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WELLTON-MOHAWK TRANSFER ACT

MARCH 17, 1999.—Ordered to be printed

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

REPORT

[To accompany S. 356]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 356) to authorize the Secretary of the Interior to convey certain works, facilities, and titles of the Gila Project, and designated lands within or adjacent to the Gila Project, to the Wellton-Mohawk Irrigation and Drainage District, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 356, as ordered reported, is to provide for the transfer of Gila Project-Wellton-Mohawk Division facilities and lands pursuant to a Memorandum of Agreement entered into between the Wellton-Mohawk Irrigation and Drainage District and the Secretary of the Interior dated July 10, 1998.

BACKGROUND AND NEED

History of facility transfers

In the 104th Congress, the Committee held hearings on legislation (S. 620) that would provide generic authority for the transfer of certain Reclamation projects to project beneficiaries as well as legislation specific to individual projects. The generic legislation was introduced following the Department of the Interior's statement, as part of the Reinventing Government Initiative, that it would seek to transfer title to appropriate projects where there were no overriding concerns.

S. 620 directed the Secretary of the Interior to transfer title to all Federal property associated with fully paid out Bureau of Rec-

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lamation projects to the project beneficiaries in those instances where the beneficiaries have already assumed responsibility for operation and maintenance. The legislation provided that the transfer would be without cost and also made all revenues previously collected from project lands and placed in the reclamation fund available to the beneficiaries under the formula set forth in subsection I of the Fact Finders Act of 1924. The Fact Finders Act provides generally that when water users take over operation of a project, the net profits from operation of project power, leasing of project lands (for grazing or other purposes), and sale or use of town sites are to be applied first to construction charges, second to operation and maintenance (O&M) charges, and third "as the water users may direct."

Proposals to transfer title to selected reclamation facilities have been advanced before. Some have already been authorized by Congress. (See: Pub. L. No. 102–575, title XXXIII transferring facilities to the Elephant Butte Irrigation District, New Mexico, and title XIV, dealing with the Vermejo Project, New Mexico.) Other title transfer proposals, such as ones advanced in 1992 for the Central Valley Project and in the late 1980's for the Solano Project and the Sly Park Unit, have been quite controversial.

As of 1990, the Bureau had identified 415 project components—out of a total of 568 facilities—where operation and management responsibilities had been transferred or were scheduled to be transferred to project users. Section 6 of the Reclamation Act of 1902 (32 Stat. 388, 389) provides in pertinent part that "when the payments required by this act are made for the major portion of the lands irrigated from the waters of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby * * *". The section concludes with the following proviso: "*Provided,* That the title to and the management and operations of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress." Historically, the Bureau has usually transferred operation and maintenance to local districts in advance of project repayment where the districts have expressed an interest in taking over management and have the capability to assume the responsibility.

A transfer provision was also included in the 1955 Distribution System Loans Act, as amended. This provision differs from the 1902 law in that it allows transfer of title to the lands and facilities upon repayment of the loan. In addition to the operations and management transfer authorization under the Reclamation Act of 1902, several other title transfer provisions are included in individual project acts. These include Section 7 of the 1928 Boulder Canyon Project Act (Act of Dec. 21, 1928, 45 Stat. 1057. 43 U.S.C. 617 et seq.), which authorizes the Secretary of the Interior to transfer title of the All-American Canal and certain other related facilities after repayment has been completed; provisions in the Act of September 22, 1959 (Pub. L. No. 86–357, 73 Stat. 641), regarding transfer of title for Lower Rio Grande project facilities; and, Pub. L. No. 83–752 (68 Stat. 1045), which directs the Secretary to transfer title to the Palo Verde Irrigation District upon repayment. Under the 1954

Act, the U.S. retained the right to build hydro power facilities at the site and to retain a share in energy production.

The hearings on S. 620 during the 104th Congress demonstrated that generic legislation was not likely to deal with all the possible issues associated with project transfers and that such legislation would wind up being complex and overly burdensome. As a result, discussions began on the potential transfer of several projects, or portions thereof. The Committee considered the transfer of the Collbran project and included language in the Reconciliation measure, H.R. 2491, the Balanced Budget Act of 1995, which was vetoed by the President. The Reconciliation measure also contained language (section 5356) to transfer the Sly Park unit of the Central Valley Project. That language was included in the House amendments and accepted in conference. During the 104th Congress, the Committee also conducted hearings and favorably reported legislation on the Carlsbad project (S. 2015), and the distribution portion of the Minidoka project serving the Burley Irrigation District (S. 1921), which was similar to S. 538. The Committee also held hearings on legislation for the transfer of Canadian River, Palmetto Bend and Nueces River projects in Texas (S. 1719). However, none of the measures was enacted into law.

