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106TH CONGRESS }
2d Session }

SENATE

{ REPORT
106-480

NAMPA AND MERIDIAN CONVEYANCE ACT

OCTOBER 3 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 3022]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3022) to direct the Secretary of the Interior to convey certain irrigation facilities to the Nampa and Meridian Irrigation District, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nampa and Meridian Conveyance Act”.

SEC. 2. CONVEYANCE OF FACILITIES.

The Secretary of the Interior (in this Act referred to as the “Secretary”) shall, as soon as practicable after the date of enactment of this Act, convey facilities to the Nampa and Meridian Irrigation District (in this Act referred to as the “District”) in accordance with all applicable laws and pursuant to the terms of the Memorandum of Agreement (contract No. 1425-99MA102500, dated 7 July 1999) between the Secretary and the District. The conveyance of facilities shall include all right, title, and interest of the United States in and to any portion of the canals, laterals, drains, and any other portion of the water distribution and drainage system that is operated or maintained by the District for delivery of water to and drainage of water from lands within the boundaries of the District.

SEC. 3. LIABILITY.

Except as otherwise provided by law, effective on the date of conveyance of facilities under this Act, the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence based on its prior ownership or operation of the conveyed property.

SEC. 4. EXISTING RIGHTS NOT AFFECTED.

Nothing in this Act affects the rights of any person except as provided in this Act. No water rights shall be transferred modified, or otherwise affected by the conveyance of facilities and interests to the Nampa and Meridian Irrigation District under

this Act. Such conveyance shall not affect or abrogate any provision of any contract executed by the United States or State law regarding any irrigation district's right to use water developed in the facilities conveyed.

PURPOSE OF THE MEASURE

The purpose of S. 3022 is to direct the Secretary of the Interior to convey certain irrigation facilities to the Nampa and Meridian Irrigation District in Idaho. The transfer shall be done pursuant to a Memorandum of Agreement dated July 7, 1999. Existing rights are not affected by the Act, nor are any water rights transferred or modified by the conveyance.

BACKGROUND AND NEED

The Nampa and Meridian Irrigation District (NMID) is located in the Boise Valley and serves the area in and around the cities of Nampa and Meridian, Idaho. NMID diverts water from the Boise River into a system of canals and laterals known as the Ridenbaugh Canal system for delivery to lands in the district, and provides drainage for district lands through a system of drain ditches. NMID performs these water delivery and drainage functions pursuant to title 43 of the Idaho Code. Since 1878, when the Canal was first constructed, NMID and its private predecessors have been responsible for operating and maintaining NMID's delivery and drainage systems.

The proposed transfer of title of certain project components to NMID meets the objectives of the Bureau of Reclamation's title transfer initiative and the criteria of Reclamation's Framework for Title Transfer. NMID has effectively operated and maintained the segments since they were constructed and has satisfied its construction repayment obligations. NMID will continue to care for, operate and maintain these segments as integral parts of its irrigation and drainage systems in a manner that is consistent with its legal and fiduciary responsibilities. Under State law and Reclamation contracts, NMID is the only candidate for title transfer because the facilities were constructed for irrigation and drainage purposes, lie solely within NMID's boundaries and, under Idaho Statutes, NMID is the only entity that has the authority, right and responsibility to operate and maintain the delivery and drainage systems to deliver NMID water rights and drain water for the benefit of NMID landowners. The segments proposed to be transferred are integral parts of the overall delivery and drainage system and cannot be separated.

The proposed transfer will eliminate redundant administrative review of projects affecting portions of NMID's irrigation and drainage systems and make the approval process more time and cost efficient for NMID and the public. The transfer will also enable Reclamation to use its resources more effectively in other areas within its jurisdiction. NMID's continued use, operation, and maintenance of the portions of its irrigation and drainage systems involved in the transfer will ensure that they will be properly managed and maintained for the delivery and drainage of water within NMID.

