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NORTHERN COLORADO WATER CONSERVANCY DISTRICT

OCTOBER 2 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2400]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2400) to direct the Secretary of the Interior to convey certain water distribution facilities to the North Colorado Water Conservancy District, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

In section 2, strike subsection (b)(1) and replace with the following:

> "(1) IN GENERAL.—The Secretary shall accept $355,502 as payment from the District and $1,798,200 as payment from the power customers, under the terms specified in this section, as consideration for the conveyance under subsection (a). Out of the receipts from the sale of power from the Loveland Area Projects collected by the Western Area Power Administration and deposited into the Reclamation fund of the Treasury in fiscal year 2001, $1,798,200 shall be treated as full and complete payment by the power customers of such consideration and as repayment by the power customers of all aid to irrigation associated with the facilities conveyed under subsection (a)."

PURPOSE OF THE MEASURE

The purpose of S. 2400 is to direct the Secretary of the Interior to transfer title to water distribution facilities, currently held by the United States, to the Northern Colorado Water Conservancy District.

79–010

BACKGROUND AND NEED

Built between 1938 and 1957, the Colorado-Big Thompson Project (Project) provides supplemental water to 30 cities and towns. The water is used to help irrigate 615,000 acres of northeastern Colorado farmland. Twelve reservoirs, 35 miles of tunnels, 95 miles of canals and 700 miles of transmission lines comprise the complex collection, distribution and power system. The Project system spans 150 miles east to west and 65 miles from north to south.

The Project was intended to provide 310,000 acre-feet of water annually to northeastern Colorado for agricultural, municipal, and industrial uses. The Northern Colorado Water Conservancy District (District), a political subdivision of the State of Colorado created in 1937, provides water for agricultural, municipal, domestic, and industrial uses in northeastern Colorado. The District was established as the local agency to contract with the United States to build the Project. The District has deposited in escrow, the funds necessary to fulfill its repayment obligations under its repayment contract. The Project stores water from the Colorado River headwaters in a series of reservoirs on Colorado's West Slope. Water is transported, via the 13-mile Alva B. Adams Tunnel, through the mountains to the District's seven-country service area on the East Slope. The District encompasses 1.5 million acres in portions of Boulder, Larimer, Weld, Morgan, Logan, Washington, and Sedgwick counties.

S. 2400 will divest the Bureau of Reclamation (Bureau) of all present and future responsibility for, and cost associated with, the management, operation, maintenance, repair, rehabilitation and replacement of, and liability for, these particular facilities. Moreover, the legislation will eliminate the duplication of efforts between the District and the Bureau in issuing and administering crossing licenses and other forms of permission to utilize the land on which the facilities are located. Finally, the legislation will provide for enhanced local control over single-purpose water facilities that are not of national importance, allowing these facilities to be used for more efficient and effective water management.

The sale price of $2,133,702 included in the legislation, as ordered reported, has been mutually agreed upon. On behalf of its preference customers, the Western Area Power Administration (WAPA) will pay $1,798,200 and the District will be responsible for $335,502. The aid-to-irrigation obligation for the project will be credited $3,767,682 as a result of the accelerated payment by WAPA, and the District's repayment obligation would be reduced by $170,555. The remainder of the District's repayment, $185,187, is compensation for Reclamation's loss of future revenue. Power users agreed to repay the aid-to-irrigation component for two reasons. First, the District has worked closely with WAPA and its customers for decades, and both the District and WAPA have previously agreed to jointly fund Project-related activities that are mutually beneficial. And second, the prepayment of this amount will save interest that would otherwise accrue on this obligation if it were repaid in the future in accordance with the existing schedule. The prepayment of this amount at this time does not adversely affect existing power rates and in fact, if this prepayment does not occur and this amount is paid under the existing schedule, it would

become due at a time when other, and far greater amounts, are due and payable, and would contribute to the need to increase preference power rates at that time.

LEGISLATIVE HISTORY

S. 2400 was introduced by Senator Allard on April 11, 2000. The Subcommittee on Water and Power held a hearing on S. 2400 on June 21, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2400 with amendment, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2400 if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 2400, the Committee adopted an amendment to strike subsection (b)(1) in section 2, which set out the sale price the Secretary may accept as consideration. The amendment reflects a sale price that has been, mutually agreed upon by the District and WAPA. The total consideration to be accepted by the Secretary is $2,153,702, of which $355,502 will come from the District and $1,798,200 will come from the power customers.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 2000.

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. 2400, a bill to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Applebaum.

Sincerely,

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

Enclosure.

