

CONVEYANCE TO NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

SEPTEMBER 6, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4389]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4389) to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended to pass.

The amendment is as follows:

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

SECTION 1. DEFINITIONS.

In this Act:

(1) **CONTRACT.**—The term “contract” means the contract between the United States and the Northern Colorado Water Conservancy District providing for the construction of the Colorado-Big Thompson Project, dated July 5, 1938 (including any amendments and supplements).

(2) **DISTRICT.**—The term “District” means the Northern Colorado Water Conservancy District.

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

(4) **TRANSFERRED WATER DISTRIBUTION FACILITIES.**—The term “transferred water distribution facilities” means the North Poudre Supply Canal and Diversion Works, also known as the Munroe Gravity Canal, the Charles Hansen (Supply) Canal and Windsor Extension and the Dixon Feeder Canal, all of which are facilities of the Colorado-Big Thompson Project located in Larimer County, Colorado.

SEC. 2. CONVEYANCE OF TRANSFERRED WATER DISTRIBUTION FACILITIES.

(a) **IN GENERAL.**—The Secretary shall, as soon as practicable after the date of enactment of this Act and in accordance with all applicable law, convey all right, title, and interest in and to the transferred water distribution facilities to the District.

(b) **SALE PRICE.**—

(1) **IN GENERAL.**—The Secretary shall accept \$1,948,515 as consideration for the conveyance of the transferred water distribution facilities under subsection (a).

(2) **NO EFFECT ON OBLIGATIONS AND RIGHTS.**—Except as expressly provided in this Act, nothing in this Act affects or modifies the obligations and rights of the District under the contract.

(3) **PAYMENTS.**—Except as provided in subsection (c), the District shall continue to make such payments as are required under the contract.

(c) **CREDIT TOWARD PROJECT REPAYMENT.**—On payment by the District of the amount authorized to be accepted under subsection (b)(1), the amount paid shall be credited toward repayment of capital costs of the Colorado-Big Thompson Project in an amount equal to the associated undiscounted obligation for repayment of the capital costs.

SEC. 3. LIABILITY.

Except as otherwise provided by law, effective on the date of conveyance of the transferred water distribution 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 any prior ownership or operation by the United States of the conveyed property.

PURPOSE OF THE BILL

The purpose of H.R. 4389 is to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District.

BACKGROUND

For the last six years the Subcommittee on Water and Power has pursued legislation to shrink the size and scope of the federal government through the defederalization of Bureau of Reclamation assets. H.R. 4389 continues this defederalization process by directing the Secretary of the Interior to convey water distribution facilities to the Northern Colorado Water Conservancy District.

H.R. 4389 transfers a small component of a much larger project. The entire project was built from 1938 to 1957 and called the Colorado-Big Thompson Project (CBTP). The CBTP provides supplemental water to 30 cities and towns. The water is used to help irrigate 615,000 acres of northeastern Colorado farmland.

The component being transferred as part of H.R. 4389 will divest the Bureau of Reclamation of all present and future responsibility for and cost associated with the management, operation, maintenance, repair, rehabilitation and replacement of, and liability for the North Poudre Supply Canal and Diversion Works, the Charles Hansen (Supply) Canal and Windsor Extension and the Dixon Feeder Canal. Moreover, the legislation will eliminate the duplication of efforts between the District and the Bureau in issuing and administering crossing licenses and other forms of permission to utilize the land on which the facilities are located. Finally, the legislation will provide for enhanced local control over water facilities that are not of national importance, and allow these facilities to be used for more efficient and effective water management.

In a letter dated June 13, 2000, Maryanne C. Bach, the Bureau of Reclamation's Regional Director for the Great Plains Region, delineated the process in which the Bureau would collect consideration for the title transfer. The Committee believes that the delin-

eated process outlined in this letter is proper and should be followed; however, the Committee does not agree with the price as set out in the letter. Therefore, the United States Treasury will accept \$1,948,315 as consideration for the transfer. Western Area Power Administration (WAPA), on behalf of their preference power customers, would be responsible for \$1,798,200 and the District will be responsible for \$150,315. The aid-to-irrigation obligation for the CBTP will be credited \$3,767,682 as a result of the accelerated payment by WAPA, and the District's repayment obligation would be reduced by \$170,555.

