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SENATE

{ REPORT  
{ 115-359

### CONTRA COSTA CANAL TRANSFER ACT

NOVEMBER 14, 2018.—Ordered to be printed

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

### R E P O R T

[To accompany S. 3001]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3001) to authorize the Secretary of the Interior to convey certain land and facilities of the Central Valley Project, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Contra Costa Canal Transfer Act”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) **ACQUIRED LAND.**—The term “acquired land” means land in Federal ownership and land over which the Federal Government holds an interest for the purpose of the construction and operation of the Contra Costa Canal, including land under the jurisdiction of—

(A) the Bureau of Reclamation;

(B) the Western Area Power Administration; and

(C) the Department of Defense in the case of the Clayton Canal diversion traversing the Concord Naval Weapons Station.

(2) **CONTRA COSTA CANAL AGREEMENT.**—The term “Contra Costa Canal Agreement” means an agreement between the District and the Bureau of Reclamation to determine the legal, institutional, and financial terms surrounding the transfer of the Contra Costa Canal, including but not limited to compensation to the reclamation fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093), equal to the net present value of miscellaneous revenues that the United States would otherwise derive over the 10 years following enactment of this Act from the eligible lands and facilities to be transferred, as governed by reclamation law and policy and the contracts.

(3) **CONTRA COSTA CANAL.**—

(A) **IN GENERAL.**—The term “Contra Costa Canal” means the Contra Costa Canal Unit of the Central Valley Project, which exclusively serves the Contra Costa Water District in an urban area of Contra Costa County, California.

(B) **INCLUSIONS.**—The term “Contra Costa Canal” includes pipelines, conduits, pumping plants, aqueducts, laterals, water storage and regulatory facilities, electric substations, related works and improvements, and all interests in land associated with the Contra Costa Canal Unit of the Central Valley Project in existence on the date of enactment of this Act.

(C) **EXCLUSION.**—The term “Contra Costa Canal” does not include the Rock Slough fish screen facility.

(4) **CONTRACTS.**—The term “contracts” means the existing water service contract between the District and the United States, Contract No. 175r-3401A-LTR1 (2005), Contract No. 14-06-200-6072A (1972, as amended), and any other contract or land permit involving the United States, the District, and Contra Costa Canal.

(5) **DISTRICT.**—The term “District” means the Contra Costa Water District, a political subdivision of the State of California.

(6) **ROCK SLOUGH FISH SCREEN FACILITY.**—

(A) **IN GENERAL.**—The term “Rock Slough fish screen facility” means the fish screen facility at the Rock Slough intake to the Contra Costa Canal.

(B) **INCLUSIONS.**—The term “Rock Slough fish screen facility” includes the screen structure, rake cleaning system, and accessory structures integral to the screen function of the Rock Slough fish screen facility, as required under the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706).

(7) **ROCK SLOUGH FISH SCREEN FACILITY TITLE TRANSFER AGREEMENT.**—The term “Rock Slough fish screen facility title transfer agreement” means an agreement between the District and the Bureau of Reclamation to—

(A) determine the legal, institutional, and financial terms surrounding the transfer of the Rock Slough fish screen facility; and

(B) ensure the continued safe and reliable operations of the Rock Slough fish screen facility.

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

### **SEC. 3. CONVEYANCE OF LAND AND FACILITIES.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, in consideration for the District assuming from the United States all liability for the administration, operation, maintenance, and replacement of the Contra Costa Canal, consistent with the terms and conditions set forth in the Contra Costa Canal Agreement and subject to valid existing rights and existing recreation agreements between the Bureau of Reclamation and the East Bay Regional Park District for Contra Loma Regional Park and other local agencies within the Contra Costa Canal, the Secretary shall offer to convey and assign to the District—

(1) all right, title, and interest of the United States in and to—

(A) the Contra Costa Canal; and

(B) the acquired land; and

(2) all interests reserved and developed as of the date of enactment of this Act for the Contra Costa Canal in the acquired land, including existing recreation agreements between the Bureau of Reclamation and the East Bay Regional Park District for Contra Loma Regional Park and other local agencies within the Contra Costa Canal.

