

LOWER YELLOWSTONE RECLAMATION PROJECTS
CONVEYANCE ACT

OCTOBER 16, 2002.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 2202]

The Committee on Resources, to whom was referred the bill (H.R. 2202) to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Lower Yellowstone Reclamation Projects Conveyance Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) INTAKE IRRIGATION DISTRICT.—The term “Intake Irrigation District” means the Irrigation District by that name that is organized under the laws of the State of Montana and operates the Intake Project.

(2) INTAKE PROJECT.—The term “Intake Project” means the Federal irrigation development operated by the Intake Irrigation District and authorized under the terms of the Act of August 11, 1939 (chapter 717; 53 Stat. 1418).

(3) IRRIGATION DISTRICTS.—The term “Irrigation Districts” means—

- (A) the Intake Irrigation District;
- (B) the Lower Yellowstone Irrigation District No. 1;
- (C) the Lower Yellowstone Irrigation District No. 2; and
- (D) the Savage Irrigation District.

(4) LOWER YELLOWSTONE IRRIGATION DISTRICT NO. 1.—The term “Lower Yellowstone Irrigation District No. 1” means the irrigation district by that name that is organized under the laws of the State of Montana and operates the part of the Lower Yellowstone Irrigation Project located in the State of Montana.

(5) LOWER YELLOWSTONE IRRIGATION DISTRICT NO. 2.—The term “Lower Yellowstone Irrigation District No. 2” means the irrigation district by that name organized under the laws of the State of North Dakota and operates the part

of the Lower Yellowstone Irrigation Project located in the State of North Dakota.

(6) LOWER YELLOWSTONE IRRIGATION PROJECT.—The term “Lower Yellowstone Irrigation Project” means the Federal irrigation development operated by Lower Yellowstone Irrigation District No. 1 and Lower Yellowstone Irrigation District No. 2 and authorized by the Act of June 17, 1902 (chapter 1093; 32 Stat. 388).

(7) MEMORANDUM OF UNDERSTANDING.—The term “Memorandum of Understanding” means the memorandum of understanding dated November 16, 1999, and any subsequent replacements or amendments between the Districts and the Montana Area Office, Great Plains Region, Bureau of Reclamation, for the purpose of defining certain principles by which the title to the projects will be transferred from the United States to the districts.

(8) PICK-SLOAN MISSOURI BASIN PROGRAM.—The term “Pick-Sloan Missouri Basin Program” means the comprehensive Federal program for multipurpose benefits within the Missouri River Basin including irrigation authorized by section 9 of the Act of December 22, 1944, commonly known as the “Flood Control Act of 1944” (chapter 665; 58 Stat. 891).

(9) PICK-SLOAN MISSOURI BASIN PROGRAM PROJECT USE POWER.—The term “Pick-Sloan Missouri Basin Program Project Use Power” means power available for establishing and maintaining the irrigation developments of the Pick-Sloan Missouri Basin Program.

(10) PROJECTS.—The term “Projects” means—

- (A) the Lower Yellowstone Irrigation Project;
- (B) the Intake Project; and
- (C) the Savage Unit.

(11) SAVAGE IRRIGATION DISTRICT.—The term “Savage Irrigation District” means the irrigation district by that name that is organized under the laws of the State of Montana and operates the Savage Unit.

(12) SAVAGE UNIT.—The term “Savage Unit” means the Savage Unit of the Pick-Sloan Missouri Basin Program, a Federal irrigation development authorized by the Act of December 22, 1944, commonly known as the “Flood Control Act of 1944” (chapter 665; 58 Stat. 891).

(13) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 3. CONVEYANCE OF PROJECTS.

(a) CONVEYANCES.—

(1) GENERAL.—The Secretary shall convey works, facilities, and lands of the Projects to the Irrigation Districts in accordance with all applicable laws and pursuant to the terms of the Memorandum of Understanding.

(2) LANDS.—

(A) GENERAL.—All lands, easements, and rights-of-way the United States possesses that are to be conveyed by the Secretary to the respective irrigation districts shall be conveyed by quitclaim deed. Conveyance of such lands, easements, and rights-of-way is subject to permits, licenses, leases, rights-of-use, or right-of-way of record outstanding in third parties on, over, or across such lands, easements, and rights-of-way.

(B) MINERAL RIGHTS.—Conveyance of all lands herein described shall be subject to a reservation by the United States reserving all minerals of a nature whatsoever, excluding sand and gravel, and subject to oil, gas, and other mineral rights heretofore reserved of record by or in favor of third parties.

