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HOUSE OF REPRESENTATIVES
REPORT
104–768

SLY PARK UNIT CONVEYANCE ACT

SEPTEMBER 4, 1996.—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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3903]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3903) to require the Secretary of the Interior to sell the Sly Park Dam and Reservoir, 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) The term "El Dorado Irrigation District" or "District" means a political subdivision of the State of California duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in the city of Placerville, El Dorado County, California.

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

(3) The term "Sly Park Unit" means the Sly Park Dam and Reservoir, Camp Creek Diversion Dam and Tunnel and conduits and canals as authorized under 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), together with all other facilities owned by the United States including those used to convey and store water delivered from Sly Park, as well as all recreation facilities associated thereto.

SEC. 3. SALE OF THE SLY PARK UNIT.

(a) The Secretary shall, on or before December 31, 1997, and upon receipt of the payment for the original construction debt described in subsection (b), sell and convey to the El Dorado Irrigation District all right, title, and interest of the United States in and to the Sly Park Unit. At the time the Sly Park Unit is conveyed, the Secretary shall also transfer and assign to the District the water rights relating to the Sly Park Unit held in trust by the Secretary for diversion and storage under California State permits numbered 2631 and 12258 and other valid permits issued by the California State Water Resources Control Board.

(b) The sale price for the Sly Park Unit shall be $2,600,000. Payment shall be deposited as miscellaneous receipts in the Treasury. Payment of such price shall extinguish all payment obligations under contract numbered 14–06–200–949IR1 between the District and the Secretary.

(c) The terms of the transfer shall include a commitment by the El Dorado Irrigation District to continue to use and operate the facility for the existing purposes following the transfer. If the District chooses to alter the operations or uses in the future it shall comply with all applicable laws or regulations governing such changes at that time.

SEC. 4. CERTAIN CONTRACT OBLIGATIONS NOT AFFECTED.

The sale of the Sly Park Unit under this Act shall not affect the payment obligations of the District under the contract between the District and the Secretary numbered 14–06–200–7734, as amended by contracts numbered 14–06–200–4282A and 14–06–200–8536A.

SEC. 5. TREATMENT OF SALES FOR PURPOSES OF CERTAIN LAWS.

(a) The sales of assets under this Act shall not be considered a disposal of Federal surplus property under the following provisions of law:

(1) Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484).

(2) Section 13 of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

(b) The Congress specifically finds that (1) the sale, conveyance and assignment of the Sly Park Unit and water rights under this Act involves the transfer of the ownership and operation of an existing ongoing water project, (2) the Sly Park Unit will continue to be operated for the existing purposes following the transfer, pursuant to section 3(c) of this Act, and (3) the sale, conveyance and assignment of the Sly Park Unit and water rights does not involve any additional growth or expansion of the Project or other environmental impacts. The sale, conveyance and assignment of the Sly Park Unit and water rights is consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) without additional environmental review and, consequently, no new environmental documentation is required pursuant to such Acts.

SEC. 6. 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 for 35 years after enactment of the Act. The District's obligation shall be calculated in the same manner as Central Valley Project water contractors.

SEC. 7. RECLAMATION ACT APPLICABILITY.

Upon conveyance of the title to the Sly Park Unit, the El Dorado Irrigation District shall no longer be subject to the Reclamation Act of 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto, except as provided in section 7 of this Act.

PURPOSE OF THE BILL

The purpose of H.R. 3903 is to direct the Secretary of the Interior to sell the Sly Park Dam and Reservoir to the El Dorado Irrigation District under certain specified terms and conditions.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3903 provides for the sale and conveyance by the Secretary of the Interior of the Sly Park Unit of the Central Valley Project (CVP) to the El Dorado Irrigation District, Placerville, El Dorado County, California. This bill directs the Secretary, within one year of enactment, to sell and convey the facilities, and to transfer and

assign the water rights relating to the Unit which are held in trust by the Secretary for the project beneficiaries.

The sale and transfer of these assets out of Federal ownership is consistent with Phase II of the Administration's "Reinventing Government" initiative. In March 1995, as part of the Reinventing Government program, the Department of the Interior announced that it would pursue an aggressive program to transfer Bureau of Reclamation facilities out of federal ownership. The Administration has yet to transmit any legislation for Reclamation project transfers to the Congress, but the Committee believes that this transfer furthers the goal of the Reinventing Government initiative.

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 in1955, 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 the Bureau of Reclamation, the District operates the Sly Park Recreation Area, which offers camping, boating, swimming, picnicking and fishing.