S. 2400—A bill to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District

Summary: S. 2400 would direct the Secretary of the Interior to convey certain canals and water distribution facilities to the Northern Colorado Water Conservancy District. These facilities are a

small part of the Colorado-Big Thompson project in Larimer County, Colorado. S. 2400 would require the district to pay $355,502 and electricity customers of the Western Area Power Administration (WAPA) to pay $1,798,200 as a condition of the conveyance.

Based on information from the Bureau of Reclamation, CBO estimates that enacting S. 2400 would reduce direct spending by about $2 million in fiscal year 2001. These savings would be offset by the loss of about $4 million in offsetting receipts over the 2001–2012 period. Because enacting S. 2400 would affect direct spending, pay-as-you-go procedures would apply. CBO estimates that implementing this bill would have no significant effect on discretionary spending.

S. 2400 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local governments would probably incur some costs as a result of the bill's enactment, but those costs would be voluntary.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 2400 is shown in the following table. The costs of this legislation fall within budget function 300 (environment and natural resources).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	−2	(1)	0	0	0
Estimated Outlays	−2	(1)	0	0	0

[1] Less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the conveyance would occur at the beginning of fiscal year 2001. The bill would require the water district to pay $355,502 and WAPA power customers to pay $1,798,200 as a condition of the conveyance. The bill would credit these amounts to their repayment of capital costs for the Colorado-Big Thompson project.

Based on information from the Bureau of Reclamation, CBO expects that, after conveying these facilities, the federal government would forgo a payment of $170,555 from the water district in fiscal year 2002, a payment of $764,463 from the power customers in fiscal year 2011, and another payment of $3.0 million from power customers in fiscal year 2012.

If the project is sold in 2001, the federal government could not enter into a contract to sell excess water capacity from the project to the Pleasant Valley Pipeline. CBO estimates that the federal government would receive $197,261 in fiscal year 2001 from such a contract in the absence of this legislation.

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. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	−2	0	0	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Under the Balanced Budget Act (BBA), proceeds from a sale that is not authorized under current law may be counted for pay-as-you-go purposes only if the sale would entail no financial cost to the government. CBO estimates that the sale of the water facilities mandated by S. 2400 would satisfy the conditions in the BBA; therefore, the proceeds would count for pay-as-you-go purposes. Under BBA, "financial cost to the government" is defined in terms of the present value of all cash flows associated with an asset sale. The forgone payments of about $4 million over the 2002–2012 period has an estimated present value that is slightly less than the sale price specified in S. 2400 (about $2 million).

Intergovernmental and private-sector impact: S. 2400 contains no intergovernmental mandates as defined in UMRA. The Northern Colorado Water Conservancy District, a local public agency, would probably incur costs to acquire the four water distribution facilities, both the decision to bear those costs would be voluntary. The district would benefit from the enactment of this legislation.

Previous CBO estimate: On July 24, 2000, CBO transmitted a cost estimate for H.R. 4389, a bill to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District, as ordered reported by the House Committee on Resources on June 21, 2000. The two versions of this bill are very similar, and our cost estimates are the same.

Estimate prepared by: Federal Costs: Rachel Applebaum. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Lauren Marks.

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

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. 2400. 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. 2400, as ordered reported.

EXECUTIVE COMMUNICATIONS

On July 16, 2000, 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. 2400. These reports had not been received at the time the report on S. 2400 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 ELUID L. MARTINEZ, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

My name is Eluid Martinez. I am Commissioner of the U.S. Bureau of Reclamation (Reclamation). I am pleased to provide the Administration's views on S. 2400, to convey certain water distribution features of the Colorado Big Thompson Project (CBT) to the Northern Colorado Water Conservancy District (District). We have worked closely with this District on this proposal and could support this bill if certain issues are resolved. I am pleased to report that since the May 23, 2000, hearing on H.R. 4389 by the House Resources Subcommittee on Water and Power, Reclamation and the District have reached agreement on a sales price and have made progress on the aid to irrigation issue. However, some technical modifications are still needed.

RECENT ACTIVITIES

Mr. Chairman, before talking about the specifics of S. 2400, I would like to give the Subcommittee a quick status report on some recent activities with Reclamation's Title Transfer initiative.

At the end of the 105th Congress, two proposals were signed into law, enabling the Secretary of the Interior to transfer title to Reclamation facilities. The first, Public Law 105–316, authorized the prepayment and subsequent conveyance of the Canadian River Pipeline in Texas to the Canadian River Authority. This facility was transferred in May, 1999.

