

## Calendar No. 625

105TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 105-376

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### PINE RIVER PROJECT CONVEYANCE ACT

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OCTOBER 7 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

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

### REPORT

[To accompany S. 2142]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2142) to authorize the Secretary of the Interior to convey the facilities of the Pine River Project, to allow jurisdictional transfer of lands between the Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Reclamation, and the Bureau of Indian Affairs, and for other purposes, 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 “Pine River Project Conveyance Act”.

**SEC. 2. DEFINITIONS.**

For purposes of this Act:

(1) The term “Jurisdictional Map” means the map entitled “Transfer of Jurisdiction—Vallecito Reservoir, United States Department of Agriculture, Forest Service and United States Department of the Interior, Bureau of Reclamation and the Bureau of Indian Affairs” dated March, 1998

(2) The term “Pine River Project” or the ‘Project’ means Vallecito Dam and Reservoir owned by the United States and authorized in 1937 under the provisions of the Department of the Interior Appropriation Act of June 25, 1910, 36 Stat. 835; facilities appurtenant to the Dam and Reservoir, including equipment, buildings, and other improvements; lands adjacent to the Dam and Reservoir; easements and rights-of-way necessary for access and all required connections with the Dam and Reservoir, including those for necessary roads; and associated personal property, including contract rights and any and all ownership or property interest in water or water rights.

(3) The term “Repayment Contract” means Repayment Contract #11r-1204, between Reclamation and the Pine River Irrigation District, dated April 15,

1940, and amended November 30, 1953, and all amendments and additions thereto, including the Act of July 27, 1954 (68 Stat. 534), covering the Pine River Project and certain lands acquired in support of the Vallecito Dam and Reservoir pursuant to which the Pine River Irrigation District has assumed operation and maintenance responsibilities for the dam, reservoir, and water-based recreation in accordance with existing law.

(4) The term "Reclamation" means the Department of the Interior, Bureau of Reclamation.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The term "Southern Ute Indian Tribe" or "Tribe" means a federally recognized Indian tribe, located on the Southern Ute Indian Reservation, La Plata County, Colorado.

(7) The term "Pine River Irrigation District" or "District" means a political division of the State of Colorado duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in the City of Bayfield, La Plata County, Colorado and having an undivided  $\frac{5}{6}$  right and interest in the use of the water made available by Vallecito Reservoir for the purpose of supplying the lands of the District, pursuant to the Repayment Contract, and the decree in Case No. 1848-B, District Court, Water Division 7, State of Colorado, as well as an undivided  $\frac{5}{6}$  right and interest in the Pine River Project.

### SEC. 3. TRANSFER OF THE PINE RIVER PROJECT.

(a) CONVEYANCE.—The Secretary is authorized to convey, without consideration or compensation to the District, by quitclaim deed or patent, pursuant to section 6, the United States' undivided  $\frac{5}{6}$  right and interest in the Pine River Project under the jurisdiction of Reclamation for the benefit of the Pine River Irrigation District. No partition of the undivided  $\frac{5}{6}$  right and interest in the Pine River Project shall be permitted from the undivided  $\frac{1}{6}$  right and interest in the Pine River Project described in subsection 3(b) and any quit claim deed or patent evidencing a transfer shall expressly prohibit partitioning. Effective on the date of the conveyance, all obligations between the District and the Bureau of Indian Affairs on the one hand and Reclamation on the other hand, under the Repayment Contract or with respect to the Pine River Project are extinguished. Upon completion of the title transfer, said Repayment Contract shall become null and void. The District shall be responsible for paying 50 percent of all costs associated with the title transfer.