During the 105th Congress, the Committee considered legislation providing for the transfer of certain features of the Minidoka Project, Idaho (S. 538), which was favorably reported from the Committee on November 3, 1997 and which passed the Senate on June 25, 1998. The Committee also considered and favorably reported legislation providing for the transfer of the lands and facilities of the Carlsbad Project in New Mexico (S. 291), the Wellton-Mohawk Division of the Gila Project, Arizona (S. 2087) and the Pine River Project, Colorado (S. 2142). The Committee also considered and favorably reported legislation that authorizes the prepayment of outstanding obligations on the Canadian River Project, Texas, which would permit the transfer of those facilities as provided in the 1950 legislation authorizing the project.

Background of Gila Project

The Gila Project in western Arizona was originally authorized for construction under a finding of feasibility approved by the President on June 21, 1937, pursuant to section 4 of the Act of June 25, 1910 (36 Stat. 836), and subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 701). It was reauthorized and reduced in area to 115,000 acres by the Act of July 30, 1947 (61 Stat. 628). Further reduction in irrigable acreage of the Wellton-Mohawk Division was authorized by the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266). Project construction was begun in 1936, and the first water was available for irrigation from the Gila Gravity main Canal on November 4, 1943. Construction of the Wellton-Mohawk Division features was started in August 1949. On May 1, 1952, water from the Colorado River was turned onto the Wellton-Mohawk fields for the first time. The project was essentially complete by June 30, 1957. The Wellton-Mohawk Irrigation and Drainage District operates the irrigation facilities in the Wellton-Mohawk Division.

Wellton-Mohawk is one of the Reclamation Project Districts that have sought agreement with the Bureau of Reclamation for a transfer and is similar to the situation of the Burley Irrigation District, which sought transfer of its portion of the Minidoka Project in Idaho. Initial drafts of the legislation were modeled after the Burley legislation reported by the Committee during the first session. Wellton-Mohawk has fully repaid its project costs and was provided a certificate of discharge on November 27, 1991. On July 10, 1998, the District and the Bureau signed a Memorandum of Agreement that covers the details of the transfer of title. It includes transfer of lands between the Federal Government and the District, including the acquisition of additional lands for exchange. All transfers will be at fair market value. No change in project operation is contemplated by the transfer and the District will continue to limit irrigated acreage to 62,875 as provided in P.L. 93–320. The transfer would include all facilities and works for which full repayment has been made.

LEGISLATION HISTORY

S. 356 was introduced by Senators Kyl and McCain on February 3, 1999. S. 356 is identical to the version of S. 2087 that passed the Senate in the 105th Congress. A hearing was held on S. 2087 by the Subcommittee on Water and Power on June 16, 1998 and the measure was ordered favorably reported by the Committee on July 29, 1998. (Report 105–289.) S. 2087 passed the Senate by Unanimous Consent on October 9, 1998.

At its business meeting on March 4, 1999, the Committee on Energy and Natural Resources ordered S. 356 favorably reported.

COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on March 4, 1999 by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 356 as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title.

Section 2 authorizes the Secretary of the Interior to carry out all provisions of the Memorandum of Agreement covering the transfer of title, including the authority to convey lands as required under section 2 of the Memorandum.

Section 3 requires the Secretary of the Interior and the Secretary of Energy to continue to provide water and power as provided under existing contracts and as provided under the Memorandum.

Section 4 is a savings clause.

Section 5 requires a report from the Secretary if the transfer has not occurred by July 1, 2000.

Section 6 authorizes such sums as are necessary.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 1999.

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. 356, the Wellton-Mohawk Transfer Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gary Brown (for federal costs), and Marjorie Miller (for the state and local impact).

Sincerely,

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

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 356—Wellton-Mohawk Transfer Act

Summary: S. 356 would authorize the appropriation of such sums as are necessary to implement a memorandum of agreement between the Bureau of Reclamation (the bureau) and the Wellton-Mohawk Irrigation and Drainage District (the district) regarding transfer of the federally owned Gila Irrigation Project to the district. The bill would give each party the discretion to exchange with each other, or purchase at fair market value, lands relating to the project.

CBO estimates that implementing this bill would result in additional spending of about $500,000 by the bureau over the 2000–2001 period, assuming appropriation of the necessary amounts. In addition, CBO estimates that the district would pay a minimum of about $2 million in 2002 for certain federally owned lands. Because the bill would affect direct spending by increasing offsetting receipts from the sale of federal land, pay-as-you-go procedures would apply.

