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PROVO RIVER PROJECT TRANSFER

JUNE 27, 2013.—Ordered to be printed

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

R E P O R T

[To accompany S. 211]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 211) to amend certain definitions contained in the Provo River Project Transfer Act for purposes of clarifying certain property descriptions, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 211 is to amend certain definitions contained in the Provo River Project Transfer Act for the purposes of clarifying certain property descriptions.

BACKGROUND AND NEED

Built by the Bureau of Reclamation (Reclamation) periodically between 1938 and 1958, the Provo River Project (Project) was designed to provide supplemental irrigation water for 48,156 acres of highly developed farmlands in Salt Lake, Utah, and Wasatch Counties, and additionally provide a domestic water supply for American Fork, Lehi, Lindon, Orem, Pleasant Grove, Provo, and Salt Lake City, Utah. 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.

In 2004, the 108th Congress passed the Provo River Project Transfer Act (P.L. 108–382) which transferred the Project's Provo River Canal and the Pleasant Grove Property from Reclamation to the Provo River Water Users Association (PRWUA). A technical change is needed to clarify PRWUA's ownership of the facility.

LEGISLATIVE HISTORY

S. 211 was introduced by Senators Hatch and Lee on February 4, 2013. The Senate Energy and Natural Resources Committee, Subcommittee on Water and Power, held a hearing on S. 211 on April 16, 2013. At its business meeting on May 16, 2013, the Committee ordered S. 211 favorably reported by voice vote.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 16, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 211.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 2(4)(A) of the Provo River Transfer Act (Public Law 108–382; 118 Stat. 2212) to clarify the terms of conveyance of the Pleasant Grove Property and it amends section 2(5) of the Act to clarify the terms of conveyance of the Provo Reservoir Canal.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of S. 211 has been provided by the Congressional Budget Office:

S. 211—A bill to amend certain definitions contained in the Provo River Project Transfer Act for purposes of clarifying certain property descriptions

S. 211 would direct the Secretary of the Interior to transfer the title of the water conveyance facilities located on the Provo Reservoir to the Provo River Water Users Association. Based on information from the Bureau of Reclamation, CBO estimates that implementing the legislation would affect net direct spending; therefore, pay-as-you-go procedures apply. However, we expect that those impacts would be insignificant. The legislation would not affect revenues.

The bureau had the authority to transfer the title to the Provo Reservoir Canal to the association as the project existed in 2004. The facilities have been modified since 2004, so that transfer authority no longer applies. S. 211 would direct the bureau to transfer the title to the water conveyance facilities associated with the Provo Reservoir, including bridges, lands, and pipelines. Upon transfer of the title, the association would be required to pay, in one lump sum, the present value of the remaining costs for construction of the canal and the value of receipts that the bureau would no longer collect for issuing special-use permits and selling surplus water.

Based on information from the bureau, if S. 211 is enacted, CBO expects that the bureau would transfer the title to the Provo Res-

ervoir facilitates in 2014. Upon transfer, the association would pay the U.S. Treasury about $700,000. Annual offsetting receipts would decrease by about $60,000 because the association would no longer make annual payments of about $40,000 for the canal's construction cost, and the bureau would no longer collect amounts for issuing special-use permits and selling surplus water, which total about $20,000 each year. In total, CBO estimates that enacting the legislation would result in a net reduction in direct spending of about $400,000 over the 2014–2018 period and $100,000 over the 2014–2023 period.

S. 211 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, 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 S. 211.

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. 211, as ordered reported.

Congressionally Directed Spending

S. 211, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

Executive Communications

The testimony provided by the U.S. Department of the Interior at the April 16, 2013, Subcommittee on Water and Power hearing on S. 211 follows:

Statement of Robert Quint, Senior Advisor, Bureau of Reclamation, Department of the Interior

> Chairman Schatz and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to present the views of the Department of the Interior (Department) regarding S. 211, an amendment to the Provo River Project Transfer Act (Act) authorizing the Secretary of the Interior (Secretary) to convey the recently-enclosed Provo Reservoir Canal to the Provo River Water Users Association (Association). The Department supports S. 211.
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> A principal feature of the Provo River Project is the Provo Reservoir Canal (canal). It extends 22 miles from

the mouth of Provo Canyon to Salt Lake County. Once it meandered through pastures and fields. By the late 1990s, suburban development had surrounded it. During this time, the Association concluded that owning the canal and associated project features would facilitate its ability to obtain financing for its eventual enclosure of the canal. Enclosing the canal into pipe offered significant potential new benefits in terms of water conservation, water quality, in stream flows, public safety and upstream recreation.