(b) BUREAU OF INDIAN AFFAIRS INTEREST.—At the option of the Tribe, the Secretary is authorized to convey to the Tribe the Bureau of Indian Affairs' undivided  $\frac{1}{6}$  right and interest in the Pine River Project and the water supply made available by Vallecito Reservoir pursuant to the Memorandum of Understanding between the Bureau of Reclamation and the Office of Indian Affairs dated January 3, 1940, together with its Amendment dated July 9, 1964 ("MOU"), the Repayment Contract and decrees in Case Nos. 1848-B and W-1603-76D, District Court, Water Division 7, State of Colorado. In the event of such conveyance, no consideration or compensation shall be required to be paid to the United States.

(c) FEDERAL DAM USE CHARGE.—Nothing in this Act shall relieve the holder of the license issued by the Federal Energy Regulatory Commission under the Federal Power Act for Vallecito Dam in effect on the date of enactment of this Act from the obligation to make payments under section 10(e)(2) of the Federal Power Act during the remaining term of the present license. At the expiration of the present license term, the Federal Energy Regulatory Commission shall adjust the charge to reflect either (1) the  $\frac{1}{6}$  interest of the United States remaining in the Vallecito Dam after conveyance to the District; or (2) if the remaining  $\frac{1}{6}$  interest of the United States has been conveyed to the Tribe pursuant to section 3(b), then no federal dam charge shall be levied from the date of expiration of the present license.

### SEC. 4. JURISDICTIONAL TRANSFER OF LANDS.

(A) INUNDATED LANDS.—To provide for the consolidation of lands associated with the Pine River Project to be retained by the Forest Service and the consolidation of lands to be transferred to the District, the administrative jurisdiction of lands inundated by and along the shoreline of Vallecito Reservoir, as shown on the Jurisdictional Map, shall be transferred, as set forth below (the "Jurisdictional Transfer"), concurrently with the conveyance described in section 3(a). Except as otherwise shown on the Jurisdictional Map—

(1) for withdrawn lands (approximately 260 acres) lying below the 7,665-foot reservoir water surface elevation level, the Forest Service shall transfer an undivided  $\frac{5}{6}$  interest to Reclamation and an undivided  $\frac{1}{6}$  interest to the Bureau of Indian Affairs in trust for the Tribe; and

(2) for Project acquired lands (approximately 230 acres) above the 7,665-foot reservoir water surface elevation level, Reclamation and the Bureau of Indian Affairs shall transfer their interests to the Forest Service.

(b) MAP.—The Jurisdictional Map and legal descriptions of the lands transferred pursuant to subsection (a) above shall be on file and available for public inspection in the offices of the Chief of the Forest Service, Department of Agriculture, the Commissioner of Reclamation, Department of the Interior, appropriate field offices of those agencies, and the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) ADMINISTRATION.—Following the Jurisdictional Transfer—

(1) All lands that, by reason of the Jurisdictional Transfer, become National Forest System lands within the boundaries of the San Juan National Forest, shall be administered in accordance with the laws, rules, and regulations applicable to the National Forest System.

(2) Reclamation withdrawals of land from the San Juan National Forest established by Secretarial Orders on November 9, 1936, October 14, 1937, and June 20, 1945, together designated as Serial No. C-28259, shall be revoked.

(3) The Forest Service shall issue perpetual easements to the District and the Bureau of Indian Affairs, at no cost to the District or the Bureau of Indian Affairs, providing adequate access across all lands subject to Forest Service jurisdiction to insure the District and the Bureau of Indian Affairs the ability to continue to operate and maintain the Pine River Project.

(4) The undivided  $\frac{5}{6}$  interest in National Forest System lands that, by reason of the Jurisdictional Transfer is to be administered by Reclamation, shall be conveyed to the District pursuant to section 3(a).

(5) The District and the Bureau of Indian Affairs shall issue perpetual easements to the Forest Service, at no cost to the Forest Service, from National Forest System lands to Vallecito Reservoir to assure continued public access to Vallecito Reservoir when the Reservoir level drops below the 7,665-foot water surface elevation.

(6) The District and the Bureau of Indian Affairs shall issue a perpetual easement to the Forest Service, at no cost to the Forest Service, for the reconstruction, maintenance, and operation of a road from La Plata County Road No. 501 to National Forest System lands east of the Reservoir.

