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CONVEYANCE OF SLY PARK DAM AND RESERVOIR

AUGUST 25, 2000.—Ordered to be printed

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

REPORT

[To accompany H.R. 992]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 992) to convey the Sly Park Dam and Reservoir to the El Dorado Irrigation District, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. On page 2, line 21, strike "14–06–200–949IR2," and insert "14–06–200–949IR3,".

2. Insert the following after section 4:

"SEC. 5. COSTS.

"All costs, including interest charges, associated with the Project that have been included as a reimbursable cost of the Central Valley Project are declared to be nonreimbursable and nonreturnable.".

PURPOSE OF THE MEASURE

The purpose of the measure is to direct the Secretary of the Interior, upon payment by the El Dorado Irrigation District of the net present value of the remaining repayment obligation, to convey the Sly Park Project to the District.

BACKGROUND AND NEED

Construction of Sly Park Dam and Reservoir (Jenkinson Lake) and Camino Conduit was authorized by the American River Basin Development Act, enacted October 14, 1949. Sly Park Dam and

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Reservoir are located on Sly Park Creek, a tributary of the North Fork Cosumnes River. The Camino Conduit conveys water by gravity from Jenkinson Lake to the El Dorado Distribution System. A small dam and tunnel, Camp Creek Diversion Dam and Tunnel, divert water from Camp Creek to augment the flow into Jenkinson Lake. The costs for construction of this small dam and tunnel are included with construction costs for Sly Park Dam, Reservoir, and Conduit.

Sly Park Dam, Reservoir, and Conduit were financially integrated into the Central Valley Project (CVP) by the authorizing legislation; however, operation of these facilities is independent from the CVP. There is no contractual commitment, nor any physical connection, to provide either water or power to or from the CVP. All of the Unit's output in water services is contractually obligated to the El Dorado Irrigation District (District), which has operated and maintained the facilities since completion of the Unit in 1955.

The District is the major water supplier in El Dorado County, providing service throughout a 200 square-mile area in the western part of the county. In cooperation with the Bureau of Reclamation (Bureau), the District operates the Sly Park Recreation Area, which offers camping, boating, swimming, picnicking and fishing.

One issue that was recently brought to the attention of the Committee regarding the Sly Park transfer is the cost allocation for this project. The Bureau is currently performing a reallocation of CVP capital costs to comply with section 106 of the Coordinated Operation Agreement Act of 1986 (P.L. 99–546) and to address a report issued by the General Accounting Office in March 1992 criticizing the current cost allocation. During a review of the Bureau's proposed allocation, released for public review in November 1998, it was found that the costs of constructing the Sly Park facility have been included as a CVP capital obligation for repayment by the CVP irrigation and municipal and industrial water users. As mentioned above, this facility serves a single local water district and does not contribute to the water yield or operations of the CVP.

In financially integrating the Sly Park Unit into the CVP, the Bureau is relying on the authorizing legislation. The authorizing Act for Sly Park directs the Secretary "to cause the operation of said works to be coordinated and integrated with the operation of existing and future features of the Central Valley project. . . ." The Act does not refer to financial integration. It appears that the project has not been integrated operationally but has been integrated financially.

LEGISLATIVE HISTORY

H.R. 992 was introduced on March 4, 1999 by Congressman John Doolittle of California and was referred to the Committee on Resources. The bill passed the House by voice vote on November 1, 1999. The measure was received by the Senate and on November 19, 1999, was referred to the Energy and Natural Resources Committee. The Subcommittee on Water and Power held a hearing on the measure on March 22, 2000. At the business meeting on July 13, 2000, the Committee on Energy and Natural Resources ordered H.R. 992, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on July 13, 2000 by a unanimous voice vote with a quorum present, recommends that the Senate pass H.R. 992, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of H.R. 992, the Committee adopted an amendment to make all costs, including interest charges, associated with the Project that have been included as a reimbursable cost of the Central Valley Project, nonreimbursable and nonreturnable.

SECTION-BY-SECTION

Section 1 provides definitions of key terms.

Section 2 provides that the Secretary of the Interior shall, as soon as practicable after date of enactment, transfer the Sly Park Unit to the District. The Secretary is authorized to receive a total of $11,500,000 to extinguish debt under specified contracts. Amounts paid shall be credited toward repayment of capital costs of the Central Valley Project.

Section 3 provides that, upon payment described in section 2, the Sly Park Unit shall no longer be a Federal reclamation project or a unit of the CVP, nor shall the District be entitled to receive any further reclamation benefits.