The second, Public Law 105–351, enabled Reclamation to convey the distribution facilities associated with the Southside Pumping Division of the Minidoka Project in Idaho. I am pleased to report that just a few months ago, these facilities were transferred to the Burley Irrigation District (BID).

As you may recall, Public Law 105–316 required that several steps be taken before title could be transferred—including completion of the process under the National Environmental Policy Act (NEPA). It also required the negotiation and development of a water rights agreement between BID, the Secretary, and the neighboring Minidoka Irrigation District (MID) on the distribution and management of the natural flow water rights, part of which would be transferred to BID, but historically had been managed together with those of MID. We worked diligently with BID, other Federal agencies, and the State to get this process completed in a timely fashion. This water rights agreement was completed and signed in February, 2000.

Since BID started the environmental review prior to the legislation's passage, the NEPA process was completed, including the full public review, and a finding of no signifi-

cant impact (FONSI) was issued on February 18, 2000. The Quit Claim Deed for the water rights transfer was negotiated in December, 1999 and signed in February, 2000 and the Real Property Quit Claim Deed was negotiated in February, 2000 and signed on February 24, 2000. As such, I am very proud to report that the facilities were transferred to the Burley Irrigation District on February 24, 2000—more than two months ahead of schedule.

Completing this transfer is a credit to the hard work and cooperation of both Reclamation staff and to the Burley Irrigation District, and all should be commended for their work. However, had we gone through Reclamation's Framework process where we work through NEPA, the water rights agreement and negotiate all of the details prior to the legislative process, we would likely have completed the transfer more quickly at less cost. Instead, the details of the transfer were negotiated in Washington, which in this case took several Congresses to be completed. Upon passage, a significant amount of work was required to make the transfer happen. The NEPA compliance had to be completed, the water rights agreement had to be negotiated and finalized, and other local consultations had to be carried out. While we were able to get through it in this case, there is a risk in going this route. As a result of the NEPA process, the hazardous waste review and the other steps that must be completed, unanticipated problems could be identified which were not addressed in the legislation. This may delay conveyance or require coming back to the Congress for additional legislation before the transfer can occur. This has happened in the past and delayed some transfers.

In addition to the completed transfers mentioned above, a significant amount of work has been going-on throughout the Western United States to move other projects and facilities toward possible title transfers. Memoranda of Agreement have been negotiated and signed between Reclamation and numerous water districts across the west including districts in Idaho, Nevada, Colorado, Montana, Arizona and Texas. These memoranda establish roles and responsibilities, and in some cases, identify goals and objectives, for completing a fair and open title transfer process. In addition, we are working with numerous other entities that are just now coming forward with an interest in title transfer.

Mr. Chairman, as I have stated in the past, the process for completing title transfer, even for relatively "uncomplicated" projects, is not simple. Each project has unique authorities, characteristics and circumstances that need to be analyzed and worked through to avoid serious unintended consequences. Given the significant progress that we have made, I continue to believe that title transfer, and the process envisioned in the Framework, is an important and worthwhile initiative.

BACKGROUND ON S. 2400

The Colorado-Big Thompson Project (CBT) is the largest transmountain water diversion project in Colorado, and one of the Most complex projects undertaken by Reclamation. Built from 1938 to 1957, the project includes over 100 water and power facilities which store, regulate, and divert water from the west slope of the Rockies under the Continental Divide to 125 water user organizations and municipalities on the east slope.

The northern Colorado Water Conservancy District—the entity to receive title to the distribution facilities under S. 2400—was organized in 1937 as the local public agency to contract with the United States to build the Colorado-Big Thompson Project. The District provides water for agricultural, municipal, domestic and industrial uses in northeastern Colorado and encompasses 1.5 million acres in portions of Larimer, Boulder, Weld, Morgan, Washington, Logan, and Sedgwick counties.

Since 1956, the District has managed, operated and maintained the single-purpose facilities proposed for transfer which include the North Poudre Supply Canal and diversion works, also known as the Munroe Gravity Canal; the Charles Hansen (Supply) Canal and Windsor Extension; and the Dixon Feeder Canal.

Since 1986, the District has also managed, operated, and maintained the following multipurpose works: Farr Plumping Plant, Granby Discharge Line and Pump Canal, Granby Dam, Willow Creek Pumping Plant, Willow Creek Pump Canal, Willow Creek Dam, Shadow Mountain Dam, Shadow Mountain Connecting Channel, Charles Hansen Feeder Canal, Carter Lake and Dams, and Horsetooth Reservoir and Dams. These facilities would not be transferred under S. 2400.

In 1999, the District contacted Reclamation's Eastern Colorado Area Office based in Loveland, CO to express its interest in obtaining title to these single-purpose Project facilities where they are the sole beneficiary.