(d) VALID EXISTING RIGHTS.—Nothing in this section shall affect any valid existing rights or interests in any existing land use authorization, except that any such land use authorization shall be administered by the agency having jurisdiction over the land after the Jurisdictional Transfer in accordance with subsection (c) and other applicable law. Renewal or reissuance of any such authorization shall be in accordance with applicable law and the regulations of the agency having jurisdiction, except that the change of administrative jurisdiction shall not in itself constitute a ground to deny the renewal or reissuance of any such authorization.

#### SEC. 5. LIABILITY.

Effective on the date of the conveyance of the remaining undivided  $\frac{1}{6}$  right and interest in the Pine River Project to the Tribe pursuant to subsection 3(b), 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 such Project, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors 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.)

#### SEC. 6. COMPLETION OF CONVEYANCE.

(a) IN GENERAL.—The Secretary's completion of the conveyance under section 3 shall not occur until the following events have been completed:

(1) Compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and other applicable Federal and State laws.

(2) The submission of a written statement from the Southern Ute Indian Tribe to the Secretary indicating the Tribe's satisfaction that the Tribe's Indian Trust Assets are protected in the conveyance described in section 3.

(3) Execution of an agreement acceptable to the Secretary which limits the future liability of the United States relative to the operation of the Project.

(4) The submission of a statement by the Secretary to the District, the Bureau of Indian Affairs, and the State of Colorado on the existing condition of Vallecito Dam based on Bureau of Reclamation's current knowledge and understanding.

(5) The development of an agreement between the Bureau of Indian Affairs and the District to prescribe the District's obligation to so operate the Project that the  $\frac{1}{6}$  rights and interests to the Project and water supply made available

by Vallecito Reservoir held by the Bureau of Indian Affairs are protected. Such agreement shall supercede the Memorandum of Agreement referred to in section 3(b) of this Act.

(6) The submission of a plan by the District to manage the Project in a manner substantially similar to the manner in which it was managed prior to the transfer and in accordance with applicable Federal and State laws, including management for the preservation of public access and recreational values and for the prevention of growth on certain lands to be conveyed hereunder, as set forth in an Agreement dated March 20, 1998, between the District and residents of Vallecito Reservoir. Any future change in the use of the water supplied by Vallecito Reservoir shall comply with applicable law.

(7) The development of a flood control plan by the Secretary of the Army acting through the Corps of Engineers which shall direct the District in the operation of Vallecito Dam for such purposes.

(b) REPORT.—If the transfer authorized in section 3 is not substantially completed within 18 months from the date of enactment of this Act, the Secretary, in coordination with the District, shall promptly provide a report to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate on the status of the transfer described in section 3(a), any obstacles to completion of such transfer, and the anticipated date for such transfer.

(c) FUTURE BENEFITS.—Effective upon transfer, the District shall not be entitled to receive any further Reclamation benefits attributable to its status as a Reclamation project pursuant to the Reclamation Act of June 17, 1902, and Acts supplementary thereto or amendatory thereof.

#### PURPOSE OF THE MEASURE

The purpose of S. 2142 is to authorize the transfer of the  $\frac{5}{6}$  right to Project facilities owned by the Bureau of Reclamation to the Pine River Irrigation District with the remaining  $\frac{1}{6}$  continuing to be held by the Bureau of Indian Affairs in trust for the Southern Ute Indian Tribe until the Tribe requests transfer. The legislation also provides for the Forest Service to transfer approximately 260 acres below the reservoir level to the Bureau of Reclamation and the Bureau of Indian Affairs, with about 230 acres of Bureau of Reclamation and Bureau of Indian Affairs lands above the level transferred to the Forest Service.