Recognizing that title transfer would be cost effective and efficient for both NMID and Reclamation, the Board of Directors of NMID adopted a resolution on September 19, 1995 authorizing the process of title transfer. For approximately five years the Irrigation

District has been engaged with Reclamation in the process of title transfer. Until early 1998, little progress was made. Later that year, the Bureau sent a scoping letter to stakeholders and determined the primary issue of interest was access to NMID right-of-ways for recreational pathways. Access has been successfully addressed. On July 7, 1999, the Bureau of NMID concluded a memorandum of agreement for the purpose of title transfer. Subsequent to that agreement, NMID, in cooperation with the Bureau, drafted title transfer legislation which was introduced in this Congress.

LEGISLATIVE HISTORY

S. 3022 was introduced by Senator Craig on September 8, 2000 and a Subcommittee hearing was held on September 19, 2000. At the business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 3022, as amended, favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 20, 2000 by a unanimous voice vote with a quorum present, recommends that the Senate pass S. 3022, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 3022, the Committee adopted an amendment in the nature of a substitute. The amendment addresses concerns raised by the Administration at the Subcommittee hearing. The amendment clarifies that the transfer of the United States' interest in certain easements, whether acquired or reserved, will not affect the rights of the underlying fee landowner. Second, liability language was changed to clarify that the District assumes liability for facilities to be transferred.

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, October 2, 2000.

Hon. FRANK H. MURKOWSKI,
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. 3022, the Nampa and Meridian Conveyance Act.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 3022—Nampa and Meridian Conveyance Act

S. 3022 would authorize the Secretary of the Interior to convey the water distribution and drainage system within the Nampa and Meridian Irrigation District in Idaho to the district. Based on information from the Bureau of Reclamation, CBO estimates that this bill would not have a significant effect on the federal budget. The district paid the last of its repayment obligations to the government in 1987, and the district pays the full cost of operating and maintaining these systems. Because S. 3022 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

S. 3022 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

On September 19, 2000, CBO transmitted a cost estimate for H.R. 3067, the Nampa and Meridian Conveyance Act, as ordered reported by the House Committee on Resources on September 12, 2000. The two bills are identical, as are our cost estimates.

The CBO staff contact for this estimate is Lisa Cash Driskill. 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. 3022. 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. 3022, as ordered reported.

EXECUTIVE COMMUNICATIONS

On September 14, 2000, 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. 3022. These reports had not been received at the time the report on S. 3022 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 Acting Chief of Staff of the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF ROBERT J. QUINT, ACTING CHIEF OF STAFF,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

My name is Robert Quint. I am Acting Chief of Staff of the U.S. Bureau of Reclamation (Reclamation). I am pleased to provide the Department's views on S. 3022, to direct the Secretary of the Interior to convey canals, laterals and distribution, conveyance and drainage facili-

ties associated with the Boise Project to the Nampa and Meridian Irrigation District (District) near Boise in Southwestern Idaho. This transfer would be completed in compliance with all applicable laws as well as with the Memorandum of Agreement between Reclamation and the District that is in place. We believe these facilities to be good candidates for title transfer and with two technical modifications, the Administration could support S. 3022.

BACKGROUND

Mr. Chairman, the facilities under consideration for transfer, which are technically part of the Boise Project, involve only a relatively small portion—less than five percent—of the lateral and drain system used by the District. Title to a large portion of the existing “Ridenbaugh” system is already held by the District. The facilities under consideration for transfer are used exclusively for irrigation purposes and have always been operated and maintained by the District. The District completed its repayment obligation in 1987. The water rights, which are Boise River Flow Water Rights and Boise Project Storage Rights, are not proposed for conveyance.

In 1995, the District’s Board of Directors passed a resolution to formally request the Bureau of Reclamation to initiate the process to transfer title of all Federal interest in the distribution, conveyance and drainage system within the District boundaries.

In December 1998, a scoping letter was released as an initial step in the process required under the National Environmental Policy Act (NEPA). The scoping letter is intended to identify issues, as well as comments and concerns from Federal, state and local agencies and individuals, or stakeholders, who may have an interest in these facilities.

In July 1999, The District and Reclamation entered into the Memorandum of Agreement referenced in the bill, which delineates the process and responsibilities for completing the title transfer including activities to comply with Federal laws including NEPA, the National Historic Preservation Act, and the Endangered Species Act, as well as to identify and deal with Native American Trust assets, and other issues that may arise.

