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FREMONT-MADISON CONVEYANCE ACT

JUNE 9, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 520]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 520) to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 520, as ordered reported, is to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

BACKGROUND AND NEED

S. 520 provides for the transfer to the Fremont-Madison Irrigation District (District) of certain facilities that are associated with the Upper Snake River Division, Minidoka Project and the Lower Teton Division, Teton Basin Project. These facilities are located near Rexburg in eastern Idaho. The facilities are used exclusively for irrigation and are currently operated and maintained by the District. Two of the facilities, the Cross Cut Diversion Dam and Canal have been paid-out by the District. The Teton Exchange Wells, which are proposed to be transferred are valued at approximately $278,000 by the Bureau of Reclamation.

The title transfer provided for in S. 520 has been the subject of significant attention in eastern Idaho. The District and other entities that make up the Henry's Fork Watershed Council worked with the Bureau of Reclamation to address issues associated with the transfer. That collaborative process resulted in a Memorandum

of Agreement (MOA) between the Secretary and the District identified as Contract No. 1425–01–MA–10–3310, dated September 13, 2001. The MOA lists the facilities to be transferred and specifies the respective responsibilities for completing activities that are a prerequisite to the transfer. The MOA is set forth as Appendix A.

LEGISLATIVE HISTORY

Senator Crapo introduced S. 520 on March 5, 2003. Senator Craig was an original co-sponsor. A companion measure, H.R. 1106, was introduced in the House of Representatives by Congressman Simpson on March 5, 2003. The Water and Power Subcommittee held a hearing on S. 520 on May 13, 2003. A similar measure, S. 2556, was introduced in the 107th Congress on May 23, 2002. The Subcommittee on Water and Power held a hearing on S. 2556 on July 31, 2002. S. 2556 was reported by the Committee on October 3, 2002 with an amendment in the nature of a substitute and passed the Senate as amended on November 19, 2002, with additional unrelated amendments. A companion measure, H.R. 4708, passed the House on September 24, 2002 and was referred to the Committee on Energy and Natural Resources. At the business meeting on May 21, 2003, the Committee on Energy and Natural Resources ordered S. 520 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 21, 2003, by a voice vote of a quorum present, recommends that the Senate pass S. 520.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title.

Section 2 defines terms used in the Act.

Section 3, subsection (a) directs the Secretary of the Interior to convey to the District pursuant to the terms of the MOA, all right, title, and interest of the United States in and to the identified facilities.

Subsection (b) specifies that if the Secretary has not completed the title transfer by September 13, 2004, the Secretary is required to submit a report to Congress explaining the reasons that conveyance has not been completed and the anticipated for completion.

Section 4, subsection (a) provides that the Secretary shall require the District to pay the administrative costs of the conveyance and costs of applicable review requirements under the National Environmental Policy Act of 1969, as described in the MOA which states that FMID agrees to cost share up to 50 percent of such costs.

Subsection (b) directs that in addition to the costs required by subsection (a), the Secretary shall require that the District pay the United States the lesser of the net present value of the remaining obligations owed by the District to the United States with respect to facilities conveyed, or $280,000. The money received will be deposited into the Reclamation Fund.

Section 5, subsection (a) directs the Secretary to include in its conveyance of the Teton Exchange Wells, Idaho Department of Water Resources permit number 22–7022, including drilled wells

under the permit as described in the MOA, and all equipment appurtenant to such wells.

Subsection (b), extends the water service contract between the Secretary and the District until the conditions described in this Act are fulfilled.

Section 6 directs the Secretary, prior to conveyance, to complete all environmental reviews and analyses as set forth in the MOA.

Section 7 limits the liability of the United States upon conveyance of the facilities and is self-explanatory.

Section 8 increases the acreage within the District eligible to receive water from the Minidoka and Teton Basin Projects to reflect the number of acres within the District as of the date of enactment of this Act. The increase in acreage does not alter the delivery of water authorized under current water storage contracts and State water law.

Section 9 directs the Secretary, in collaboration with the stakeholders in the Henry's Fork watershed, to initiate a drought management planning process to address all water uses, including irrigation and the wild trout fishery, in the Henry's Fork watershed. It also directs the Secretary to report to Congress with a final drought management plan within 18 months of enactment.