#### BACKGROUND AND NEED

In the 104th Congress, the Committee held hearings on legislation (S. 620) that would have provided 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 would have directed the Secretary of the Interior to transfer title to all Federal property associated with fully paid out Bureau of Reclamation projects to the project beneficiaries in those instances where the beneficiaries have already assumed responsibility for operation and maintenance. The legislation would have provided that the transfer would be without cost and would have 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 most recently: 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 1980s for the Solano Project and the Sly Park Unit, have been quite controversial.

As of 1990, the Bureau has identified 415 project components—out of the 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 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 lan-

guage (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). 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 this Congress, the Committee has 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 has also considered and favorably reported legislation providing for the transfer of the lands for and facilities of the Wellton-Mohawk Division of the Gila Project, Arizona (S. 2087) and the Carlsbad Project New Mexico (S. 736). The Committee has also considered and favorably reported legislation but 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.

The Pine River Project in Colorado was originally authorized in 1937 and the only project feature is the Vallecito Dam and Reservoir, which has a capacity of 129,700 acre feet. The project is fully paid out and the Pine River Irrigation District and the Southern Ute Indian Tribe have operated and managed the facility as well as the distribution system for the past twenty years. Repayment of all obligations occurred in 1984. The United States holds a decreed water right from the State of Colorado covering the Tribe's  $\frac{1}{6}$  water supply while the Irrigation District holds a decreed water right covering its  $\frac{5}{6}$  beneficial interest in the project's water supply. The project is authorized for irrigation and also provides flood control, recreation, and fish and wildlife benefits. In addition, Ptarmigan Resources and Energy Company operates a hydroelectric facility at the dam pursuant to a license issued by the Federal Energy Regulatory Commission under the Federal Power Act. The Irrigation District and the Bureau of Reclamation have discussed the terms of a transfer since 1997 and the District has had several public meetings to address local concerns.

#### LEGISLATIVE HISTORY

S. 2142 was introduced by Senator Campbell on June 5, 1998. A hearing was held by the Subcommittee on June 16, 1998. Similar legislation (H.R. 3715) was introduced by Congressman McInnis on April 23, 1998.

At the business meeting on September 23, 1998, the Committee on Energy and Natural Resources ordered S. 2142, as amended, favorably reported.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 23, 1998, by a unanimous voice vote of

a quorum present, recommends that the Senate pass S. 2142, if amended as described herein.

#### COMMITTEE AMENDMENT

During the consideration of S. 2142, the Committee adopted an amendment in the nature of a substitute to address most of the concerns raised by the Administration during its testimony. The Committee amendment also continues the present Federal dam charge on the license under the Federal Power Act for the remaining term of the license, thereby obviating the rationale for a prepayment by the Irrigation District to cover anticipated revenues to the Federal Government. The specific provisions of the amendment are discussed in the section-by-section analysis.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides a short title.

*Section 2* provides a series of definitions.

*Section 3(a)* authorizes the conveyance of the  $\frac{5}{6}$  interest of the United States in the project to the District with the remaining  $\frac{1}{6}$  interest to be held by the Bureau of Indian Affairs (BIA). Partition of the interests is expressly prohibited. The District is required to assume 50% of the costs of the transfer.

*Subsection 3(b)* authorizes the transfer of the Southern Ute Indian Tribe's  $\frac{1}{6}$  interest to the Tribe and provides that no compensation will be required for the transfer.

*Subsection 3(c)* provides that the current Federal dam charge assessed under section 10(e)(2) of the Federal Power Act will continue on the license issued for the use of Vallecito dam until the expiration of the current license term. At that time, the charge will be adjusted to reflect whatever ownership interest the Federal Government may have in the dam. If the Federal Government still retains a  $\frac{1}{6}$  interest for the benefit of the Tribe, then the charge is to be reduced to  $\frac{1}{6}$ . If the Federal Government has transferred that interest to the Tribe and no longer owns any portion of the dam, then no charge will be assessed.