In October, 1999, a Memorandum of Understanding between Reclamation and the District was signed. This document defined the roles and responsibilities for the activities to be undertaken in order to complete the process for title transfer under Reclamation's Title Transfer Framework.

Mr. Chairman, Reclamation has worked very closely with the District over the years and I think it is safe to say that we have a good and cooperative relationship not only on the management of the facilities under consideration for title transfer in S. 2400, but in the operation and maintenance of the entire CBT Project in general.

S. 2400 CONVEY CERTAIN WATER DISTRIBUTION FACILITIES OF THE COLORADO BIG THOMPSON PROJECT

As introduced, S. 2400 would enable the Secretary of the Interior to transfer all right, title and interest in certain

water distribution facilities of the Colorado Big Thompson Project in Colorado—built by the U.S. Bureau of Reclamation and owned by the United States—to the Northern Colorado Water Conservancy District.

The rest of the CBT will remain in Federal ownership and the terms of the existing contract will remain in place. Furthermore, the District's obligation for their share of repayment for the Project'sother features will continue until they are paid out. This bill could affect direct spending. Assuming the Administration's concerns are resolved, we expect the bill to be PAYGO neutral.

NEPA and Compliance with Federal Laws: Over the past several years, the Administration has insisted that title transfers comply with all applicable laws including NEPA and the Endangered Species Act (ESA) prior to transfer. As a result of a compromise worked out with the Chairman, that is reflected in this legislation, we believe that S. 2400 does this.

Compliance with the process under NEPA will enable all interested stakeholders to have an opportunity to voice their concerns and have them addressed. Furthermore, compliance with NEPA and ESA will enable the U.S. Fish and Wildlife Service to evaluate the impacts of the transfer and future activities on species that may be threatened or endangered and to develop any mitigation that may be necessary.

Sale price: Addressing the valuation is central to getting an agreement on title transfer. It is Reclamation's title transfer valuation policy that we determine the base value by calculating the net present value of the future revenue stream that would, absent the title transfer, come to the United States. As a next step, we adjust the base value to account for changes that the new owners are likely to make in the public benefits. Since the May 23, 2000, hearing on H.R. 4389 by the House Resources Subcommittee on Water and Power, Reclamation and the District have reached agreement on a sales price of $2,133,702.

Aid to Irrigation: The source of the payments to satisfy Section 2(b)(1) needs to be made clear. As I understand it, a portion of the amount to be paid under section, will be made by the District directly. The remaining portion will be paid by the Project's power beneficiaries as aid-to-irrigation. That division of payment and its timing need to be identified, reviewed by the Administration and authorized by the legislation. Furthermore, the portion of the repayment obligation paid by the power users needs to be appropriately credited by the Western Area Power Administration (western) to ensure that this amount is noted as completed for Western's book-keeping purpose.

Credit Project Repayment: The Administration supports inclusion of Section 2(c) and I believe that some explanation is necessary for the hearing record. Since S. 2400 transfers title to only a portion of CBT, which is not completely paid-out, it needs to be clear—for book-keeping purposes—that while the amount being paid is the net

present value of the obligation, the undiscontinued amount that this payment represents is credited against the total capital amount that is owed. This will ensure that when the final accounting on the Project is done, that the District is not asked to pay the difference between the present value payment that is made pursuant to the legislation, and the undiscounted amount that is on the books. Absent this language, which has been included in several other bills currently pending, how to handle this issue may not be clear and could result in some confusion.

TECHNICAL MODIFICATION AND AMENDMENT

As I mentioned earlier, the Department can support S. 2400 if one technical modification is made and if the bill is amended to reflect the sale price agreement between the District and Reclamation.

Section 2(b)(1) needs to be amended to state clearly that payment by the District is a trigger and a prerequisite for transfer. The existing language can be interpreted as simply allowing the Secretary to receive payment. Also, Section 2(b)(1) should be amended to reflect the agreement between the District and Reclamation establishing the sales price at $2,133,702.

We recommend the following revision:

(B) CONSIDERATION.—

(1) IN GENERAL.—As a condition of transfer, the Secretary shall receive the sum of $2,133,702 as consideration for the conveyance. * * *

CONCLUSION

In conclusion Mr. Chairman, I would like to reiterate that we have worked well with the District in the past and are working closely with them on the memorandum of understanding to get the title transfer process started. The Department looks forward to working with the Committee, the Colorado delegation, and the District to address these remaining issues and to move this legislation forward.

That concludes my statement, 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. 2400 as ordered reported.

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