Section 10, subsection (a) disclaims any effect on existing rights and is self-explanatory.

Subsection (b) disclaims any effect on any contract regarding any irrigation district's right to use water and is self-explanatory.

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, June 2, 2003.

Hon. PETE V. DOMENICI,
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. 520, the Fremont-Madison Conveyance Act.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 520—Fremont-Madison Conveyance Act

S. 520 would direct the Secretary of the Interior through the Bureau of Reclamation to convey certain components of a water distribution and drainage system to the Fremont-Madison Irrigation District in Idaho by September 2004. These components include a dam, a canal, and several wells, which are currently operated and maintained by the district and used for irrigation. The transfer would occur after the district meets its outstanding obligations under an existing repayment contract with the federal government.

In addition, S. 520 would require the federal government to pay half of the costs associated with the conveyance, including a review under the National Environmental Policy Act. This bill also would authorize the Bureau to develop a drought management plan for the Henry's Fork watershed located in Idaho and Wyoming.

CBO estimates that enacting S. 520 would result in an insignificant increase in offsetting receipts to the government. (Such receipts are a credit against direct spending.) Since 1977, the district has repaid $234,000 to the federal governments for the cost of constructing several water wells. As a condition of conveyance, CBO estimates that the federal government would receive an additional $133,000 from the district in 2004 as the final payment under the existing repayment contract for those wells. This amount represents the net present value of the remaining obligations owed by the district. This near-term cash savings would be offset by the loss of future offsetting receipts of about $10,000 a year over the 2004–2030 period. CBO also estimates that the Bureau of Reclamation would spend about $80,000 for its share of the administrative costs associated with this conveyance, assuming the availability of appropriated funds.

S. 520 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. This conveyance would be voluntary on the part of the district, as would any costs it would incur to comply with the conditions set by the bill.

The CBO staff contact for this estimate is Julie Middleton. This 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 S. 520. 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. 520.

EXECUTIVE COMMUNICATIONS

On May 13, 2003, 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. 520. These reports had not been received at the time the report on S. 520 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 Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF JOHN W. KEYS III, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

My name is John Keys. I am Commissioner of the Bureau of Reclamation. I am pleased to provide the Administration's views on S. 520, the Fremont Madison Conveyance Act, which directs the Secretary of the Interior to transfer title of certain Federal owned facilities, lands and permits to the Fremont-Madison Irrigation District (District).

The facilities under consideration for transfer in S. 520, the Cross Cut Diversion Dam and Canal, the Teton Exchange Wells and the Idaho Department of Water Resources permit number 22–7022B are associated with the Upper Snake River Division, Minidoka Project and the Lower Teton Division, Teton Basin Project, respectively, and are located near Rexburg in eastern Idaho. The facilities under consideration for transfer are used exclusively for irrigation purposes and have always been operated and maintained by the District. While the Cross Cut Diversion Dam and Canal are paid-out by the District, the legislation provides for a payment for the Teton Exchange Wells, which are currently valued at $277,961, based upon the outstanding balance to be repaid by the District.

Mr. Chairman, over the last few years, we have been working very closely with the District and numerous other local organizations including the Henry's Fork Foundation, a local conservation and sportsmen's organization, to work through the issues on the title transfer for the features, lands and water rights associated with this project. We have made great progress in narrowing the scope of the transfer to meet the District's needs, protect the interests of the other stakeholders, and ensure that the transfer does not negatively impact downstream contractors of the integrated Snake River system. I testified before this Subcommittee last year that we had a few minor concerns with the legislation. Those issues were subsequently addressed and the Administration supports S. 520 as written.

In conclusion, Mr. Chairman, I have had the opportunity to work with the District over the last few years to reach the point where we are today. I would like to take this opportunity to compliment District Board Chairman Jeff Raybould and their Executive Director, Dale Swenson, for their diligence and commitment in working with us and the other interested entities of eastern Idaho on the issues surrounding this transfer. I would also like to thank Senator Crapo and Senator Craig and their staffs for their cooperation.

That concludes my statement. I would be happy 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. 520, as ordered reported.

