

SLY PARK UNIT CONVEYANCE ACT

JULY 26, 1999.—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

DISSENTING VIEWS

[To accompany H.R. 992]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 992) to convey the Sly Park Dam and Reservoir to the El Dorado Irrigation District, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend 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 “Sly Park Unit Conveyance Act”.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) DISTRICT.—The term “District” means the El Dorado Irrigation District, a political subdivision of the State of California that has its principal place of business in the city of Placerville, El Dorado County, California.

(2) ORIGINAL CONSTRUCTION CONTRACT.—The term “original construction contract” means the repayment contract between the District and the Secretary numbered 14-06-200-949, as amended and renewed.

(3) PROJECT.—The term “Project” means all of the right, title, and interest in and to the Sly Park Dam and Reservoir, the Camp Creek Diversion Dam and Tunnel, and other conduits, canals, facilities, and property held by the United States pursuant to or related to the authorization in the Act entitled “An Act to authorize the American River Basin Development, California, for irrigation

and reclamation, and for other purposes”, approved October 14, 1949 (63 Stat. 852 chapter 690).

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

(5) SUPPLEMENTAL CONTRACTS.—The term “supplemental contracts” means the repayment contracts between the District and the Secretary numbered 14-06-200-7734, 14-06-200-4282A, and 14-06-200-8536A.

SEC. 3. CONVEYANCE OF PROJECT.

(a) IN GENERAL.—In consideration of the District accepting the obligations of the Federal Government for the Project and upon the payment by the District of the net present value of the remaining repayment obligation of the District under the original construction contract, determined in accordance with Office of Management and Budget Circular A-129 (as in effect on the date of enactment of this Act), the Secretary shall convey the Project to the District. Such conveyance shall be subject to a reversion in favor of the United States if the remaining repayment obligations of the District under the supplemental contracts are not completed in accordance with those contracts.

(b) DEADLINE.—

(1) IN GENERAL.—If no changes in Project operations are expected following the conveyance under subsection (a), the Secretary shall complete the conveyance expeditiously, but not later than 180 days after the date of the enactment of this Act.

(2) DEADLINE IF CHANGES IN OPERATIONS INTENDED.—If the District notifies the Secretary that it intends to change Project operations as a result of the conveyance under subsection (a), the Secretary—

(A) shall take into account those potential changes for the purpose of completing any required environmental evaluation associated with the conveyance; and

(B) shall complete the conveyance by not later than 2 years after the date of the enactment of this Act.

(3) ADMINISTRATIVE COSTS OF CONVEYANCE.—If the Secretary fails to complete the conveyance under this Act before the applicable deadline under paragraph (1) or (2), the full cost of administrative action and environmental compliance for the conveyance shall be paid by the Secretary. If the Secretary completes the conveyance before that deadline, ½ of such cost shall be paid by the District.

SEC. 4. RELATIONSHIP TO EXISTING OPERATIONS.

(a) IN GENERAL.—Nothing in this Act shall be construed as significantly expanding or otherwise changing the use or operation of the Project from its current use and operation.

(b) FUTURE ALTERATIONS.—If the District alters the use or operation of the Project it shall comply with all applicable laws or regulations governing such changes at that time (subject to section 5).

SEC. 5. RELATIONSHIP TO CONTRACT OBLIGATIONS.

(a) ORIGINAL CONSTRUCTION CONTRACT.—Provision of consideration by the District in accordance with section 3(a) shall extinguish all repayment obligations under the original construction contract.

(b) SUBSEQUENT CONSTRUCTION CONTRACTS.—

(1) PAYMENT OBLIGATIONS NOT AFFECTED.—Subject to paragraph (2), the conveyance of the Project under this Act does not affect the repayment obligations of the District under the subsequent construction contracts.

(2) PREPAYMENT.—The District may at any time prepay its remaining repayment obligations under the subsequent construction contracts by tendering to the Secretary the net present value, at that time, of the remaining repayment obligations under those contracts, determined in accordance with Office of Management and Budget Circular A-129 (as in effect on the date of enactment of this Act). Effective on the date of such tender, or on the date of completion of all repayment obligations under the subsequent construction contracts, whichever occurs first, any reversionary interest of the United States in and to the Project is extinguished.

SEC. 6. RELATIONSHIP TO OTHER LAWS.

(a) RECLAMATION LAWS.—Except as provided in subsection (b), upon conveyance of the Project under this Act, the Reclamation Act of 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto shall not apply to the Project.