(b) **ROCK SLOUGH FISH SCREEN FACILITY.**—

(1) **IN GENERAL.**—The Secretary shall convey and assign to the District all right, title, and interest of the United States in and to the Rock Slough fish screen facility pursuant to the Rock Slough fish screen facility title transfer agreement.

(2) **COOPERATION.**—No later than 180 days after the conveyance of the Contra Costa Canal, the Secretary and the District shall enter into good faith negotiations to accomplish the conveyance and assignment under paragraph (1).

(c) **PAYMENT OF COSTS.**—The District shall pay to the Secretary any administrative and real estate transfer costs incurred by the Secretary in carrying out the conveyances and assignments under subsections (a) and (b), including the cost of any boundary survey, title search, cadastral survey, appraisal, and other real estate transaction required for the conveyances and assignments.

(d) **COMPLIANCE WITH ENVIRONMENTAL LAWS.**—

(1) **IN GENERAL.**—Before carrying out the conveyances and assignments under subsections (a) and (b), the Secretary shall comply with all applicable requirements under—

- (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
  - (B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
  - (C) any other law applicable to the Contra Costa Canal or the acquired land.
- (2) EFFECT.—Nothing in this Act modifies or alters any obligations under—
- (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or
  - (B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**SEC. 4. RELATIONSHIP TO EXISTING CENTRAL VALLEY PROJECT CONTRACTS.**

- (a) IN GENERAL.—Nothing in this Act affects—
- (1) the application of the reclamation laws to water delivered to the District pursuant to any contract with the Secretary; or
  - (2) subject to subsection (b), the contracts.
- (b) AMENDMENTS TO CONTRACTS.—The Secretary and the District may modify the contracts as necessary to comply with this Act.
- (c) LIABILITY.—
- (1) IN GENERAL.—Except as provided in paragraph (2), the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the Contra Costa Canal or the acquired land.
  - (2) EXCEPTION.—The United States shall continue to be liable for damages caused by acts of negligence committed by the United States or by any employee or agent of the United States before the date of the conveyance and assignment under section 3(a), consistent with chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).
  - (3) LIMITATION.—Nothing in this Act increases the liability of the United States beyond the liability provided under chapter 171 of title 28, United States Code.

**SEC. 5. REPORT.**

- If the conveyance and assignment authorized by section 3(a) is not completed by the date that is 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that—
- (1) describes the status of the conveyance and assignment;
  - (2) describes any obstacles to completing the conveyance and assignment; and
  - (3) specifies an anticipated date for completion of the conveyance and assignment.

PURPOSE

The purpose of S. 3001 is to authorize the Secretary of the Interior (Secretary) to convey certain lands and facilities of the Central Valley Project.

BACKGROUND AND NEED

The Contra Costa Canal System in California, which includes the Rock Slough intake channel, Main Canal, Loop Canal, Shortcut Pipeline, the Clayton and Ygnacio Re-lift Canals and pumping plants, and the Martinez Reservoir and pumping plants, was authorized in 1937 through the Rivers and Harbors Act of 1937 (Public Law 75–392). Construction was completed in 1948, and additional features were finished in 1967.

The Contra Costa Water District (CCWD) has operated and maintained these facilities since 1972 under agreement with the Bureau of Reclamation (BOR), and in 2010 repaid its contract for the cost of construction in full. The repayment contract states that at completion of repayment, title to the facilities is to be transferred to CCWD, following authorization by Congress.

With repayment for these facilities complete, CCWD has asked for authorization to receive title of the Contra Costa Canal System as provided in its contract with BOR. Conveying title to CCWD will facilitate a planned \$650 million project to convert the open main canal to closed pipe in order to increase public safety and water

conservation, and to provide needed upgrades to the main canal and other system components.