*Section 4* provides for the transfer of lands above and below the reservoir level between the Bureau of Reclamation, BIA, and the Forest Service to consolidate administration. All lands above the reservoir level will become part of the San Juan National Forest and reclamation withdrawals will be revoked. All existing uses are protected and appropriate easements are provided for.

*Section 5* limits the liability of the United States whenever the remaining  $\frac{1}{6}$  interest in the facility is transferred to the Tribe.

*Section 6* conditions the transfer on certain events:

Compliance with NEPA and other applicable Federal and State laws;

Written statement from the Tribe that they are satisfied that Trust assets are protected;

An agreement acceptable to the Secretary that limits the future liability of the United States relative to the operation of the project;

Statement by the Secretary on the condition of the dam under Safety of Dams;

Agreement between BIA and the District on operation to protect the Tribe's  $\frac{1}{6}$  interest;  
 Submission of a plan on future management of the reservoir;  
 Development of a flood control plan by the Secretary of the Army.

The section also requires a report on progress within 18 months if the transfer has not been completed and provides that upon transfer the District will not longer be eligible for any benefits under Reclamation law attributable to its status as a Reclamation project.

#### COST AND BUDGETARY CONSIDERATIONS

An estimate of the cost of this measure has been requested from the Congressional Budget Office, but has not been received as of the date of filing of this report. When the estimate is received, the Chairman will have it printed in the Congressional Record for the advice of the Senate.

#### 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. 2142. 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. 2142, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On June 8, 1998, 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. 2142. These reports had not been received at the time the report on S. 2142 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 pertinent portions of the testimony provided by the Commissioner of the Bureau of Reclamation, Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF ELUID L. MARTINEZ, COMMISSIONER, U.S.  
 BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to appear today to provide the Administration's view on S. 2142.

#### S. 2142. CONVEYANCE OF THE PINE RIVER PROJECT

S. 2142 would authorize the Secretary of the Interior to convey the Project facilities of the Pine River Project, and would allow the jurisdictional transfer of lands between the U.S. Forest Service, the Bureau of Reclamation and the Bureau of Indian Affairs.



More specifically, this legislation would transfer the  $\frac{5}{6}$  right to Project facilities owned by the Bureau of Reclamation to the Pine River Irrigation District (District), while the  $\frac{1}{6}$  right currently held in trust by the Bureau of Indian Affairs (BIA) for the benefit of the Southern Ute Indian Tribe would remain under the jurisdiction of the BIA, until the Tribe requests title to the  $\frac{1}{6}$  right. As a result of this  $\frac{1}{6}$  right. As a result of the  $\frac{1}{6}$  right held by the BIA for the Tribe, the United States, through the BIA would remain involved in the operation of the project.

While the Department has not had the opportunity to thoroughly analyze all of the implications of this legislation, the process established by S. 2142 will enable the Federal agencies, Tribes, the local community and all the other stakeholders ample opportunities to identify and work towards protecting the public interests they represent. Therefore, with the amendments provided below, the Administration could support this legislation.

#### *Background*

The Pine River Project, authorized for construction in 1937, is located in La Plata and Archuleta Counties of southwestern Colorado. The only project feature is the Vallecito Dam and Reservoir with a total capacity of 129,700 acre feet. In addition to irrigation water for the District and the Southern Ute Indian Tribe, this project also provides flood control, recreation, and fish and wildlife benefits. The District holds the water rights for the Project in its name.

Currently, the Forest Service manages acquired and withdrawn lands along the reservoir, and provides land-based recreation which includes operation campgrounds alongside the reservoir. The District manages, through a contract with Reclamation under authority of the Act of July 9, 1965, all of the water-based recreation including management of boat ramps, marinas, boating and other water-based recreational activities.

