

S. 1876

S. 1876 requires the Secretary to convey to the Provo River Water Users Association, pursuant to a transfer agreement still being drafted, all right, title, and interest of the United States in certain lands, rights-of-way, and facilities that are part of the Provo River Project in Utah. The bill does not impair any existing contracts that allow for, or create a right, to convey water through the Provo Reservoir Canal.

Section 6 of S. 1876 requires that the Association and the Metropolitan Water District of Salt Lake & Sandy pay or contribute to administrative costs, real estate transfer costs, and the costs of compliance with the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act of 1973 (ESA), the National Historic Preservation Act, and other Federal cultural resource laws included in the transfer agreement. S. 1876 clearly states in Section 7 that before any property is conveyed, the Secretary must complete all actions required under NEPA, the ESA, and

all other applicable laws. Section 6 also requires the Association and the District to pay the net present value of the property being transferred.

Finally in Section 9, the bill makes it clear that, upon conveyance of the land and facilities, the United States will not be liable for future occurrences on those lands and facilities, and the Association and District will not be entitled to receive any future Reclamation benefits with respect to the transferred properties, except those benefits available to other non-Reclamation facilities.

Issues of Concern

Despite the Administration's support for the transfer of these lands and facilities, we have a number of concerns about S. 1876 as drafted.

Agreements: During the course of its deliberations, the members of the work group identified several written agreements among the parties that are needed in order to ensure that the transfer achieves its intended purposes without adversely impacting the other affected parties. At present, many of the identified agreements are being drafted by the work group, but none have been completed or signed. Section 3(a) of the bill partially addresses this issue by requiring that the Association provide the Secretary with certification, prior to transfer. We are concerned that this does not fully address our situation or the issue.

We believe that completing the agreements prior to passage of the legislation will expedite implementation of the transfer. Our experience has shown that transfers move more expeditiously when involved parties complete preliminary work, including written agreements, before proceeding with legislation. In many cases where agreements were not completed before legislation was passed, significant delays occurred while issues were identified, negotiated, and satisfactorily addressed in agreements.

If agreements are not completed prior to passage of the legislation, then we believe the legislation should specify that certain minimum requirements be included in the agreements. For example, Section 2(8) of the bill defines a transfer agreement among the United States, the District and the Association and requires the transfer to be completed in accordance with the terms of that transfer agreement. While the work group has been actively engaged in drafting the transfer agreement, it is not yet finalized or signed. This transfer agreement should include descriptions and maps of land interests to be transferred, including rights-of-way. Also, at a minimum, the agreement defined in Section 2(8) should include terms which: (1) provide for orderly and efficient transfer and protect public interests; (2) preserve access for operation and maintenance of nearby facilities which will continue to be federally owned; (3) provide for coordinated operation of transferred and retained portions of the Provo River Project; and (4)

ensure the Department can continue to fulfill its obligations.

Certification of Agreements: Section 3(a) directs the Secretary to convey the lands and facilities of the Project when the Association has certified that the agreements entered into are satisfactory to the Association, District, Central, and Jordan Valley. Since many of the features and facilities of the Project will not be conveyed and because of the close relationship between this project and the Central Utah Project, which will not be transferred, the Secretary will be a party to several of these agreements. As such, we believe that both the Association and the Secretary should certify the agreements are satisfactory.

Operational Access: The canal and the aqueduct to be transferred in S. 1876 are in close proximity and operationally related to the Central Utah Project which will remain in Federal ownership. For example, for a sizeable portion of its alignment, the canal lies so near key Central Utah Project facilities that lack of access to the canal right-of-way would make operation and maintenance of those Central Utah Project facilities difficult. Conversely, operation and maintenance of the canal would be problematic without access to Central Utah Project lands. Therefore, as indicated above, it is important that provisions for reciprocal access are included in the agreement defined in Section 2(8) of the bill.

National Forest System: In several locations, the Salt Lake Aqueduct crosses lands lying within the boundaries of the Uinta and Wasatch-Cache National Forests under the jurisdiction of the U.S. Forest Service. Prior to constructing the aqueduct, Reclamation withdrew significant blocks of land in locations where the aqueduct alignment crosses through these National Forests. At present, operation and maintenance of the aqueduct by the District within National Forest boundaries is possible solely because the aqueduct is federally owned and located upon Reclamation withdrawals. Any revocation of Reclamation's withdrawals will return primary jurisdiction of these areas to the U.S. Forest Service. S. 1876 needs to address this issue or it will significantly delay conveyance of the lands and rights-of-way and will negatively impact the District's ability to operate and maintain the facilities once transferred. We also recommend the transfer agreement defined in Section 2(8) include a suitable provision covering replacement of withdrawals with a linear permanent easement for the District. We recommend that the Department of the Interior issue the easement of the Aqueduct. At that point, the Bureau of Reclamation would revoke the withdrawal on the National Forest System lands, and then the Forest Service would administer the easement.

