

CLEAR CREEK DISTRIBUTION SYSTEM CONVEYANCE ACT

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JULY 26, 1999.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

REPORT

[To accompany H.R. 862]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 862) to authorize the Secretary of the Interior to implement the provisions of the Agreement conveying title to a Distribution System from the United States to the Clear Creek Community Services District, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 862 is to direct the Secretary of Interior to convey title for the Clear Creek Distribution System to the Clear Creek Community Services District.

BACKGROUND AND NEED FOR LEGISLATION

Bureau of Reclamation (BOR) facility transfers has been of particular interest to Congress, local irrigation districts, and the Administration in recent years. Facility transfers represent an effort to shrink the federal government and shift the responsibilities for ownership into the hands of those who can more efficiently operate and maintain them. As a result of the National Performance Review (Reinventing Government II), BOR, which is part of the Department of the Interior, initiated a program in 1995 to transfer ownership of some of its facilities to non-federal entities. However, to date, the Administration has not presented a legislative proposal for project transfers. During the 105th Congress, two legislatively initiated BOR transfers bills were signed into law that directed the

Secretary of the Interior to convey all right, title, and interest of the United States in and to specified project facilities.

Much of the momentum for these transfers comes from local irrigation districts that are seeking title to these projects. The federal government holds title to more than 600 BOR water projects throughout the West. A growing number of these projects are now paid out and operated and maintained by local irrigation districts. The districts seek to have the facilities transferred to them since many of the districts now have the expertise needed to manage the systems and can do so more efficiently than the federal government. BOR has already transferred operation and maintenance responsibilities for about 400 of the projects to local irrigation districts. Under the provisions of Section VI of the Reclamation Act of 1902, title to project facilities remain with the United States unless otherwise provided by Congress, even if project beneficiaries have completed their repayment obligation. Section VI of the Reclamation Act of 1902 states:

The Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided*, That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any 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, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

32 Stat. 389; 43 U.S.C. §§491, 498

Many of these projects were constructed in remote locations and at a time when there were no local communities and utilities near the BOR project. Furthermore, many of the States in which the projects were built did not have a sufficient tax base to fund them. However, as the West became more populated, and with the urbanization of these areas, the BOR now owns and operates public facilities that would be owned, operated, and funded by private corporations or local government agencies if they were constructed today.

Legislative initiatives to transfer the title of BOR facilities have been in play for many years. Two bills enacted during the 105th Congress and signed into law directed the Secretary of Interior to convey all right, title, and interest of the United States in and to selected project features to the Burley Irrigation District and the Canadian River Project. See Public Law 105-351 and Public Law 105-316. In addition, Title XIV of Public Law 102-575 directed the Secretary to transfer the Rio Grande Project in New Mexico to the local irrigation district, once the local irrigation district consented to amend a contract.

*Background of the Clear Creek distribution project*

The facilities to be transferred are located in the Central Valley Project's (CVP) Clear Creek South Unit, a portion of the Trinity River Diversion, which was authorized by the Act of August 12, 1955. The District is provided with CVP water through the Muletown Conduit which extends from the outlet works of Whiskeytown Dam to the terminus of the conduit at the existing pressure-regulating control tank located at the District's northern boundary.

The District was originally formed in 1963 to sign a two-part contract with the BOR to provide a public water system for homes and businesses in Anderson, California. The first part of the contract was a water service contract that provided the actual water to be used for the community's consumption. The second part of the contract required BOR to finance the land, pipes, gauges, valves and other physical facilities that make up the original part of the community's water distribution system.

The total cost of building the original system was to be paid by Clear Creek over a period of forty years. However, unlike other situations where the purchaser owns the facilities at the end of the payment period, under the terms of the May 14, 1963, contract, the federal government retained ownership of the original distribution system, the District office, and other physical facilities even though the debt was to be paid completely by Clear Creek. This bill transfers title of the distribution system to the Clear Creek Services District without affecting the underlying water service contract and relieves the federal government of all liability for its role in owning and constructing the water distribution system.