(b) PAYMENTS INTO THE CENTRAL VALLEY PROJECT RESTORATION FUND.—The El Dorado Irrigation District shall continue to make payments into the Central Valley

Project Restoration Fund until the year 2029. The District's obligation shall be calculated in the same manner as Central Valley Project water contractors.

SEC. 7. LIABILITY.

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

PURPOSE OF THE BILL

The purpose of H.R. 992 is to convey the Sly Park Dam and Reservoir to the El Dorado Irrigation District, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Bureau of Reclamation (BOR) facility transfers has been of particular interest to the 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 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 the 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 Sly Park Project

The Sly Park Unit was originally authorized under the American River Act of October 14, 1949. The Unit includes Sly Park Dam and Jenkinson Lake on Sly Park Creek, Camp Creek Diversion Dam on Cam Creek, and Camino Conduit. Upon completion in 1955, the operation of the facilities was transferred to the El Dorado Irrigation District. The District is the major water supplier in El Dorado County, providing service throughout a 200 square-mile area in the western part of the County. In cooperation with BOR, the District operates the Sly Park Recreation Area, which offers camping, boating, swimming, picnicking and fishing.

COMMITTEE ACTION

H.R. 992 was introduced on March 4, 1999, by Congressman John T. Doolittle (R–CA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On February 2, 1999, the Subcommittee held a hearing concerning BOR title transfers. The Commissioner of the BOR, Eluid Martinez, testified that Sly Park could be a good candidate for title transfer.

On March 11, 1999, the Subcommittee met to mark up the bill. Mr. Doolittle offered an amendment in the nature of a substitute, technical in nature, designed to make the bill easier to read. The primary feature of the amendment included definitions for the contracts being paid off by the District and how the contracts with remaining repayment obligations would be identified. The new definitions included “original construction contract” and “supplemental contracts.” The amendment also provided for the minor rewording

for several provisions with no intent to change the policy directives of the bill itself. The amendment was adopted by voice vote. The bill was then ordered favorably reported to the Full Committee by voice vote. On March 17, 1999, the Full Resources Committee met to consider the bill. Congressman George Miller (D-CA) offered an amendment in the nature of a substitute to authorize, rather than direct, the Secretary to convey the Sly Park Unit. The amendment failed on a voice vote. 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 this bill is the Sly Park Unit Conveyance Act.

Section 2. Definitions

This section defines five terms used in the Act.

Section 3. Conveyance of project

This section directs the Secretary of Interior to convey the Sly Park Dam and Reservoir to the El Dorado Irrigation District. However, the sale of the Sly Park Unit would not affect the payment obligation of the District under additional, supplemental contracts it has with the Secretary of the Interior. Payments under those contracts will continue under the terms of those contracts.

The supplemental contracts are 9(D) loans, administered by BOR. The BOR has other loans with public entities where the title to the facilities are held in the name of the local entity. Like any other federal loan program, the money needs to be paid back at predetermined rate, regardless of whether the water is used for agricultural or municipal purposes. Additionally, the legislation collateralizes the loan by making the conveyance subject to a reversion in favor of the United States if the remaining repayment obligations of the District under the supplemental contracts are not completed in accordance with those contracts.

Section 4. Relationship to existing operations

The operation and use of water from the Sly Park Project after a proposed transfer is governed by various State and local regulatory agencies. The current water rights for the project are under the jurisdiction of the California State Water Resources Control Board. Any change in storage volume, diversions and environmental release is governed by the State Board.

Land use decisions in the Sly Park Service Area are under the jurisdiction of El Dorado County. All growth or development decisions are the responsibility of the County and its adopted General Plan and zoning regulations. Full California environmental law compliance, as well as a full public review process, is required for any development project.

The Committee expects that title transfer should occur in an open and fair public process within the affected community. The Committee does not want to establish a one size fits all statutory procedure that would limit a State, or community from developing a process to address issues surrounding each individual project,

and how it should be transferred. Furthermore, it is not the intent of the Committee to use the National Environmental Policy Act as a means to stall, or halt a project from transferring to a local entity. If environmental documentation is needed to facilitate a transfer, it is the intent of the Committee to have it done in a timely manner. For example, H.R. 992 contains a provision that, if no changes in Project operations are expected following the conveyance of title then the Secretary shall complete the conveyance expeditiously, but not later than 180 days after the date of the enactment. If the District intends to change Project operations as a result of conveyance of the Project the Secretary shall take that into consideration and complete the conveyance within two years. If the Secretary fails to meet the conveyance deadlines the full costs of administrative action and environmental compliance for the conveyance shall be borne by the Secretary. If the Secretary completes the conveyance before the deadlines, one half of the cost will be paid by the District.