In the Fall of 1997, the District contacted Reclamation expressing an interest in title transfer. Since that time, the District has held six public scoping meetings, attended by more than 285 people, to identify issues and concerns and answer questions about their intentions for future project management. The District has worked with the Forest Service, the Bureau of Indian Affairs, the Southern Ute Indian Tribe and local landowners to address concerns they have identified. On April 1, 1998, La Plata County conducted an additional public meeting, and the County Commissioners subsequently endorsed the title transfer proposal.

#### *Sale price*

Section 3(b) of S. 2142 establishes a sale price of \$492,000 to be paid by the District to the United States. This price was arrived at during negotiations between the

District and the Bureau of Reclamation and we believe reflects a fair price for the Project based on the information currently available to us. The district completed its project repayment obligation in 1982. The \$492,000 valuation includes a payment of \$193,000, which represents the present value of the stream of payments that accounts for a conversion of 2,000 acre feet of water (or 1.9 percent of the water available for the District's use) from agricultural use to municipal and industrial use (M&I) as proposed by the District, but which is not likely to occur for some time. This \$193,000 payment is appropriate because, when such a conversion occurs, in the absence of a transfer, the beneficiaries of that conversion are required to pay the United States at a higher rate for the use of the M&I water to reflect the greater value of the water.

The sale price also includes \$299,000 to account for the loss of Federal revenue from the Federal dams charge required under Section 10(e)(2) of the Federal Power Act of 1920, as amended. Currently Ptarmigan Resources and Energy Company (Ptarmigan) maintains a hydroelectric facility at Vallecito Dam and pays the United States an annual fee based on the annual generation of their hydro-power plant. If  $\frac{5}{6}$  rights to the Project are transferred out of Federal ownership as proposed, then  $\frac{5}{6}$  of these revenues would no longer be paid to the United States, and the price appropriately accounts for this. The legislation envisions that the remaining  $\frac{1}{6}$  of the revenues from the Federal dams charge would continue to be paid to the United States.

During transfer negotiations, Reclamation and District representatives worked to identify the factors and other sources of revenue and potential sources of revenue that comprise the value of the facilities in question. Those are incorporated into the price established in this legislation. While Reclamation believes that the negotiated price specified in S. 2142 represents a fair price, additional information bearing on this issue could arise prior to resolution of the remaining public concerns, whether through public input or otherwise. Due to the importance of ensuring that the price is fair—both to Federal taxpayers and to the District—we urge the Committee to substitute the following generic language which sets forth the criteria that Reclamation uses, in place of the first sentence of Section 3(b):

“The Secretary, in consultation with the Secretary of the Treasury, shall ensure that the District pays a fair price for all rights, title and interest of the United States conveyed pursuant to this Act, considering the value of the facilities and lands conveyed would have had to the Federal government or other potential purchasers.” In addition to this payment, there would be a long-term savings to the taxpayers as a result of the fact that the current Federal operation and maintenance responsibilities, which cost approximately \$145,000 per year, will no longer be the responsibility of the United States after title is transferred.

*Tax-exempt financing*

To ensure that the District does not finance its costs in ways that would generate a loss to the Treasury, the legislation should be amended to include the following language:

(F) Any funds paid by the District pursuant to this section shall not be financed by the proceeds of obligations that qualify as federally tax obligations under Section 103 of the Internal Revenue Code, as amended.”

*Dam safety*

Section 6 of S. 2142 requires the Secretary to provide a statement of the condition of the dam based on current knowledge and understanding. Currently, Reclamation plans to conduct hydrologic and seismic studies at the dam. The principle cost of these studies would be incurred in fiscal Years 2000 and 2001. Between now and then a comprehensive review will provide recommendations on whether these or other studies are warranted. If the dam were to remain in the ownership of the United States, Reclamation would complete the recommended studies. If title is transferred to the District, the District and the State of Colorado would determine the proper course of action.

*Compliance with Federal laws and protection of public purposes*

S. 2142 includes a number of provisions to ensure that there is full compliance with NEPA and other Federal laws and requirements and that the public purposes for which this facility was developed are protected.