APPENDIX A

MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR AND FREMONT-MADISON IRRIGATION DISTRICT

This Memorandum of Agreement (MOA) is made pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and the FREMONT-MADISON IRRIGATION DISTRICT, a public corporation organized under the laws of the State of Idaho, with its principal place of business in St. Anthony, Idaho, hereinafter referred to as FMID, and;

WHEREAS, FMID has stated its intent to seek Congressional authority to transfer title of the United States' ownership interests in Cross Cut Diversion Dam and Cross Cut Canal, and the Teton wells including all well permits and water right permits (identified under permit number 22–7022 by the Idaho Department of Water Resources), both drilled and undrilled, together with all of the Reclamation's water right interests associated with such well permits, and any other associated facilities and real property pertaining to Cross Cut Diversion Dam and Cross Cut Canal, and the Teton wells held by the United States for the benefit of FMID, and;

WHEREAS, in addition to the existing Teton wells, FMID has stated its intent to develop such additional wells (using said permit number 22–7022) as may be required to provide a supplemental water supply to the lands of its spaceholders in years when there is an adequate supply of water, and;

WHEREAS, it is also FMID's intent to give the undeveloped portion of permit number 22–7022, not needed to provide a supplemental water supply to its spaceholders, to the Idaho Water Resources Board for the Water Board's future use, and;

WHEREAS, FMID has also stated its intent to demonstrate its capacity for owning and operating these facilities, and;

WHEREAS, Reclamation has a responsibility to protect the interests of the United States and its public's interests in the resources, which are supported by Reclamation's ownership of the facilities and real property proposed to be transferred, and;

WHEREAS, Reclamation has the ultimate responsibility to approve environmental analyses, prepared by FMID or its contractors, associated with such a transfer and has adopted guidelines designed to assist FMID in implementing a successful transfer, and;

WHEREAS, FMID and Reclamation agree to cooperate in a joint effort to evaluate the environmental impacts, and other elements associated with such a transfer and to prepare associated analyses required for the transfer, and;

WHEREAS, Reclamation has no authorization or funds appropriated for paying costs associated with this title transfer and Reclamation will not be able to reimburse FMID for any of its expenditures without Congressional authorization, and;

WHEREAS, FMID and Reclamation agree to proceed, as applicable, with title transfer under the August 1995 Framework for the transfer of Title process, although FMID does not necessarily agree to the exact sequence of events as set forth in said Framework;

NOW THEREFORE, the parties agree as follows:

1. Reclamation will be responsible for the following actions that may be undertaken in cooperation with FMID:

(a) Assist FMID in the planning and completion of required environmental compliance activities to implement the proposed Federal action, including drafting a scoping document. Reclamation will also assist FMID with any planned scoping meetings and will attend the scoping meetings set up by FMID.

(b) Following scoping and in consultation with FMID develop the alternatives for evaluation and analysis in Reclamation's National Environmental Policy Act (NEPA) documents and Endangered Species Act (ESA) compliance actions.

(c) Review the work of FMID and/or any consultants engaged by FMID to assure that the applicable procedural requirements of NEPA, ESA and other applicable State and Federal laws are met as required. Reclamation reserves the right to approve any consultant retained by FMID in connection with the NEPA process.

(d) Review NEPA documentation prepared by FMID to determine the appropriate level of NEPA compliance required for this action. As lead agency for NEPA compliance, final approval of NEPA documentation will be provided when determined to be satisfactory.

(e) Request and pursue consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act.

(f) Identify and/or inventory and consult with Tribes on Indian Trust Assets and Traditional Cultural Properties and ensure the Secretary's Native American Trust Responsibilities are met.

(g) Conduct an asset valuation to determine the value of the features to be transferred and any revenue streams thereof. Said asset valuation has previously been performed and value determined by Reclamation.

(h) Provide for an independent financial review of the adjusted asset value, if required.

(i) Complete hazardous waste surveys on all Reclamation lands intended for title transfer.

(j) Provide copies, if so requested, of drawings and non-privileged legal documents currently in Reclamation's possession, to FMID that are associated with the lands, third party agreements, Reclamation's water rights, rights-of-way, and facilities to be included in the title transfer.

(k) Perform other technical or administrative tasks associated with the title transfer process.