COMMITTEE ACTION

H.R. 862 was introduced on February 25, 1999, by Congressman Wally Herger (R-CA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On March 11, 1999, the Subcommittee met to mark up the bill. No amendments were offered and the bill was ordered favorably reported to the Full Committee by voice vote. On March 17, 1999, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

The short title of the bill is the Clear Creek Distribution System Conveyance Act.

*Section 2. Definitions*

This sections provides three definitions for the bill.

*Section 3. Conveyance of project*

The section directs the Secretary of Interior to convey several project components to the District, pursuant to an MOA entered into between the BOR and the District. Specifically, the agreement states:

Within one hundred eighty (180) days of the effective date of this Agreement, *the Secretary shall convey to the District*, by means of execution, delivery, and recordation of a document in the form substantially set forth in Appendix A attached, all right, title, and interest of the United States in and to the Distribution System, subject to the terms and conditions in this agreement.

MOA, page 5 [emphasis added]

The agreement stipulates the irrigation conveyance system, surface drainage, related lands, a control tank and various other equipment and properties will be transferred. The payments received to date through the existing repayment contract constitute the full payment for transfer of the project, while responsibilities for all duties and costs associated with the operation, replacement, maintenance, enhancement, and betterment of the distribution system shall be assumed by the District.

*Section 4. Relationship to existing operations*

This section clarifies the effect of the transfer required by H.R. 862 on existing operations of the Project.

*Section 5. Relationship to certain contract obligations*

This section clarifies that the conveyance under this Act does not affect the District's existing water service contract as specified and does not deprive the District of existing entitlements to renewal of that contract or renewal by entering into a long-term water service contract.

*Section 6. Liability*

Once title is transferred, the responsibility for the transferred property fully resides with the District. For all decisions and liabilities that may arise subsequently, the District assumes all financial risks and benefits. Both future cost and potential benefits should accrue to the Districts.

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 and Article IV, section 3 of the Constitution of the United States grant 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. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the

bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

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 revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill could reduce federal spending over the 2000–2004 period but any savings would be “insignificant.”

3. Government Reform Oversight Findings.—Under clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

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 received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 31, 1999.*

Hon. Don Young,  
*Chairman, Committee on Resources,*

HOUSE OF REPRESENTATIVES, WASHINGTON, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 862, the Clear Creek Distribution System Conveyance Act.

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

Sincerely,

STEVEN M. LIBERMAN,  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 862—Clear Creek Distribution System Conveyance Act*

H.R. 862 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to convey all right, title, and interest in and to the Clear Creek Distribution System to the Clear Creek community Services District, which is located in Shasta County, California. CBO estimates that enacting the bill could reduce federal spending over the 2000–2004 period, but that any such savings would not be significant. Because these savings could take the form of a reduction in direct spending, pay-as-you-go procedures would apply. H.R. 862 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Local governments might incur some costs as a result of the bill’s enactment, but these costs would be voluntary. The budgetary impact of this legislation falls within functions 300 (natural resources and environment) and 800 (general government).

H.R. 862 would absolve the federal government of potential liabilities associated with the Clear Creek Distribution System, in-

cluding the cost of repairing an installation defect that has resulted in frequent breaks in the water delivery system. If H.R. 862 is not enacted, the federal government may elect to repair the system with appropriated funds. Alternatively, it is possible that the district would take legal action against the United States and that the federal government would be compelled to pay these costs. Based on information provided by the Bureau of Reclamation, CBO estimates that such costs could total about \$1 million.

H.R. 862 also would excuse the district from repaying amounts due to the federal government for the distribution system. However, in light of the problem with the system and the associated maintenance costs, the district may refuse to pay these amounts even if H.R. 862 is not enacted. The district's outstanding balance is \$0.4 million. Its next scheduled payment is in 2000, and currently scheduled payments over the 2000–2004 period total about \$0.1 million. (No payments were scheduled over the past several years.)

The CBO staff contact for this estimate is Gary Brown. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### 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 State, local or tribal law.

#### CHANGES IN EXISTING LAW

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