Section 5. Relationship to contract obligations

This section clarifies the obligations of the District under its original construction contract and its subsequent construction contracts.

Section 6. Relationship to other laws

Power customers of the Central Valley Project (CVP) had raised concerns that since their contributions to the CVP Restoration Fund are not capped, their contributions would be increased to compensate for the fact that the El Dorado Irrigation District would no longer be paying into the Fund. Last year, the Committee addressed this concern by requiring the El Dorado Irrigation District to continue making payments into the Fund until 2029 (the remaining period of their repayment obligation), as required under Public Law 102-575.

Section 7. Liability

This section clarifies the liability of the United States regarding the conveyed property.

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 would result in a net decrease in direct spending of \$2.1 million in 2000. However, this savings would be offset on a present-value basis by a loss of receipts over the 2000–2022 period.

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 19, 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. 992, the Sly Park Unit Conveyance 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.

H.R. 992—Sly Park Unit Conveyance Act

Summary; H.R. 992 would direct the Secretary of the Interior, acting through the Bureau of Reclamation, to convey the Sly Park Unit of the Central Valley Project in California to the El Dorado Irrigation District. The following conditions would apply to the transfer:

- The Secretary would be directed to complete the conveyance within 180 days of enactment if project operations are not expected to change following the conveyance and within two years if they are. The federal government and the district would split the cost of the conveyance if it occurs by the relevant deadline; otherwise, the federal government would bear the full cost.

- The transfer would be contingent upon the district paying the net present value of a portion of its outstanding financial obligations to the bureau. The federal government would hold a reversionary interest in the Sly Park Unit if the remaining obligations are not repaid.

CBO estimates that implementing H.R. 992 would cost less than \$50,000 in appropriated funds over the 2000–2004 period. CBO also estimates that enacting H.R. 992 would yield a net decrease in direct spending of \$2.1 million in 2000, but that this near-term cash savings would be offset on a present-value basis by the loss of receipts over the 2000–2022 period. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 992 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 H.R. 992 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal years, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
CHANGES IN DIRECT SPENDING ¹						
Estimated Budget Authority	0	–2	(?)	(?)	(?)	(?)
Estimated Outlays	0	–2	(?)	(?)	(?)	(?)

¹ Implementing the bill also would require new spending subject to appropriation of less than \$50,000 in 2000.

² Less than \$500,000.

Basis of estimate: For the purpose of this estimate, CBO assumes that H.R. 992 will be enacted by the end of fiscal year 1999 and that the estimated amounts necessary to implement the bill (less than \$50,000) will be appropriated in fiscal year 2000.

Direct spending

H.R. 992 would direct the El Dorado Irrigation District to pay the net present value of its outstanding obligations to the United States for its existing share of water storage at the Central Valley Project. CBO estimates that such payments would total \$2.3 million in 2000. Those receipts would be offset by the loss of currently scheduled repayments of about \$200,000 a year over the 2000–2022 period.

H.R. 992 would not require the district to prepay its outstanding obligations for water delivery facilities. However, the bill would provide for returning ownership of the Sly Park Unit if the district fails to repay these amounts. Based on information provided by the bureau, CBO estimates that approximately \$16 million in debt would remain outstanding after the transfer. All amounts are scheduled to be repaid (under current law), mostly without interest, by 2019. CBO does not estimate any significant change in the likely stream of payments to the United States if this bill is enacted.

Spending subject to appropriation

Based on information provided by the bureau, CBO anticipates that the transfer would occur within 180 days of enactment and that the bureau and the district would split the cost of conveying the facilities. CBO estimates that completing the conveyance would require new spending subject to appropriation of less than \$50,000 in fiscal year 2000. This amount would be used for preparing transfer documents and conducting environmental reviews.

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 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 years, in millions of dollars										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	-2	0	0	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Estimated impact on State, local, and tribal governments: H.R. 992 contains no intergovernmental mandates as defined in UMRA. The conveyance authorized by this bill would be voluntary on the part of the district, and any costs incurred by it as a result of the conveyance would be accepted on that basis. Before the unit could be conveyed, the bill would require the district to pay the present value of certain outstanding obligations to the United States and to pay half the cost of the conveyance. CBS estimates that the prepayment would be about \$2.3 million in fiscal year 2000 and that the district's share of the conveyance cost would be less than \$50,000.