Subsequently, the District contracted with Ogden Environmental and Energy Services to prepare and draft the environmental analysis documents which are part of the NEPA process. In August, 2000, Reclamation, in cooperation with the District and their contractor, released the Draft Environmental Assessment (EA), which is currently available for public review and comment. The comment period for this EA is scheduled to close on September 28, 2000.

As you can see, a significant amount of work is well underway and we are very encouraged by the progress.

Mr. Chairman, when we testified on a similar bill in the House Resources Committee in October 1999, the process

under NEPA was just beginning. At that time, the major issue that was raised was related to the use of certain portions of the distribution, conveyance and drainage system's right-of-way for recreation bike/jogging/walking paths by local citizens. Since that time, the District has worked very hard to deal with these issues—holding numerous meetings with the cities of Nampa, Meridian, Boise and Caldwell, Ada County, the Ada County Planning Association, and the Foundation for Ada County Trail System. It appears that the District has made great progress—agreeing to enter into agreements with various groups and jurisdictions to accommodate the development of recreational pathways and for recreational use. They have also had numerous meetings with Reclamation and the State Historic Preservation Office to resolve issues associated with protection of the historic value of the irrigation system—including both those segments included in the transfer, and the rest of the system that is already owned by NMID. I am pleased to hear that this progress has been made and that the NEPA process provided a mechanism for that facilitated those activities.

ISSUES ADDRESSED WITH S. 3022

Mr. Chairman, when we testified on similar legislation in the House, concerns were raised about some aspects of the legislation. While there are two technical issues which still need to be addressed, I am pleased to report that S. 3022 has resolved previous concerns. We appreciate the cooperation of the District and the Idaho delegation in working with us on these issues.

(1) *Deadline*: In the House version of this legislation, as introduced, there was a provision setting a one year deadline for completing the transfer. The Administration strongly opposed this provision and I appreciate the willingness of the District and the delegation to remove it. One of the reasons for our opposition was that it was an unnecessary constraint on the NEPA process. As we have seen from our recent experience with the implementation of P.L. 105-351 to transfer facilities to the Burley Irrigation District in Idaho, the process of completing a title transfer, even where we have to do NEPA compliance, does not have to take a long time if there is good cooperation between all of the parties and the controversies have been resolved. In the case of the Burley transfer, we were able to complete the NEPA process and develop an agreement on the transfer and management of water rights as required by the statute, several months ahead of the schedule set out in the law and within the budget that we had originally estimated.

(2) *Third Party Impacts*: In testimony before the House, concerns of other Boise Project contractors were identified. These contractors were concerned about the possible impact on non-District facilities and water rights that are within the District boundaries but which are held by the United States, and/or operated and maintained by other

Boise Project contractors such as the Black Canyon Irrigation District or the Boise Project Board of Control. It appears that the addition of Section 2(d)(1) and 2(d)(2) addresses these concerns.

OUTSTANDING TECHNICAL MODIFICATIONS TO S. 3022

While the majority of the concerns we raised have been addressed, there are two issues which require technical modifications.

(1) *Land Ownership*: As stated in testimony in the House Resources Committee, concerns have been raised that the transfer of the United States' interest in certain easements, whether acquired or reserved, that was proposed should not effect the rights of the underlying fee landowner. To address this issue, we suggest the following addition to subsection 2(d)(1):

Nothing in this Act shall affect the rights of any person or entity except as provided herein.

(1) *Liability*: Section 2(c) proposes that the District assume liability for the facilities to be transferred. We support the intent of this provision, but would like to make this provision consistent with language that we have worked out with other entities interested in title transfer. As such, we propose the following:

Effective on the date of conveyance of the transferred works, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission or occurrence relating to the transferred works, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.)

Again, Mr. Chairman, let me reiterate that we have worked very closely with the District and a great deal of progress has been made. I would also like to take this opportunity to compliment the District for their diligence in working with us and with the interested entities in Idaho, on the issues of concern. I would also like to thank Senator Craig and Senator Crapo as well as Representative Chenoweth-Hage and their staffs for working with us. With the technical modifications mentioned above, we look forward to supporting passage of this legislation and moving this title transfer forward.

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. 3022, as ordered reported.