Section 6 of S. 2142 establishes a number of important conditions that must be met before title can be transferred. This will ensure that the public purposes are protected and will ensure that interested stakeholders have the opportunity to participate in determining the future operations of the reservoir to protect their interests. These conditions are:

- (1) Compliance with NEPA and other applicable federal and state laws;
- (2) A written statement from the Southern Ute Indian Tribe of satisfaction that their interests are protected;
- (3) The issuance of an amendment to the Federal Energy Regulatory Commission (FERC) license to revise the annual charges for the hydropower user;
- (4) A submission by the Secretary of a statement of the existing conditions of Vallecito Dam based on current knowledge and understanding;
- (5) The development of an agreement between the District and the Bureau of Indian Affairs on the operations of the Vallecito Dam and Reservoir for BIA's 1/6 interest;
- (6) The submission of a management plan between the District and the residents of the Vallecito Res-

ervoir to address issues of recreation management, public access, and for the prevention of growth on certain lands to be conveyed to the District; and

(7) The development of a flood control plan by the Secretary of the Army which shall direct the operations of the dam and reservoir by the District.

*Outstanding concerns*

The Pine River Irrigation District has taken a number of important steps to address the concerns of local residents, the Southern Ute Indian Tribe, the Forest Service, the BIA and other Federal, state, and local government agencies. However, it is important to note that there are still some concerns raised by the local community. In particular, some in the local community and others are concerned about how quickly this legislation is moving and that there has not been a thorough analysis of the implications. For example, the transfer might effect options that have been proposed as a possible alternative to resolve Ute tribal water rights claims instead of constructing the Animals LaPlata project. In this case, Reclamation's NEPA analysis of the proposed title transfer would include an analysis of such effects. Furthermore, the bill provides additional opportunities for public comment before title could be transferred. Furthermore, if the conditions established in Section 6 are not met, then title will remain in the name of the United States.

*Technical amendments*

Mr. Chairman, there are several technical or clarifying amendments that the Department recommends be made before this bill moves forward:

(1) *Section 2, Definitions:* The definition of Repayment Contract needs to be modified to accurately identify all the existing contracts on this Project. After "November 30, 1953", should insert "and all amendments and additions thereto, including the Act of July 27, 1954, 68 Stat. 534."

(2) *Section 3(d):* After "In the event of such conveyance," delete "no" and insert "neither deferred compensation" nor before "additional consideration . . ."

(3) *Section 6(a)(5):* At the end of the paragraph, insert the phrase "Such agreement shall supersede the MOU referred to in Section 3(d) of this Act." This will clarify that the agreement reached between the District and the BIA will supersede the pre-existing MOU for operating the facilities that exists between Reclamation and the BIA.

(4) *Elevation:* The elevation noted in Section 4(a)(1), 4(a)(2) and Section 4(c)(5) was incorrectly identified and should be changed from 7,765 to 7,665.

(5) *Definitions (Section 2):* Should read: "The term "Repayment Contract" means Repayment Contract #Ilr - 1204. . . ." rather than "Contract N Zilr-1204."

(6) *Section 6(a)(3)*: Should read: “The issuance by the Federal Energy Regulatory Commission of an amendment to license #3174–001”, rather than license N Z3174–001.

(7) As drafted, the first line of Section 6(a) does not conform to other provisions in the bill that authorize, but do not require, the Secretary to complete the transfer. I assume this is due to an oversight. However, I should point out that we cannot support the bill unless this is revised. We would suggest the following: “IN GENERAL—The Secretary’s completion of the conveyances under section 3 shall not occur prior to the following events:”

In summary, Mr. Chairman, Reclamation believes that this project is a good candidate for title transfer. And while all the questions have not been completely answered, the process to date, and that required in the future under this legislation is open, public, and inclusive. Furthermore, there are numerous safeguards established in S. 2142 to protect the public interests and the public purposes for which this facility has been constructed.

#### 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. 2142, as ordered reported.