In 2004, Congress agreed that transfer of the Provo River Project was in the public interest. The Provo River Project Transfer Act (Public Law 108–382) was enacted, authorizing the transfer to the Association of the Provo Reservoir Canal and the site of the Association's Office. It further authorized the transfer of the Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy. The Department supports transferring ownership of certain Reclamation project facilities to non-Federal entities in cases where transfers create benefits for those who take title as well as for other stakeholders and the public. For this reason, the Department supported passage of the Act in 2004.

In the years since enactment of the Act, Reclamation has conveyed the Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy. One of the requirements of the Act was that all of the water users—including the Association, the Central Utah Water Conservancy District, the Metropolitan District of Salt Lake and Sandy and the Jordan Valley Water Conservancy District needed to develop a comprehensive agreement to govern the operations, ownership financing and improvement of the PRC (Section 3.a.1B of the Act). Consequently, following its enactment, the parties began meeting regularly to discuss and negotiate the Master Agreement. From late 2004 through mid-2009, all of the parties acted on the belief that, after the parties reached agreement as required in the Act, Reclamation would transfer title and, after transfer, the Association would begin the piping of the PRC. However, in May of 2009, the Association determined that the approach being considered for title transfer, funding, and enclosure placed the Association's tax-exempt status in jeopardy and threatened the entire project.

In response, an alternative strategy for the canal portion of the transfer was developed by the parties, whereby the Association, the partners and Reclamation proceeded with piping the canal under Reclamation's operation, maintenance, and replacement authority in 2009. Today, crews are constructing a recreation trail on the surface of the ground over the piped Provo Reservoir Canal. Below the surface, a 10.5-foot-diameter pipe continues to convey Provo River Project water.

Unfortunately, the parties, including Reclamation, moved forward with the title-transfer-after-piping option without realizing that this sequence was out of compliance with the original statutory authority to transfer the Provo

Reservoir Canal to the Association "as in existence on the date of enactment[.]". In retrospect, we all should have more carefully considered the potential effects of this change in the title transfer/construction sequence on title transfer as provided for in the Act. That brings us to the need for the technical amendments provided by S. 211. This technical amendment alters the definition of the Provo Reservoir Canal to authorize the transfer of the pipeline as well as to eliminate any confusion about the facilities to be transferred. The amendment authorizes transfer of the newly constructed pipeline by removing the term "canal" in the definition and replacing it with "water conveyance facility historically known as the Provo Reservoir Canal", and by eliminating the phrase "as in existence on the date of enactment of this Act." The bill also directs the transfer of "all associated bridges, fixtures, structures, facilities, lands, interests in land, and rights-of-way held", which Reclamation also supports since appurtenant facilities are currently used by the Association.

The majority of the $150 million cost of piping the canal was born by the Association, the Central Utah Water Conservancy District, the Jordan Valley Water Conservancy District, and the Provo Reservoir Water Users Company. Federal funding applied to the project was $39 million provided by the Central Utah Project Completion Act Office. This amount, provided under the water conservation provisions of the Central Utah Project Completion Act, ensured that 8,000 acre-feet of conserved water would be made available to the Secretary to provide in-stream flows on the lower Provo River. These flows benefit fish and wildlife including the endangered June sucker, a species native only to Utah Lake and its tributary streams. Reclamation provided no funding to the piping project.

As a condition of title transfer, the 2004 Act (PL 108–382) requires the Association to remit to the United States its repayment obligation associated with the canal—the amount it continues to owe Reclamation for reimbursement of the original costs of construction. This obligation does not change under the technical amendment proposed by S. 211.

Reclamation sees the issue being addressed by S. 211 as purely technical. Concurrent to consideration of S. 211, Reclamation, the Association and the other partners continue to move ahead to complete all the other steps necessary to transfer title and believe that with passage of this bill, we will be able to move forward expeditiously to finalize this title transfer. We continue to support the title transfer and the excellent work that has gone on with the enclosure of the canal.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S.

211, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PROVO RIVER PROJECT TRANSFER ACT

Public Law 108–382

AN ACT To authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 2. DEFINITIONS.

In this Act:

* * * * * * *

(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] *on which the parcel is conveyed under section 3(a)(2)*.

(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] *water conveyance facility historically known as the Provo Reservoir Canal and all associated bridges, fixtures, structures, facilities, lands, interests in land, and rights-of-way held* 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 *and forebay* at the mouth of Provo Canyon, Utah, to and including the Provo Reservoir Canal Siphon and Penstock *near the Jordan Narrows to the point where water is discharged to the Welby-Jacob Canal and the Utah Lake Distributing Canal*, as in existence on the date [of enactment of this Act] *on which the Provo Reservoir Canal is conveyed under section 3(a)(1).*

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