Section 4 describes the extent of the liability retained by the United States after conveyance.

Section 5 provides that all costs, including interest charges, associated with the Project that have been included as a reimbursable cost of the Central Valley Project, are declared to be nonreimbursable and nonreturnable.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 992—An act to convey the Sly Park Dam and Reservoir to the El Dorado Irrigation District, and for other purposes

Summary: H.R. 992 would direct the Secretary of the Interior to convey the Sly Park Dam and Reservoir, the Camp Creek Diversion Dam and Tunnel, and certain conduits and canals to the El Dorado Irrigation District. These water facilities are part of the Central Valley Project in California. The district would pay $11.5 million to the federal government for these facilities.

CBO estimates that enacting H.R. 992 would decrease net direct spending by about $11 million in fiscal year 2001, and that this near-term cash savings would be offset by the loss of about $1 million in receipts annually over the 2002–2028 period. Because the legislation would affect direct spending, pay-as-you-go procedures would apply.

H.R. 992 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Local governments would incur some costs as a result of the legislation's enactment, but these costs would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 992 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING [1]						
Estimated Budget Authority	0	−11	1	1	1	1
Estimated Outlays	0	−11	1	1	1	1

[1] Implementing the conveyance of property under H.R. 992 would cost about $50,000, assuming the availability of appropriated funds.

Basis of estimate: For this estimate, CBO assumes that the conveyance of water facilities under H.R. 992 will occur in early fiscal year 2001. CBO estimates that it will cost about $50,000 to administer the conveyance.

The El Dorado Irrigation District would pay $11.5 million to the federal government for the conveyance. In return, the legislation would cancel all repayment obligations and interest charges associated with the conveyed water facilities. As a result of these provisions, receipts to the federal government would be offset by the loss of currently scheduled repayments of about $1 million each year over the 2001–2008 period.

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	−11	1	1	1	1	1	1	1	1	1
Changes in receipts	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)

[1] Not applicable.

Intergovernmental and private-sector impact: H.R. 992 contains no intergovernmental or private-sector mandates as defined in UMRA. The conveyance authorized by this bill would be voluntary on the part of the district, and any costs incurred by it as a result of the conveyance would be accepted on that basis. The bill would allow the district to prepay certain outstanding obligations to the federal government.

Previous CBO estimate: On March 19, 1999, CBO transmitted a cost estimate for H.R. 992, the Sly Park Unit Conveyance Act, as ordered reported by the House Committee on Resources on March 11, 1999. The House version of H.R. 992 would direct the Secretary of the Interior to convey some but not all of the water facilities that are included in the Senate version. The House version also contains a different set of conditions for the conveyance. The two estimates reflect those differences.

Estimate prepared by: Federal Costs: Rachel Applebaum. Impact on State, Local, and Tribal Governments: Majorie Miller. Impact on the Private Sector: Sarah Sitarek.

Estimate approved by: Peter H. Fontaine, Deputy 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 H.R. 992. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and business.

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 H.R. 992, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendation relating to H.R. 992 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 5, 2000.

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

DEAR MR. CHAIRMAN: This letter responds to your request for the views of this Department on H.R. 992, to convey the Sly Park Dam and Reservoir to the El Dorado Irrigation District, as adopted by the House of Representatives.

The Administration supports H.R. 992, with the inclusion of the technical modification recommended below. The bill as originally introduced was amended at the request of the Administration in the House of Representatives so that we believe it now protects the interests of the United States, the citizens of El Dorado County and the El Dorado Irrigation District. As such, and we look forward to working with the Committee, the California delegation, and the District to move this legislation forward.

There is a minor technical amendment that recently became necessary. On February 29, 2000, Reclamation and the El Dorado Irrigation District renewed the interim water service contract pursuant to the Central Valley Project Improvement Act. To accurately identify the contract that is being extinguished by the payments authorized in H.R. 992, the contract number that is referenced needs to be changed. Therefore in Section 2(b), line 20, the contract number should be 14–06–200–949IR*3*.

RECENT ACTIVITIES IN TITLE TRANSFER

We would like to provide the Subcommittee a brief 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, P.L. 105–316, authorized the prepay-

ment and subsequent conveyance of the Canadian River Pipeline in Texas to the Canadian River Authority. This facility was transferred in May, 1999.