Under provisions of the bill, the sale price is set at $2.6 million. Transfer of title to the facilities will occur upon the signing of an agreement to carry out the sale. The sale of the Sly Park Unit under the bill would not affect the payment obligation of the District under an additional contract it has with the Secretary of the Interior. Payments under that contract will continue under the terms of the contract.

Power customers of the 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. The Committee has addressed this concern by requiring the El Dorado Irrigation District to continue making payments into the Fund for 35 years after title is transferred.

This bill is not intended as a precedent for federal policy regarding transfer of project facilities from other units of the CVP or any other Bureau of Reclamation project. The Sly Park Unit presents a unique situation with respect to its physical isolation from other CVP units, and due to the long history of project transfer discussions and legislative proposals. The Congress and this Committee will consider other facility transfer proposals in the future on the basis of the individual policy issues presented by those proposals.

Language similar to H.R. 3903 was approved by the Congress as part of the fiscal year 1996 Budget Reconciliation package which was vetoed by the President. In addition, language providing for the sale of the Sly Park Unit, under different conditions, was passed by the House in 1991 as a part of H.R. 429, the Reclamation Projects Authorization and Adjustment Act of 1991. However, the sale was not included in the final public law, Public Law 102–575.

COMMITTEE ACTION

On June 15, 1995, the Subcommittee on Water and Power Resources of the Committee on Resources held an oversight hearing

on the possible transfer of Reclamation facilities out of federal ownership. At that hearing, the Board Director of the El Dorado Irrigation District testified about the District's ongoing efforts to acquire title to the Sly Park Unit facilities.

The Subcommittee on Water and Power Resources marked up a Subcommittee Print of legislation to direct the sale of the Sly Park Unit on July 11, 1996, which was ordered reported to the Full Committee by voice vote.

H.R. 3903 was subsequently introduced on July 25, 1996, by Congressman John T. Doolittle (R–CA). The bill, as introduced, was nearly identical to the Subcommittee Print directing the Secretary of the Interior to sell the Sly Park Dam and Reservoir. Changes were made to clarify contract and water permit numbers, and to clarify that the project will be operated in accordance with state water law in the future.

H.R. 3903 was referred to the Committee on Resources, and held at the full Committee. On August 1, 1996, the Full Resources Committee met to consider H.R. 3903. Congressman Doolittle offered an amendment en bloc to: specify that the terms of the transfer shall include a commitment by the El Dorado Irrigation District to continue to use and operate the facility for the existing purposes following the transfer; stipulate that the sales price for the Sly Park Unit shall be $2.6 million and that payment shall be deposited as miscellaneous receipts in the Treasury; clarify the Congressional findings section; add a new section to require the District to continue to make payments for 35 years into the Central Valley Project Restoration Fund; and add a new section stating that upon conveyance of the Unit's title to the District, the District shall no longer be subject to the Reclamation Act of 1902. The en bloc amendment was adopted by voice vote. The bill as amended 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 the bill is the "Sly Park Unit Conveyance Act".

Section 2. Definitions

This section defines the Sly Park Unit to include the Sly Park Dam and Reservoir, Camp Creek Diversion Dam and Tunnel and conduits and canals as authorized under the Act entitled "An Act to authorize the American River Basin Development, California, for irrigation and reclamation, and for other purposes," and all other facilities owned by the U.S. including those used to convey and store water delivered from Sly Park and the associated recreation facilities.

Section 3. Sale of the Sly Park Unit

This section requires the Secretary of the Interior to sell, no later than December 31, 1997, the Sly Park Unit to the El Dorado Irrigation District for $2.6 million, and directs that the payment be deposited as miscellaneous receipts in the Treasury.

The section requires the Secretary of the Interior to transfer to the El Dorado Irrigation District water rights relating to the Sly Park Unit for diversion and storage under California State permits numbered 2631 and 12258 and other permits issued by the California State Water Resources Control Board.

Finally, the section stipulates that the terms of the transfer shall include a commitment by the El Dorado Irrigation District to continue to use and operate the facility for the existing purposes following the transfer.

Section 4. Certain contract obligations not affected

The sale of the Sly Park Unit does not affect the payment obligations of the El Dorado Irrigation District under the distribution system loan contract between the District and the Secretary of the Interior numbered 14–06–200–7734, as amended by contracts numbered 14–06–200–4282A and 14–06–200–8536A.

Section 5. Treatment of sales for purposes of certain laws

The sale of the Sly Park Unit is not considered to be disposal of Federal surplus property under the provisions of Section 203 of the Federal Property and Administrative Services Act of 1949 and Section 13 of the Surplus Property Act of 1944.