(3) WATER RIGHTS.—The Secretary shall transfer to the respective Irrigation Districts in accordance with and subject to the law of the State of Montana, all natural flow, wastewater, seepage, return flow, domestic water, stock water, and groundwater rights held in part or wholly in the name of the United States that are used to serve the lands within the Irrigation Districts.

(4) COSTS.—

(A) RECLAMATION WITHDRAWN LANDS.—The Irrigation Districts shall purchase Reclamation withdrawn lands as identified in the Memorandum of Understanding for their value in providing operation and maintenance benefits to the Irrigation Districts.

(B) SAVAGE UNIT REPAYMENT OBLIGATIONS.—

(i) SAVAGE IRRIGATION DISTRICT.—As a condition of transfer, the Secretary shall receive an amount from the Savage Irrigation District equal to the present value of the remaining water supply repayment obligation of \$60,480 that shall be treated as full payment under Contract Number 11r-1525, as amended and as extended by Contract No. 9-07-60-W0770.

(ii) PICK-SLOAN MISSOURI BASIN PROGRAM CONSTRUCTION OBLIGATION.—As a condition of transfer, the Secretary shall accept \$94,727 as payment from the Pick-Sloan Missouri Basin Program (Eastern Division) power customers under the terms specified in this section, as consideration for the conveyance under this subsection. This payment shall be out of the receipts from the sale of power from the Pick-Sloan Missouri Basin Program (Eastern Division) collected by the Western Area Power Administration and deposited into the Reclamation fund of the Treasury in fiscal year 2003. This payment shall be treated as full and complete payment by the power customers of the construction aid-to-irrigation associated with the facilities of the Savage Unit.

(b) REVOCATION OF RECLAMATION WITHDRAWALS AND ORDERS.—

(1) The Reclamation withdrawal established by Public Land Order 4711 dated October 6, 1969, for the Lower Yellowstone Irrigation Project in lots 1 and 2, section 3, T.23N., R. 59 E., is hereby revoked in its entirety.

(2) The Secretarial Order of March 22, 1906, which was issued for irrigation works on lots 3 and 4 section 2, T. 23N., R. 59E., and Secretarial Order of August 8, 1905, which was issued for irrigation works in section 2, T. 17 N., R. 56 E. and section 6, T. 17 N., R. 57 E., are hereby revoked in their entirety.

(3) The Secretarial Order of August 24, 1903, and July 27, 1908, which were issued in connection with the Lower Yellowstone Irrigation Project, are revoked insofar as they affect the following lands:

(A) Lot 9 of Sec. 2 and lot 2 of Sec. 30, T.18N., R.57E.; lot 3 of Sec. 4, T.19N., R.58E.; lots 2 and 3 and 6 and 7 of Sec. 12, T.21N., R.58E.; SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 26, T.22N., R.58E.; lots 1 and 4 and 7 and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 20, T.22N., R.59E.; SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 13, T.23N., R.59E.; and lot 2 of Sec. 18, T.24N., R.60E.; all in the Principal Meridian, Montana.—

(B) Lot 8 of Sec. 2 and lot 1 and lot 2 and lot 3 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 10 and lot 2 of Sec. 11 and lot 6 of Sec. 18 and lot 3 of Sec. 35, T.151N., R.104W.; and lot 7 of Sec. 28, T.152N., R.104W.; all in the Fifth Principal Meridian, North Dakota.

SEC. 4. REPORT.

If the conveyance under this Act has not occurred within 2 years after the date of the enactment of this Act, the Secretary shall submit to the Congress a status report.

SEC. 5. RECREATION MANAGEMENT.

As a condition of the conveyance of lands under section 3, the Secretary shall require that Lower Yellowstone Irrigation District No. 1 and Lower Yellowstone Irrigation District No. 2 convey a perpetual conservation easement to the State of Montana, at no cost to the State, for the purposes of protecting, preserving, and enhancing the conservation values and permitting recreation on Federal lands in part to be conveyed under this Act. Lower Yellowstone Irrigation District No. 1, Lower Yellowstone Irrigation District No. 2, and the State of Montana have mutually agreed upon such conservation easement.

SEC. 6. PROJECT PUMPING POWER.

The Secretary shall sustain the irrigation developments established by the Lower Yellowstone and Intake Projects and the Savage Unit as components of the irrigation plan under the Pick-Sloan Missouri River Basin Program and shall continue to provide the Irrigation Districts with Pick-Sloan Missouri River Basin Project Use power at the Irrigation Districts' pumping plants, except that the rate shall be at the preference power rate and there shall be no ability-to-pay adjustment.

SEC. 7. YELLOWSTONE RIVER FISHERIES PROTECTION.