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

P.L. 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) and the negotiation and the development of an 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 which that 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. Since BID began the environmental review prior to the legislation's passage, the NEPA process was completed, including the full public review, and a finding of no significant impact (FONSI) was issued on February 18, 2000. The water rights agreement was negotiated in December, 1999 and signed by all parties in February, 2000. The Quit Claim Deed for the water rights transfer was negotiated in December, 1999 and signed in February 2000 and the Quit Claim Deed Real Property was negotiated in February, 2000 and signed on February 24, 2000. As such, the facilities were transferred to Burley Irrigation District on February 24, 2000—more than two months ahead of schedule.

While completing this is a credit to the hard work and cooperation of both Reclamation staff and to the Burley Irrigation District, we remain convinced that rather than negotiating the details in Washington, which in this case took several Congresses, then doing NEPA, the water rights agreement and other local consultations, and risk finding unanticipated problems through that process that may delay or require additional legislation before the transfer, 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 and probably cheaper.

In addition to these completed transfers, 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.

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, we

continue to believe that title transfer, and the process envisioned in the Framework, is an important and worthwhile initiative that continues to be a priority for this Administration.

Given that background, we turn to the Administration's views on H.R. 992.

H.R. 992 CONVEY SLY PARK UNIT OF CENTRAL VALLEY PROJECT

H.R. 992 would enable the Secretary of the Interior to transfer all right, title and interest in the Sly Park Unit of the Central Valley Project (CVP) to the El Dorado Irrigation District (District) in California. This legislation has been the subject of a great deal of negotiation in the House of Representatives and the bill before the Subcommittee today represents a reasonable and fair compromise. As such, with one further technical amendment, the Department supports H.R. 992 as it is now under consideration by this Committee.

BACKGROUND

The Sly Park Unit of the Central Valley Project (CVP), while hydrologically isolated from the rest of the CVP, was authorized under the American River Act of October 14, 1949 (63 Stat. 853) and includes the Sly Park Dam and Jenkinson Lake, Camp Creek Diversion and the Camino Conduit, and Camino and Cap Creek Tunnels which were built by the Bureau of Reclamation. Upon completion of construction in 1955, the operations, maintenance and replacement responsibility for these facilities was transferred to the District.

The Project also includes water treatment facilities and a distribution system for irrigation and municipal purposes in western El Dorado County, which was built by Reclamation and is also operated and maintained by the District. The distribution system consists of three pipelines which extend a total of 46.3 miles from the vicinity of Sly Park Dam to the community of Placerville, California.

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As amended and passed by the House of Representatives, H.R. 992 would enable the Secretary of the Interior to transfer all rights, title and interest in the Sly Park Unit. In exchange, the District is required to make a lump-sum payment extinguishing all debt associated with related water service and repayment contracts between the District and the United States. However, the District would still be required to make payments into the Central Valley Project Restoration Fund, established by Section 3407(c) of the Central Valley Project Improvement Act.

Once the facilities are transferred, the District would assume all liability for the Project. In addition, the Sly Park Unit would no longer be a Federal reclamation project or a unit of the CVP, and the District would no longer be eligible to receive any further reclamation benefits.

During discussions of this bill in the House and of many others in both the House and Senate, the Administration has insisted that title transfers comply with all applicable laws including NEPA and the Endangered Species Act (ESA) prior to transfer and to ensure

that whatever mitigation for the impacts of the title transfer, that is identified as necessary, is carried out. We believe that H.R. 992 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 Fish and Wildlife Service to evaluate the impacts of the transfer and further activities on species that may be threatened or endangered. Six such species of plants, the gabbro soil plants of the Central Sierra Nevada Foothills, are present in El Dorado County. The Fish and Wildlife Service is currently developing a recovery plan for these species in hopes of being able to delist them in the future. It is the Department's expectation that this will be an integral part of the NEPA and ESA compliance processes as this title transfer moves forward.

TECHNICAL MODIFICATION

As mentioned earlier, there is a minor technical amendment that recently became necessary. On February 29, 2000, Reclamation and the El Dorado Irrigation District renewed the interim water service contract pursuant to the Central Valley Project Improvement Act. To accurately identify the contract that is being extinguished by the payments authorized in H.R. 992, the contract number that is referenced needs to be changed. Therefore in Section 2(b), line 20, the contract number should be 14–06–200–949IR*3*. With this amendment, we support the bill.

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

Sincerely,

E.L. MARTINEZ,
Commissioner, Bureau of Reclamation.

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 Act H.R. 992, as ordered reported.

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