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

Estimate prepared by: Federal costs: Gary Brown. Impact on State, local, and tribal governments: Marjorie Miller.

Estimate 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 make no changes in existing law.

DISSENTING VIEWS

Since the Committee first considered the Sly Park transfer more than 10 years ago, we have never been afforded an opportunity to look into the implications of the District's plans for use of the project after transfer. Will the District divert additional water from the American River? Could the transfer fuel urbanization pressures in the District's service area and possibly jeopardize habitat for endangered or threatened species? These and other matters are significant and they should be examined closely before transfer decisions are made final. Unfortunately, the District has carefully avoided discussion of this transfer proposal in local public forums, and opportunities for stakeholder participation and public review have been stifled. The District has even avoided opportunities to discuss the terms of the project transfer with the Bureau of Reclamation, apparently preferring to take its chances in Congress. And the current legislation would allow the District to avoid compliance with almost all standards procedures, administrative reviews, and environmental law. As a result, the legislation continues to languish after a full decade.

H.R. 992 directs, rather than authorizes, the Secretary of the Interior to convey the Sly Park Unit to the Central Valley Project to the El Dorado Irrigation District. The bill as reported effectively eliminates the discretion of the Secretary of the Interior in determining whether to proceed with the project transfer. Normal procedural requirements, including environmental reviews, could easily be bypassed or subverted by the mandatory transfer requirement.

H.R. 992 also does not set a fixed transfer price for the project. Instead, the bill assumes that the eventual repayment of current debts will somehow replace the concept of a transfer price based on the actual or negotiated value of the project assets. This notion was rejected in 1991 by the Interior Department's Inspector General, who concluded, we do not believe, therefore, that the reimbursable costs should be used as the basis for establishing the sales price of Federal assets because use of this pricing methodology does not protect the interests of the Federal taxpayer or fully recover the Government's investment in the facilities." (IG report No. 91-I-822, p. 8).

The bill also leaves in place the El Dorado Irrigation District's current repayment obligation for its share of the capital costs of construction of the Sly Park Unit, a debt of approximately \$9.7 million. The Commissioner of Reclamation has correctly noted that this language, in effect, would require the Bureau of Reclamation to serve a banker for the El Dorado Irrigation District. In a March 10, 1999 letter to the Chairman and Ranking Minority Members of the Subcommittee on Water and Power, Commissioner Martinez stated:

By structuring the transfer in this manner, the District would not have to raise funds in the market, nor would it be required to use existing reserves to finance the payout of its obligation. The Federal government would, in essence, be subsidizing the District's transfer with below market interest rates for the municipal and industrial portion of its repayment obligation and with no interest rate applicable to the agricultural portion of the repayment obligation.

H.R. 992 as reported ensures that taxpayers subsidies to the El Dorado Irrigation District will continue. Under the bill, the United States will not receive a fair return on the taxpayers' investment in this project.

There is also no limitation in H.R. 992 regarding how the district might obtain funds to pay off the remaining repayment obligations. Under the bill as reported, Federal funds could be used to pay off this federal debt. Tax advantaged funds (municipal bond financing) could be used to the additional detriment of the federal tax payer and treasury. The beneficiaries of Reclamation project transfers should be prohibited from using federal funds, or tax advantaged funding, to pay the costs of acquiring their projects. Use of public funds or financing, combined with the inherent interest subsidy and artificially low transfer price, is triple dipping into the federal treasury.

The bill also attempts to limit the scope of NEPA analysis by stating that the Act shall not be construed as expanding or otherwise changing the use and operation of the Project. Yet it goes on to imply that the District may change operations and uses if it complies with applicable law. The NEPA analysis may therefore be constrained by the bill's requirement that the Act shall not be construed as changing operations of the Project, but the District is under no limitations as to future use.

The El Dorado Irrigation District could easily resolve the issues identified herein by agreeing to participate in open discussions regarding project transfer opportunities with the Bureau of Reclamation and other stakeholders in the project area. A transfer agreement incorporating full public disclosure, reasonable project transfer terms, and honest compliance with procedural requirements would in all probably easily be enacted by Congress.

GEORGE MILLER.
PETER DEFAZIO.