Timpanogos Interagency Land Exchange Act (P.L. 107–329): On December 6, 2002, Congress passed the Timpanogos Interagency Land Exchange Act (TILEA), P.L. 107–329. This Act authorizes the acquisition of land and construction of an interagency administrative and visitor

facility by the National Park Service and the U.S. Forest Service at the entrance to American Fork Canyon. The proposed exchange would be with a private landowner who is willing to trade property in Highland City, Utah, for six parcels of National Forest Land. The private property proposed to be acquired for the site of the administrative and visitor facility is bisected by a strip of land owned in fee title by the United States and administered by Reclamation for the aqueduct. If fee title were transferred to the District at this location, the administrative and visitor facility site would be bisected by a strip of District-owned lands. To avoid this situation, we believe the transfer agreement defined in Section 2(8) should provide for the Secretary to convey an appropriate permanent easement to the District for the aqueduct where it bisects the administrative and visitor facility site and then to transfer jurisdiction over the same area to the U.S. Forest Service to be administered as part of the administrative and visitor facility site.

Impact on the On-Going Utah Lake Basin Water Delivery System EIS: Central and the Department recently released a draft environmental impact statement (EIS) for the Utah Lake Basin Water Delivery System (ULS) to the public. This draft EIS indicates that about 24,000 acre-feet of CUP M&I water would be conveyed through the Provo Reservoir Canal for use in Salt Lake County, which is proposed for transfer under S. 1876. As part of this legislation, or the transfer agreement for these facilities, it is important to ensure that this transfer does not impact the NEPA compliance process for the ULS or, more importantly, prevent the utilization of the canal to convey CUP M&I water.

Technical Issues

In addition to the policy and procedural issues identified above, we have identified several minor technical corrections to S. 1876 that are needed in order to facilitate completion of the transfer.

Include Both Reservoirs at the Salt Lake Aqueduct: In the definition for the Salt Lake Aqueduct, S. 1876 refers to the "Terminal Reservoir located at 3300 South and I–215." There are in fact two reservoirs located at the terminus of the Salt Lake Aqueduct. We believe any transfer should include both. Therefore, Section 2(g) of the bill should be amended to change "Terminal Reservoir" to "Terminal Reservoirs".

Make Consistent with Existing Contributed Funds Act Agreement and Memorandum of Agreement: On August 21, 2003 Reclamation, the Association, and the District signed an agreement entitled "Contributed Funds Act Agreement and Memorandum of Agreement" (Contract No. 03–WC–40–8800) (Contributed Funds Act Agreement) to formalize, among other things, the cost-sharing obligations of the various parties for transfer-related expenses. To ensure that the legislation is consistent with the already signed

Contributed Funds Act Agreement, Section 6(a) of the bill should be amended to read "The Secretary shall require, as a condition of the conveyance under section 3, that the Association and the District pay all administrative costs and real estate transfer costs, and half of costs associated with compliance with the National Environmental Policy Act of 1969, the Endangered Species Act, the National Historic Preservation Act, and other federal cultural resource laws, all as described in the Agreement." This would make it consistent with the terms of the existing Contributed Funds Act Agreement.

Modify Payment Requirement: Section 6(b)(1) requires the Association to pay "the net present value of the Provo Reservoir Canal and the Pleasant Grove Property". Similarly, Section 6(b)(2) requires the District to pay "the net present value of the Salt Lake Aqueduct." We believe the intent of these sections is to require the transfer recipients to pay, not the net present value of a facility (potentially, a very large sum), but rather the present value of the remaining obligations for that facility. Therefore, we recommend these portions of Section 6(b) be amended to read:

> (1) "In addition to subsection (a) the Secretary shall also require, as a condition of the conveyances under Sections 3(a) and 3(b), that the Association pay to the United States the net present value of the remaining debt obligation, including future miscellaneous revenue streams, attributable to the Provo Reservoir Canal and the Pleasant Grove Property, as described in the Agreement; Provided, however, that the Association may deduct from the net present value such sums as are required to accomplish the reimbursement described in the Contributed Funds Act Agreement."
>
> (2) "In addition to subsection (a) the Secretary shall also require, as a condition of the conveyance under Section 3c), that the District pay to the United States the net present value of the remaining debt obligation, including future miscellaneous revenue streams, attributable to the Salt Lake Aqueduct, as described in the Agreement; Provided, however, that the Association may deduct from the net present value such sums as are required to accomplish the reimbursement described in the Contributed Funds Act Agreement."

National Environmental Policy Act Citation: Section 7 should be modified to correct an error in the citation for the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

Conclusion

The Department recognizes significant benefits that may be achieved by the proposed title transfer. Much work has already been accomplished. If the above-mentioned issues and technical corrections can be addressed, I believe the Department could support passage of this legislation.

Mr. Chairman, we appreciate the excellent work and cooperation we have had with the District, the Association, Central, Jordan Valley, the Central Utah Project Completion Act Office, the U.S. Forest Service and the National Park Service. We look forward to continuing that effort and to working with Senator Bennett, Committee staff, as well as the Association, the District, the Title Transfer Working Group and anyone else to craft provisions necessary to resolve these issues. 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. 1876 as ordered reported.

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