S. 356 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Local governments might incur some costs as a result of the bill's enactment, but these costs would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 356 if shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
CHANGES IN DIRECT SPENDING [1]						
Estimated budget authority	0	0	0	−2	0	0
Estimated outlays	0	0	0	−2	0	0

[1] Implementing the bill would also affect spending subject to appropriation, but in amounts less than $500,000 a year (for 2000 and 2001).

Basis of estimate: For the purpose of this estimate, CBO assumes that S. 356 will be enacted by the end of fiscal year 1999 and that

the estimated amounts necessary to implement the bill will be appropriated for fiscal year 2000. Based on information from the bureau, CBO estimates that the federal share of costs for implementing the transfer of the federally owned irrigation project would be about $500,000, spread over fiscal years 2000 and 2001. These funds would pay for necessary environmental studies and legal transactions. The estimate of outlays is based on historical rates of spending for these activities.

S. 356 would give the district and the bureau the discretion to exchange, or purchase at fair market value, lands relating to the project. Based on information provided by the bureau, CBO estimates that the district would pay a minimum of about $2 million in 2002 for certain lands. That payment would be recorded as offsetting receipts (a credit against direct spending). Based on information provided by the bureau, CBO estimates that the government would not forgo any income by completing these transactions. In addition, we estimate that completing the land transfers would have no significant impact on spending subject to appropriation.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	0	−2	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Under the Balanced Budget Act of 1997, proceeds from nonroutine asset sales (sales that are not authorized under current law) may be counted for pay-as-you-go purposes only if the sale would entail no financial cost to the government. Based on information provided by the bureau, CBO estimates that the sale proceeds would exceed any net revenues currently projected to accrue from these lands; therefore, selling these assets would result in a net savings for pay-as-you-go purposes.

Estimated impact on State, local and tribal governments: S. 356 contains no intergovernmental mandates as defined in UMRA. The district has agreed to pay a share of the costs to implement this transfer as part of its memorandum of agreement with the bureau. These costs, which CBO estimates would be about $1 million, were voluntarily accepted by the district as part of that agreement. The decision to purchase land from the federal government also would be voluntary on the part of the district.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

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. 356. 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. 356, as ordered reported.

EXECUTIVE COMMUNICATIONS

On March 3, 1999, the Committee received the following communication from the Department of the Interior:

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, DC, March 3, 1999.

Hon. FRANK MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to express the Administration's position on two bills scheduled for consideration by the Committee on Energy and Natural Resources on Wednesday, March 3, 1999, which could result in the transfer of title to projects constructed and owned by the Bureau of Reclamation (Reclamation). The Administration supports S. 291, to convey certain lands and facilities of the Carlsbad Project in New Mexico. In addition, the Administration could support S. 356 to convey certain works and facilities of the Gila Project, and designated lands within or adjacent to the Gila Project, if it were clarified that the District could not use revenues from municipal bonds to finance this transfer.

As you may know, in 1995, Reclamation, as part of the second phase of the Vice President's National Performance Review, undertook an initiative to transfer title for appropriate Reclamation projects and facilities to non-Federal entities. Since that time, Reclamation has been working closely with the water users, the other stakeholders, and the sponsors in both the House and Senate to address the issues of concern. As a result of that hard work on all sides, tremendous progress has been made.

S. 291 is identical to S. 736, as amended, and S. 356 is identical to S. 2087, as amended, from the 105th Congress. Both these bills passed the Senate but were not considered by the House of Representatives before it adjourned sine die for the 105th Congress. As you may recall, the Administration supported both last year. While these represent very different approaches, we view them as good examples of the progress that has been made.

While we were once far apart on the terms of the legislation for both these projects, the Carlsbad Irrigation District and the Wellton Mohawk Irrigation and Drainage District both worked closely with the Administration and the other stakeholders to address the issues of concern and to craft creative proposals which will ensure compliance with Federal environmental laws, protect the interests of the United States, potentially save the taxpayers money in the long term and give responsibility for operational control and management to the local beneficiaries and interests. Enactment of S. 291 would affect receipts: therefore it is subject to the

pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

We look forward to working closely with you and the Committee to complete consideration of these proposals. If I can provide any additional information or assistance, please do not hesitate to contact me.

Sincerely,

ELUID L. MARTINEZ, *Commissioner.*

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. 356, as ordered reported.

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