#### LEGISLATIVE HISTORY

Senator Feinstein introduced S. 3001 on June 6, 2018. The Subcommittee on Water and Power held a hearing on S. 3001 on June 13, 2018.

Representative DeSaulnier introduced H.R. 6040, companion legislation, in the House of Representatives on June 7, 2018. The Natural Resources Committee's Subcommittee on Water, Power and Oceans held a hearing on H.R. 6040 on July 11, 2018, and it was favorably reported, as amended, by the Natural Resources Committee on August 31, 2018. H.R. 6040 passed the House of Representatives by voice vote on September 12, 2018.

The Senate Committee on Energy and Natural Resources met in an open business session on October 2, 2018, and ordered S. 3001 favorably reported, as amended.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present recommends that the Senate pass S. 3001, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 3001, the Committee adopted an amendment in the nature of a substitute. The substitute amendment modified the definition of "Contra Costa Canal Agreement" to require the CCWD to provide compensation for miscellaneous revenues BOR will no longer receive. The substitute amendment also made a number of technical and conforming changes and is further described in the section-by-section analysis.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1. Short title*

This section states the short title.

##### *Sec. 2. Definitions*

Section 2 defines key terms.

##### *Sec. 3. Conveyance of land and facilities*

Subsection (a) directs BOR to convey all right, title and interest of the United States in the Contra Costa Canal and the acquired land, as well as all interest in the acquired land to date, to CCWD within 180 days of the Act's enactment. As consideration for the conveyance, CCWD must assume all liability for the administration, operation, maintenance, and replacement of the Contra Costa Canal, in accordance with applicable agreements and valid existing rights.

Subsection (b) directs the Secretary to convey the Rock Slough fish screen facility to the CCWD pursuant to that facility's title transfer agreement. This subsection also directs the Secretary and CCWD to enter into negotiations to accomplish the fish screen fa-

cility conveyance within 180 days of the Contra Costa Canal conveyance.

Subsection (c) requires the CCWD to pay any conveyance-related administrative and real estate transfer costs to the Secretary.

Subsection (d) requires the Secretary to comply with applicable environmental laws prior to conveyance.

*Sec. 4. Relationship to existing central valley project contracts*

Section 4 states that nothing in the Act affects the application of reclamation laws to water delivered to CCWD and authorizes the modification of existing contracts to comply with the Act. This section further shields the United States from liability related to the conveyed property after the date of conveyance.

*Sec. 5. Report*

Section 5 requires the Secretary to submit an explanatory report to Congress if the conveyance and assignment of the Contra Costa Canal is not completed within one year after the Act's enactment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office: S. 3001 would authorize the Bureau of Reclamation (BOR), the Western Area Power Administration, and the Department of Defense to transfer the Contra Costa Canal, the Rock Slough Fish Screen, and the associated federal land and facilities to the Contra Costa County Water District located in California.

Under the bill, BOR would modify the Rock Slough Fish Screen to ensure the screen is operating safely before transferring it. Using information from BOR, CBO estimates that the federal share of the costs to complete that work would be \$2 million, subject to the availability of appropriated funds.

Under current law, the federal government collects leasing and grazing fees of about \$80,000 per year from the property that would be transferred under S. 3001. Those amounts are recorded in the federal budget as offsetting receipts, or reductions in direct spending. Under the bill, to compensate the federal government for those lost receipts, the district would pay the federal government an amount equal to the net present value of 10 years of receipts (discounted using the 10-year Treasury rate). CBO estimates that the district would pay the federal government \$750,000 in the next few years and that the net effect on direct spending over the 2019–2028 period would be negligible.

Because enacting S. 3001 would affect direct spending, pay-as-you-go procedures apply. Enacting S. 3001 would not affect revenues.

