

## CONTRA COSTA CANAL TRANSFER ACT

AUGUST 31, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

### R E P O R T

[To accompany H.R. 6040]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6040) to authorize the Secretary of the Interior to convey certain land and facilities of the Central Valley Project, 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 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 OF THE BILL**

The purpose of H.R. 6040 is to authorize the Secretary of the Interior to convey certain land and facilities of the Central Valley Project.

**BACKGROUND AND NEED FOR LEGISLATION**

The Contra Costa Water District is a public utility that delivers water to approximately 500,000 people.<sup>1</sup> The District’s service area comprises much of Contra Costa County, located on the south side of the Sacramento-San Joaquin Delta in California’s Central Valley. Congress authorized key components of the California Central Valley Project in 1937 (50 Stat. 844, 850) including the Contra Costa Canal that serves as the backbone of the District’s water conveyance system.

The Bureau of Reclamation holds title to the individual water, power supply and delivery, and recreational facilities it has constructed over the last century, including the Canal. The federal government provided the initial capital contribution to build the vast majority of these early projects. However, the water, power, and recreational customers who benefitted from the facilities entered into long-term contracts with the federal government to repay their part of the initial taxpayer investment. Under the Reclama-

<sup>1</sup> <https://www.cwater.com/27/About-Us>.

tion Act of 1902 (Public Law 57–161), Reclamation may transfer day-to-day operational and maintenance responsibilities to project beneficiaries; however, the title or ownership of any facility must remain in federal ownership until Congress enacts legislation specifically authorizing such a transfer. Since 1996, more than three dozen Reclamation projects have been transferred or authorized to be transferred to local entities.<sup>2</sup>

A title transfer can provide many benefits to end users. A transfer can reduce regulatory paperwork and staff time at both the federal and local levels, reduce the federal backlog on repairing and upgrading infrastructure and help improve the environment and public safety. Additionally, a title transfer can reduce federal liability since the local entity assumes a transferred facility’s liability. At a 2008 Water and Power Subcommittee hearing, Mr. Dan Keppen, Executive Director for the Family Farm Alliance stated, “Experience throughout the West demonstrates that when control of projects is assumed by local interests, the projects are run more cost effectively and with far fewer items of deferred maintenance.”<sup>3</sup> It is because of these and other benefits, Reclamation included in its Fiscal Year 2018 budget language reaffirming the agency’s commitment to facilitate title transfers when they are mutually beneficial to all parties.<sup>4</sup>

The Contra Costa Water District seeks a title transfer of the Contra Costa Canal system which includes several pipelines, conduits, pumping plants and other support facilities, along with the Rock Slough Fish Screen Facility. The District believes that taking title to the Canal system would improve both water supply and public safety. The District has documented 81 drownings in the Canal, or approximately one every year.<sup>5</sup> The District wants to enclose the Canal, and title transfer removes duplicative federal approvals and allows the District to leverage its ownership for additional financing. According to the District, the Canal system is a single-purpose facility well-suited to title transfer. The District claims that it has completed Reclamation’s administrative process to prepare for title transfer legislation.<sup>6</sup>

The Senate Committee on Energy and Natural Resources’ Subcommittee on Water and Power held a legislative hearing on identical legislation, S. 3001, introduced by Sen. Dianne Feinstein (D-CA).<sup>7</sup> The Department of the Interior (DOI) stated concerns that environmental compliance activities still need to be completed and that DOI and local stakeholders still need to address some technical details and agreements.<sup>8</sup> Despite those concerns, DOI acknowledged that “the District has completed its repayment obligation for its share of construction costs of the Canal” and that, when

<sup>2</sup>U.S. Bureau of Reclamation, Title Transfer of Projects and Facilities, *Title Transfer of Projects and Facilities of the Bureau of Reclamation*; available at: <http://www.usbr.gov/title/>.

<sup>3</sup>Submitted Testimony of Mr. Dan Keppen, Executive Director, The Family Farm Alliance, before the House Water and Power Subcommittee legislative hearing, September 25, 2008, p. 2.

<sup>4</sup>Bureau of Reclamation Fiscal Year 2018 Budget in Brief, pg BH–36.

<sup>5</sup>Borba, L. M. (2018, June 11). June 13, 2018 Hearing—Contra Costa Canal Transfer Act (S. 3001) [Letter to Sen. Jeff Flake and Sen. Catherine Cortez Masto], at 2.

<sup>6</sup>*Id.*

<sup>7</sup><https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=6E245B44-DA4F-428D-96F2-BC6AD3E9DF49>.

<sup>8</sup>*Legislative Hearing on S. 3001, H.R. 132, and H.R. 1967 Before the S. Comm. on Energy Natural Resources, Subcomm. on Water and Power*, 115th Cong., 2, (2018) (Statement of Timothy Petty, U.S. Department of the Interior), available at [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=916FC45F-5A34-4515-B6F4-45741D357740](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=916FC45F-5A34-4515-B6F4-45741D357740), at 2.

its concerns are addressed, “the Department is pleased to support this legislation.”<sup>9</sup>

This legislation is supported by the Contra Costa Water District, the East Bay Regional Park District, and Defenders of Wildlife.

#### COMMITTEE ACTION

H.R. 6040 was introduced on June 7, 2018, by Congressman Mark DeSaulnier (D–CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On July 11, 2018, the Subcommittee held a hearing on the bill. On July 18, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Jared Huffman (D–CA) offered an amendment designated #1; it was adopted by unanimous consent. No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

#### 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 Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 29, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6040, the Contra Costa Canal Transfer Act.

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

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 6040—Contra Costa Canal Transfer Act*

H.R. 6040 would authorize the Bureau of Reclamation (BOR), the Western Area Power Administration, and the Department of De-

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<sup>9</sup>*Id.*

fense 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 H.R. 6040. 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 H.R. 6040 would affect direct spending, pay-as-you-go procedures apply. Enacting H.R. 6040 would not affect revenues.

CBO estimates that enacting H.R. 6040 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6040 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to convey certain land and facilities of the Central Valley Project.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pur-

suant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