In a letter dated June 14, 2000, Joel K. Bladow, WAPA's Regional Manager for the Rocky Mountain Customer Service Region, agreed with the amount of \$1,798,200 for irrigation assistance for the Pick-Sloan Missouri Basin Program, and agreed that WAPA would "make the appropriate adjustments to the power repayment study to include this amount when the legislation becomes law, and the Bureau of Reclamation advises us of the changes in existing irrigation assistance obligations for the Colorado-Big Thompson Project."

COMMITTEE ACTION

H.R. 4389 was introduced on May 4, 2000, by Congressman Bob Schaffer (R-CO). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On May 23, 2000, the Subcommittee held a hearing on the bill. On June 15, 2000, the Subcommittee met to mark up the bill. Congressman John Doolittle (R-CA) offered an amendment that modified a definition in the bill and removed a speculative cost to the transfer. The amendment was adopted by voice vote. The bill, as amended, was then ordered to be reported to the Full Committee by voice vote. On June 21, 2000, the Full Resources Committee met to consider the bill. No further amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Definitions

This section provides definitions of terms used in the bill including: "contract", "District", "Secretary", and "transferred water distribution facilities".

Section 2. Conveyance of transferred water distribution facilities

This section directs the Secretary of the Interior to convey all right, title, and interest in the single-purpose water distribution facilities to the District for which the Secretary may accept from the District \$1,948,515 as consideration for the transfer. This consideration will be credited toward repayment of capital costs of the CBTP. This transfer shall not affect the obligations and rights of the District under the contract and the District shall continue to make payments as outlined in the contract.

Section 3. Liability

This section states that the United States, upon completion of the transfer, shall no longer be liable for any damage that might arise as a result of its previous ownership.

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. 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, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill would reduce direct spending by about \$2 million in fiscal year 2001, which would be offset by a loss of offsetting receipts.

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, July 24, 2000.

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. 4389, a bill to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District.

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

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4389—A bill to direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District

Summary: H.R. 4389 would direct the Secretary of the Interior to convey certain canals and water distribution facilities to the Northern Colorado Water Conservancy District. These facilities are a small part of the Colorado-Big Thompson project in Larimer County, Colorado. H.R. 4389 would require the district to pay \$1,948,515 for the facilities.

Based on information from the Bureau of Reclamation, CBO estimates that enacting H.R. 4389 would reduce direct spending by about \$2 million in fiscal year 2001. These savings would be offset by the loss of offsetting receipts of about \$4 million over the 2001–2012 period. Because enacting H.R. 4389 would affect direct spending, pay-as-you-go procedures would apply. CBO estimates that implementing this bill would have no significant effect on discretionary spending.

H.R. 4389 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local governments would probably 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 H.R. 4389 is 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—				
	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING					
Estimated budget authority	–2	(¹)	0	0	0
Estimated outlays	–2	(¹)	0	0	0

¹ Less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that the conveyance would occur in the beginning of fiscal year 2001. The bill would require the water district to pay \$1,948,515 for the facilities that would be conveyed under H.R. 4389. The bill would credit this amount to the repayment of capital costs for the Colorado-Big Thompson project. Based on information from the Bureau of Reclamation, the federal government would forgo a payment of \$170,555 from the water district in fiscal year 2002, a payment of \$764,463 from the electricity customers of the Western Area Power Administration (WAPA) in fiscal year 2011, and another payment of \$3,003,219 from WAPA customers in fiscal year 2012. If the project is sold in 2001, the federal government could not enter into a contract to sell excess water capacity from the project to the Pleasant Valley Pipeline. CBO estimates that the federal govern-

ment would receive \$197,261 in fiscal year 2001 from such a contract.