CBO estimates that enacting S. 3001 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3001 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On August 29, 2018, CBO transmitted a cost estimate for H.R. 6040, the Contra Costa Canal Transfer Act, as ordered reported by the House Committee on Natural Resources on July 18, 2018. The

two pieces of legislation are similar and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### 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. 3001. 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. 3001, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 3001, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the July 13, 2018, hearing on S. 3001 follows:

##### STATEMENT OF TIMOTHY R. PETTY, PH.D., ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Chairman Flake, Ranking Member Cortez Masto and members of the Subcommittee, I am Dr. Tim Petty, the Assistant Secretary for Water and Science at the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on S. 3001, the Contra Costa Canal Title Transfer Act.

S. 3001 directs the Department to offer to transfer and convey to the Contra Costa County Water District (District) all right, title, and interest of the United States in and to the Contra Costa Canal (Canal) within 180 days of enactment of this Act. The Canal, as defined in S. 3001, includes the entirety of the Contra Costa Canal Unit of the Central Valley Project (CVP), including pipelines, conduits, pumping plants, aqueducts, laterals, water storage and regulatory facilities, electric substations, related works, and improvements and all interests in land associated within the unit, not including the Rock Slough fish screen facility. The lands under consideration to be transferred are currently under the jurisdiction of the Bureau of Reclamation, the Western Area Power Administration, and the Department of Defense. The District has been effectively operating and maintain these facilities. The title

transfer of the Canal will maintain this arrangement into the future.

The Department recognizes that the District is a long-time CVP contractor, and that even with enactment of S. 3001, the District would continue to pay their share of CVP operations and maintenance and repayment through their water service rates.

If the conveyance has not been completed within 12 months, Interior is required to submit Congress an explanation and the date by which the conveyance will be completed.

The Department has an active title transfer program and supports transferring certain Reclamation project facilities to non-Federal entities, particularly in cases where transfers could create opportunities, not just for those who receive title, but for other stakeholders and the public as well. Specifically, a streamlined title transfer process for uncomplicated transfers creates incentives for non-Federal entities to closely engage with Reclamation to complete the process and allow for appropriate transfers to take place without legislation. This approach is reflected in the Administration's Title Transfer legislative proposal, transmitted to Congress in February of this year.

Mr. Chairman, it is important to note that in most cases, Reclamation and the entity interested in taking title must complete environmental compliance activities and negotiate the terms and conditions of the transfer before pursuing legislation. Reclamation has been working with the District closely on this effort and will continue to do so. However, this legislation, as currently drafted would authorize the transfer before those steps are completed.

Instead, we recommend that the conveyance be completed pursuant to a title transfer agreement developed between the Department and the District, in consultation with other stakeholders, including the East Bay Regional Park District, the City of Antioch and the City of Walnut Creek. This will enable Reclamation, the District and the other stakeholders to work through the upfront activities necessary to complete a title transfer. We have had situations in previous transfers where additional legislation was required because the terms and conditions were dictated exclusively in the legislation and there was no flexibility to address unanticipated problems on this matter.

Further, it is important that the legislation protect the financial interests of the taxpayers. While the District has completed its repayment obligation for its share of construction costs of the Canal, we need to account for revenues from other contracts, leases and agreements that currently come to the United States, but would transfer to the District under this Act. We recommend that the legislation acknowledge this requirement.

We would be pleased to work with the Committee, the sponsors and the District on legislative language to reflect these necessary modifications. In the meantime, we recommend that Reclamation and the District complete a

valuation analysis to ensure that the financial interests of the United States are protected and that the results be reflected in the title transfer agreement that is referenced in the legislation.

Mr. Chairman, Reclamation has been working closely with the District on this issue and we look forward to continuing that progress. We believe that if structured properly, the transfer of these facilities will improve the efficiency and effectiveness of the Canal's operations by getting control of the lands and facilities into the hands of those who best understand the needs of the community.

With these modifications, the Department is pleased to support this legislation. This completes my statement, I am happy to answer questions at the appropriate time.

#### 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 as ordered reported.