(l) Review draft Federal authorization language and other transfer documents prepared by FMID.

(m) Provide FMID with projections and/or summaries of expenses incurred in connection with the title transfer process upon the request of FMID. Further, Reclamation will notify FMID when Reclamation's total obligations in connection with the title transfer (including their 50 percent share of the costs associated with NEPA) exceed $80,000 and provide a summary of obligations, expenditures and estimated cost to complete.

(n) Ensure that all contracts or obligations entered into relating to this MOA be revocable, wherein the contracts or obligations may be terminated at any time upon the request of FMID, and FMID will only be responsible for costs and expenditures incurred to the date of the termination and any contract termination cost.

(o) Provide copies, if so requested, to FMID of all contracts, documents, invoices and other writings which evidence obligations pursuant to this MOA.

2. The FMID will be responsible, subject to Reclamation's review and approval as appropriate, for the following:

(a) Ensure completion of all activities required to comply with NEPA. ESA and other applicable State and Federal laws are required, including the draft biological assessment.

(b) Arrange all public involvement, as deemed necessary and appropriate by both parties, including meetings places, mailings to all key participations, and notices to the public as required by Federal regulations.

(c) Complete any required cultural resource surveys, prepare a draft cultural resource report, assist in developing any cultural, resource agreement with the State, and submit these documents to Reclamation for review and approval.

(d) Draft Federal authorization language for the proposed title transfer to facilities as determined appropriate by the through this transfer process.

(e) Any land surveys needed for the transfer of the project or related facilities shall be at the expense of FMID.

(f) Prepare drafts of necessary legal documents including any associated agreements involving Federal, State, local and Tribal issues. FMID is responsible for officially contacting all interested local, State, Tribal and Federal agencies to determine if the have concerns or jurisdictional obligations which need to be met. FMID will provide Reclamation a report of these contacts and the agency responses.

3. Areas of mutual responsibility:

(1) Reclamation and FMID will appoint representatives to coordinate the transfer analysis and documentation process. All FMID requests for Reclamation relating to the transfer will go through Stuart Stanger, Deputy Area Manager, Reclamation, Burley, ID. All Reclamation requests to FMID relating to the transfer will go through Dale Swensen, Manager, FMID, St. Anthony, ID.

(b) Reclamation and FMID will cooperate to conduct the process in a manner that ensures appropriate public and spaceholder participation.

(c) Reclamation and FMID agrees to use, if appropriate, a quit claim deed to transfer title of facilities, water right interests held

by the United States' Secretary of the Interior for Reclamation purposes, real property, and other interests from Reclamation to FMID, in title is transferred.

(d) Reclamation and FMID agree to work cooperatively to determine final value of the features to be transferred based upon previous Reclamation asset valuation and any revenue streams thereof.

(e) Reclamation and FMID agree that any of the responsibilities for either party may become the responsibility of the other party if agreed to by both parties in writing, unless prohibited by law or regulation.

4. Costs:

(a) Subject to the terms of this MOA, FMID agrees to cost share up to 50 percent of all transfer costs associated with applicable procedural requirements of the NEPA, ESA, other Federal cultural resource laws, and other applicable State and Federal laws as required. FMID agrees that it shall be responsible for paying, in advance, all costs incurred by it and/or Reclamation associated with the tasks described herein for title transfer, expect for those costs for which Reclamation agrees to by subsequent written agreement with the FMID. Any subsequent agreement will be documented as an amendment to this agreement. FMID intends to seek a cap of its share of the administrative costs in the legislation.

(b) Reclamation may contract with another person or entity for any of the obligations described herein. Reclamation will ensure that the costs billed to FMID shall be actual costs, including Reclamation's actual costs for administering the contracts, if Reclamation contracts with another person or entity for any of the obligations herein.

(c) FMID will pay in advance for Reclamation's reasonable costs for coordination, review, public meetings, oversight, and other reasonable costs related to the title transfer process.

(d) FMID will pay in advance Reclamation's reasonable costs associated with cultural resource compliance actions, NEPA compliance, inspection of facilities, hazardous waste surveys, assistance by Reclamation in all documents related to real property transfer, and other reasonable Reclamation costs as described herein.