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—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	-2	0	0	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Under the Balanced Budget Act (BBA), 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. CBO estimates that the sale of the water facilities as specified in H.R. 4389 would satisfy the conditions in the BBA, and therefore, the proceeds would count for pay-as-you-go purposes. Under BBA, “financial cost to the government” is defined in terms of the present value of all cash flows associated with an asset sale. The forgone payments of about \$4 million over the 2002–2012 period has an estimated present value that is slightly less than the sale price specified in H.R. 4389 (about \$2 million).

Intergovernmental and private-sector impact: H.R. 4389 contains no intergovernmental or private-sector mandates as defined in UMRA. The Northern Colorado Water Conservancy District, a local public agency, would probably incur costs to acquire the four water distribution facilities, but the decision to bear those costs would be voluntary. The district would benefit from the enactment of this legislation.

Estimate prepaid by: Federal costs: Rachel Applebaum; impact on State, local, and tribal governments: Susan Van Deventer and Marjorie Miller, impact on the private sector: Sarah Sitarek.

Estimate approved by: Peter H. Fontaine, 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 any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill makes no changes in existing law.

ADDITIONAL VIEWS

As amended and reported by the Committee on Resources, H.R. 4389, a bill to direct the Secretary to convey certain water distribution facilities to the Northern Colorado Water Conservancy District, lacks at least four important elements that should be addressed before passage:

First, H.R. 4389 mandates conveyance of the facilities without requiring a determination by the Secretary of the Interior that the conveyance is in the public interest. The bill's language mandating conveyance—"shall, as soon as practicable after the date of enactment of this Act and in accordance with all applicable law"—is helpful in providing assurance that the Secretary must, for example, comply with the National Environmental Policy Act, but that language does not provide the Secretary with adequate discretion as to whether the facilities should be conveyed. The language also appears to foreclose the "no action" alternative (not conveying the facilities) that must be included as part of National Environmental Policy Act compliance. Instead of this mandatory language, the bill should merely "authorize" conveyance. This would allow the Secretary to base a determination whether to convey on invaluable input from the proposed transferee, Bureau of Reclamation, other federal and state agencies, and interested members of the local public.

Second, H.R. 4389 fails to require that full public involvement precede legislation. Stakeholder involvement and negotiation at the local level are essential prior to legislation so that Congress, the District, and the public know the details of what is enacted into law. Lack of such involvement prior to legislation deprives Congress of the benefit of full analysis of the issues by federal agencies and stakeholders. It leaves the transferee in the dark about future obligations related to transfer. And, it substantially alters the playing field for public participation in transfer negotiations due to the foregone conclusion that transfer will take place. In its written testimony before the Water and Power Subcommittee, the Bureau of Reclamation voiced its concern that this transfer not side-step the established Framework process which, among other things, contemplates that the specifics of transfer be negotiated at the local level prior to congressional action. If transfer happens, it should be done right, with full public input.

Third, H.R. 4389 fails to provide for environmental protection and enhancement. Environmental protection and enhancement are the appropriate quid pro quo to mitigate for post-transfer loss of federal control and applicability of most federal laws. Providing for protection and enhancement of the environment enables the District to share the benefit of the transfer with the current federal taxpayer-owners in the form of environmental protection and enhancement, as well as public accountability. Environmental protec-

tions should be negotiated and agreed upon in advance of interested stakeholders and then included as specific terms and conditions of conveyance.

Fourth, H.R. 4389 creates a fixed "sale price" prior to knowing the details of the transfer. The United States should negotiate a fair price for the conveyance only after the terms and conditions of conveyance are established through negotiations with local stakeholders.

If this bill is enacted in its present form, the Committee on Resources and this Congress will have lost another opportunity to write sensible and fair legislation that protects the public interest while allowing the transfer of Bureau of Reclamation projects to local control.

GEORGE MILLER.

