

Calendar No. 410

109TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 109-248

NORTHERN COLORADO WATER CONSERVANCY DISTRICT CONVEYANCE ACT

APRIL 20, 2006.—Ordered to be printed

Filed, under authority of the order of the Senate of April 7, 2006

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

R E P O R T

[To accompany H.R. 3443]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 3443) to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 3443 is to direct the Secretary of the Interior to transfer the title of specific water distribution facilities of the Colorado-Big Thompson Project in northeastern Colorado to the Northern Colorado Water Conservancy District.

BACKGROUND AND NEED

The Northern Colorado Water Conservancy District (hereinafter "District") seeks the transfer of title of the following three single-purpose Colorado-Big Thompson Project (hereinafter "C-BT") water conveyance facilities: the St. Vrain Supply Canal, the Boulder Creek Supply Canal, and the South Platte Supply Canal. The C-BT is a multi-purpose project built by Reclamation between 1938 and 1957. The C-BT's primary purpose is to provide supplemental water supply for the beneficial use of the District's customers, with hydropower generation as a secondary purpose.

In 2000, Congress transferred title to four single-purpose water conveyance facilities associated with the C-BT from the United States to the District (P.L. 106-376). In that instance, a Memo-

randum of Agreement (hereinafter “MOA”) with Reclamation was completed subsequent to passage of that law and the property was transferred. Enactment of H.R. 3443 would complete the transfer of title of all single-purpose water conveyance facilities within the C–BT to the District. In July 2005, the District requested that Reclamation enter into a Memorandum of Understanding (hereinafter “MOU”) for purposes of the transfer proposed by H.R. 3443. Pursuant to that request, Reclamation and the District have reached agreement on the title transfer MOU.

The District has operated and maintained these distribution facilities since 1957 and has completed its repayment of the capital costs for the C–BT. According to the bill’s proponents, the transfer will allow the District to cost-effectively manage the facilities and reduce paperwork.

LEGISLATIVE HISTORY

H.R. 3443 was introduced on July 26, 2005, by Representative Musgrave for herself and Representative Mark Udall and referred to the House Resources Committee. The Subcommittee on Water and Power held a hearing on H.R. 3443 on September 27, 2005. The House Resources Committee, by unanimous consent, ordered H.R. 3443 favorably reported on October 19, 2005. Under suspension of the rules, H.R. 3443 passed the House of Representatives on December 13, 2005. A similar measure, S. 1498 was introduced by Senator Allard on July 26, 2005 for himself and Senator Salazar and referred to the Energy and Natural Resources Committee. The Subcommittee on Water and Power held a hearing on S. 1498 on October 6, 2005. S. Hrg. 109–273. The Senate Committee on Energy and Natural Resources ordered H.R. 3443 favorably reported on March 15, 2006.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business meeting on March 15, 2006 by unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 3443.

SECTION-BY-SECTION ANALYSIS

Section 1 defines the terms used in the Act.

Section 2 subsection (a) directs the Secretary to convey to the District all right, title and interest in the St. Vrain Supply Canal; the Boulder Creek Supply Canal that extends from the St. Vrain River to Boulder Creek, including that portion that extends from the St. Vrain River to Boulder Reservoir; and the South Platte Supply Canal. This section directs that the title transfer take place while ensuring that the Secretary evaluate the impacts of the change of ownership of the transferred water distribution facilities, if any, develop environmental compliance documents, and proceed in compliance with all applicable laws. Any action required as a result of the Secretary’s action shall be carried out by the Federal government or the Northern Colorado Water Conservancy District pursuant to MOU No. 06AG602103 entered into on December 16, 2005.

Subsection (b) provides that the District has completed its capital cost obligation associated with the C–BT; that the District shall not

be required to provide any additional consideration for the conveyance made under subsection (a); and that the Western Area Power Administration shall continue to include the unpaid portion of the transferred facilities in its annual power repayment studies for the Loveland Area Projects until such facilities are repaid, consistent with applicable laws and policies.