(a) GENERAL.—As a condition of transfer, the Secretary, prior to the conveyances under section 3 and in cooperation with the Irrigation Districts, shall provide fish protection devices to prevent juvenile and adult fish from entering the Main Canal of the Lower Yellowstone Irrigation Project and allow bottom dwelling fish species to migrate above the Project's Intake Diversion Dam.

(b) PARTICIPATION.—The Secretary and the Irrigation District shall work cooperatively in planning, engineering, and constructing the fish protection devices.

(c) MONITORING.—The Secretary, acting through the Commissioner of the Bureau of Reclamation and the Director of the United States Fish and Wildlife Service, shall establish and conduct a monitoring plan to measure the effectiveness of the devices for a minimum of 2 years after construction is completed. The Commissioner of the Bureau of Reclamation shall be responsible to modify the devices as necessary to ensure proper functioning.

(d) **YELLOWSTONE RIVER FISHERIES PROTECTION DEVICES COSTS.**—The cost incurred in planning, engineering, constructing, monitoring, and modifying all fish protection devices shall be deemed non-reimbursable.

(e) **OPERATION, MAINTENANCE AND REPLACEMENTS.**—Following completion of the construction period and the two-year monitoring period, the Districts shall operate, maintain, and replace the fisheries protection devices in a manner to ensure proper functioning.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to implement this section.

SEC. 8. RELATIONSHIP WITH OTHER LAWS AND FUTURE BENEFITS.

Upon conveyance of the projects under this Act, the Irrigation Districts shall not be subject to the Reclamation laws or entitled to receive any Reclamation benefits under those laws except as provided in section 6.

SEC. 9. LIABILITY.

Effective on the date of conveyance of a project under this Act, the United States shall not be liable under any State or Federal law for damages of any kind arising out of any act, omission, or occurrence relating to the projects, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of this conveyance. Nothing in this section shall be considered to increase the liability of the United States beyond that currently provided in chapter 171 of title 28, United States Code, popularly known as the Federal Tort Act.

SEC. 10. COMPLIANCE WITH LAWS.

As a condition of the conveyances under section 3, the Secretary shall by no later than the date on which the conveyances occur complete appropriate analyses of the transfer in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable laws.

PURPOSE OF THE BILL

The purpose of H.R. 2202 is to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts.

BACKGROUND AND NEED FOR LEGISLATION

This legislation directs the Bureau of Reclamation to convey the Lower Yellowstone Irrigation Districts Numbers 1 and 2 (including all easements, right of ways, physical features, and water rights) to Dawson and Richland Counties in the State of Montana. This legislation will also convey the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to their respective irrigation districts after payment of the districts' share of construction costs for these projects.

Overview of transfers

Since the Bureau of Reclamation construction program began in the early 1900s there has been an expectation that many of the Bureau of Reclamation constructed facilities would ultimately be transferred to the local entities they were built to serve. Taking facilities off the federal books represents real budget savings for the future. Transfers help shrink the size and budget of the federal government, and help us manage our water resources in a more efficient way.

Lower Yellowstone Irrigation Project, Intake Irrigation Project, and Savage Unit

The Bureau of Reclamation began work on the Lower Yellowstone Project in 1905, just three years after the agency was cre-

ated. The goal of the project was to furnish a dependable supply of irrigation water for about 54,000 acres of farmland along the Yellowstone River. The project includes the Lower Yellowstone Diversion Dam, a pumping plant, a canal, and other associated structures.

The Intake Irrigation Project was completed by the Bureau in the 1940s; it includes a pumping plant and an irrigation distribution system serving 823 acres adjacent to the Lower Yellowstone Project in Dawson County, Montana. The power used to run the pumping operations for the Intake Project is supplied by the Pick-Sloan Missouri Basin Program.

The Savage Unit of the Pick-Sloan Missouri Basin Program on the far eastern edge of Montana is comprised of a feeder canal, pumping plant, and main canal. Water is delivered to the pumping plant by means of a feeder canal about 100 feet long extending from the Lower Yellowstone Project Main Canal. There are 2,200 acres of farmland in the Savage Unit. Although ownership of the project will change under this legislation, the bill would still require the Secretary of the Interior to continue providing power at a subsidized cost for the pumping operations.

COMMITTEE ACTION

H.R. 2202 was introduced on June 14, 2001, by Congressman Dennis Rehberg (R-MT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On June 5, 2002, the Subcommittee held a hearing on the bill. On October 8, 2002, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill by unanimous consent. Mr. Rehberg offered an amendment in the nature of a substitute. It was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The Committee believes that in the short term, enactment of this bill will provide revenue to the United States, and in the long term, provide small savings to the federal budget.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. Enactment of the bill will result in short-term revenue to the federal government, although longer term payments will be foregone.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