(e) Reclamation and FMID agree that payment in advance for Reclamation costs completion of any or all aspects of this agreement does not guarantee that title will be transferred for any or all of the facilities named in this agreement or that transfer of title will be approved by Reclamation and/or the Congress of the United States. Notwithstanding the above Reclamation will do everything it can to facilitate a transfer.

(f) Those costs for which the FMID will be fully responsible for in the proposed title transfer will include, but not limited to, to the following (for each of which FMID intends to seek the right of reimbursement through the legislative process):

(i) Inspection of facilities designated herein to be transferred, if required, and review of property and lands, asset valuation, identification of Indian Trust Assets, hazardous material surveys, and other activities that are associated with or possibly impacted by the proposed transfer of Federal Reclamation facilities and associate lands.

(ii) Reclamation's salary and overhead costs accrued for activities associated with this MOA.

(iii) Travel by Reclamation staff, including per diem and transportation costs, as required for the above actions or activities and/or the development and negotiation of the terms for the proposed title transfer.

(iv) Photocopying and mailing by Reclamation of documents related to the proposed title transfer (e.g., the proposed draft agreement for public review, comment, and public notification).

(v) Title transfer recording costs.

(g) Reclamation agrees to allocate authorized and appropriated funds as may become available for the performance of certain tasks which are described herein:

(i) Reclamation and FMID agree to work in a prudent manner to minimize costs for activities associated with this agreement.

5. Payment:

(a) Reclamation will establish a unique costs account to track and account for the cost and services provided under the terms of this MOA.

(b) FMID submitted an advance payment to Reclamation in the amount of $25,000 on November 20, 1998 (March 31, 2001 credit balance of $21,148.60) which will be held by Reclamation in account number AIR 1751 and will be applied toward Reclamation's costs, upon FMID's signature of this MOA (Contributed Funds Act 42 U.S.C. 345). Payment has been made payable to Bureau of reclamation, to the attention of Reclamation Grants Management Specialist, PN–6317, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706.

(c) FMID will maintain a balance of at least $5,000 in this account to be used to reimburse Reclamation's costs; and

(d) Reclamation will contact FMID prior to the first of each month to discuss (consult) and itemize anticipated Reclamation actions and expenses for the upcoming month, and upon Reclamation's submittal of the itemized anticipated actions and costs to FMID. FMID shall promptly pay Reclamation for the anticipated reimbursable costs.

(e) Following completion of title transfer or cessation (for whatever reason) of the title transfer process, Reclamation will refund within 60 days to FMID any unexpended advanced funds identifiable as excess of the total estimated costs.

6. General Provisions:

(a) All responsibilities of either or both parties required above shall be performed only after mutual agreement and reasonable notification to the other party.

(b) FMID and Reclamation will work in a cooperative manner throughout the legislative process.

(c) The parties pledge their individual good faith to seek a prompt and fair agreement on all issues relating to a proposed transfer described in this Agreement. FMID agrees that in order to facilitate a facility transfer, FMID must address all substantive issues in the context of Congressional hearings. In the event that an agreement on a particular matter cannot be promptly resolved, the parties pledge to continue to work cooperatively on those matters relating to a title transfer for which there is no disagreement.

(d) This MOA shall become effective on the date of the last signature hereto. This MOA may be modified, amended or terminated upon mutual agreement of the parties hereto, but in any event will terminate two (2) years from the date of the MOA is signed unless renegotiated and or renewed at that time through mutual consent of both parties. Either party may terminate its obligations and duties under this MOA at any time upon 30 days written notice to the other party. All duties and obligations of both parties under this MOA will cease at that time except as the MOA provisions relate to accounting, termination of contracts and reimbursing the parties' expenses.

(e) Nothing herein shall be construed to obligate the Bureau of Reclamation to expend or involve the United States of America in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

(f) No Member or delegate to Congress, or resident Commissioner, shall be admitted to any share or to be part of this MOA or to receive any benefit that may arise out of it other than as a water user or landowner in the same manner as other water user or landowner.

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last date and signature below.

UNITED STATES OF AMERICA

Date: September 13, 2001.
Jarrold D. Gregg,
Area Manager,
Snake River Area Office.

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