Subsection (c) provides that, except as provided in the Act, nothing affects the obligations and rights of the District under the contract between the District and the United States providing for the construction of the C-BT.

Section 3 provides that, following the conveyance made under subsection (a), the United States shall not be liable for damages associated with the transferred facilities.

Section 4 recognizes the unique status of the New Consolidated Lower Boulder Reservoir and Ditch Co., and the New Coal Ridge Ditch Company, and ensures that any action undertaken by the Secretary in accordance with this Act will not affect the rights and interests of those companies or ability to use the transferred water distribution facilities. This section does not affect the activities to be carried out pursuant to MOU No. 06AG602103.

Section 5 provides that, if the conveyance has not occurred one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report detailing why the facilities have not been transferred and the schedule for completing the transfer.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 3443—An act to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District

H.R. 3443 would direct the Secretary of the Interior to convey certain water distribution facilities that are a part of the Colorado-Big Thompson Project to the Northern Colorado Water Conservancy District. Based on information from the Bureau of Reclamation, CBO estimates that enacting H.R. 3443 would have no significant effect on the federal budget.

The Northern Colorado Water Conservancy District has fulfilled all repayment obligations associated with the project. Under current law, the district pays all operations and maintenance costs for the project. In addition, H.R. 3443 would have no effect on the Western Area Power Administration's (WAPA's) repayment obligation for the Colorado-Big Thompson Project. Under current law, WAPA will repay \$72 million in construction costs for the project by 2051.

H.R. 3443 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. Accepting the land conveyance authorized in this act would be voluntary on the part of the Northern Colorado Water Conservancy District. Any costs they might incur to comply with the conditions of conveyance would be incurred voluntarily.

The CBO staff contact for this estimate is Julie Middleton. The estimate was 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. 3443. The bill 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 H.R. 3443.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Subcommittee hearing on S. 1498, the Senate counterpart to H.R. 3443, in the 109th Congress follows:

STATEMENT OF WILLIAM E. RINNE, DEPUTY COMMISSIONER OF THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Good morning, I am William E. Rinne, Deputy Commissioner of the Bureau of Reclamation. I am pleased to appear before this Subcommittee to provide Reclamation's views on S. 1498, legislation to transfer title to certain water distribution facilities of the Colorado-Big Thompson Project (C-BT) located in Colorado, to the Northern Colorado Water Conservancy District. Mr. Chairman, we are working diligently with the District to accomplish this title transfer because we are convinced it has the potential to provide operations efficiencies and other benefits. However, we are concerned that the legislation may be premature because we have not yet worked out the details of the title transfer with the District.

To date, our most successful transfers have relied on a simple plan—identify issues and obstacles at the local level and address them prior to the introduction of legislation authorizing the title transfer. Toward this end, Reclamation has a clear and collaborative process for title transfers. Not only has the preferred approach helped entities identify and address concerns of other interested parties early on in the process, but it has also enabled Reclamation and the districts to accurately predict and assign costs, and resolve other issues during the more flexible period preceding legislation. This process has been quite successful and we strongly encourage the District to continue to work through it with us before legislation advances.

The transfer contemplated by S. 1498 has only just begun. On January 24 of this year, Reclamation wrote to the District, acknowledging its interest in title transfer and urging it to follow the title transfer process described

above. On July 26, 2005, H.R. 3443 was introduced in the House. On September 7, 2005, the District wrote Reclamation requesting that an MOU be entered into by October 7, 2005. We have begun working with the District on that MOU, and if no unexpected issues arise, we anticipate executing the MOU by October 7. Subsequent to the completion of that MOU, Reclamation and the District need to thoroughly discuss the remaining issues associated with the transfer of these facilities.

Mr. Chairman, we look forward to working with you and the District to complete this title transfer in the most efficient and cost-effective manner possible.

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 Act, H.R. 3443, as ordered reported.