This section declares that the sale, conveyance and assignment of the Sly Park Unit and water rights involves the transfer of the ownership and operation of an existing ongoing water project, that since the Sly Park Unit will continue to be operated for the existing purposes following the transfer in accordance with section 3 of this Act, and that the sale, conveyance and assignment of the Unit and water rights does not involve expansion of the project or other environmental impacts.

The sale of the Unit and water rights is found, without additional environmental review, to be consistent with the National Environmental Policy Act of 1969 and the

Endangered Species Act of 1973, and no additional environmental documentation is required pursuant to the Acts.

Section 6. 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 for 35 years after enactment of the Act. The District's obligation shall be calculated in the same manner as CVP water contractors.

Section 7. Reclamation act applicability

Upon conveyance of the title to the Sly Park Unit, the El Dorado Irrigation District shall no longer be subject to the Reclamation Act of 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto, except that the District shall continue to make payments into the restoration fund.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee

on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3903 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) 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 H.R. 3903. However, clause 7(d) 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 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3903 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. If enacted, H.R. 3903 would result in asset sale proceeds of $2.6 million in 1998, but would also result in loss of receipts of $200,000 a year from 1998–2022.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI 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 and Oversight on the subject of H.R. 3903.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI 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 H.R. 3903 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 22, 1996.

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. 3903, the Sly Park Unit Conveyance Act.

Enacting H.R. 3903 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3903.

2. Bill title: Sly Park Unit Conveyance Act.

3. Bill status: As ordered reported by the House Committee on Resources on August 1, 1996.

4. Bill purpose: H.R. 3903 would direct the Secretary of the Interior, acting through the Bureau of Reclamation, to sell the Sly Park water supply unit and transfer all associated water rights to the El Dorado Irrigation District (the District) for $2.6 million on or before December 31, 1997. The payment would be deposited as a miscellaneous receipt to the Treasury and would extinguish all obligations of the District to repay federal investments in the water supply unit.

5. Estimated cost to the Federal Government: CBO estimates that enacting the bill would result in asset sale proceeds of $2.6 million in 1998 but would result in a loss of receipts of about $0.2 million a year over the 1998–2022 period. Receipts from the Sly Park Unit represent a very small portion of the federal receipts collected under water supply and repayment contracts managed by the Bureau of Reclamation. (The total amount of such payments is currently about $160 million a year.) The following table summarizes the estimated budgetary effects of H.R. 3903.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
ASSETS SALES[1]						
Estimated budget authority	.....	−3	.....	.....	.....	.....
Estimated outlays	.....	−3	.....	.....	.....	.....
CHANGES IN DIRECT SPENDING						
Estimated budget authority	.....	(2)	(2)	(2)	(2)	(2)
Estimated outlay	.....	(2)	(2)	(2)	(2)	(2)

[1] Under the 1997 budget resolution, proceeds from asset sales are counted in the budget totals for purposes of Congressional scoring. Under the Balanced Budget Act, however, proceeds from asset sales are not counted in determining compliance with the discretionary limits or pay-as-you-go requirement.

[2] Less than $500,000.

The costs of this bill fall within budget function 300.

6. Basis of estimate: For the purpose of this estimate, CBO assumes that the District would purchase the Sly Park Unit for $2.6 million, the price specified in the bill, and that the transaction would occur by the end of the first quarter of fiscal year 1998. That payment would extinguish all obligations of the District to repay federal investments in the water supply unit. This would result in a loss of receipts totaling about $0.2 million a year over the 1998–2022 period.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 3903 would

affect direct spending because the government would forgo offsetting receipts of about $0.2 million a year after the unit is sold to the District early in fiscal year 1998. Hence, the first year of such a receipt loss would be 1998. The proceeds from nonroutine asset sales do not count as an offset to direct spending for pay-as-you-go purposes under current law. Therefore, the asset sale receipts of $2.6 million are not included in the following table that summarizes the bill's estimated pay-as-you-go impact.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	(1)	(1)	(1)

[1] Not applicable.

7. Estimated impact on State, local, and tribal governments: H.R. 3903 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) and would impose no costs on state, local, or tribal governments. This transaction would be voluntary on the part of the El Dorado Irrigation District.

9. Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in Public Law 104–4.

10. Previous CBO estimate: On November 16, 1995, CBO provided an estimate for the conference report on H.R. 2491, the Balanced Budget Act of 1995, which also would direct the Secretary of the Interior to sell the Sly Park Unit. Differences between that estimate and the estimate for H.R. 3903 reflect differences in the provisions regarding the terms of the sale.

11. Estimate prepared by: Federal Cost Estimate: Gary Brown. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Amy Downs.

12. Estimate approved by: Peter Fontaine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 3903 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 3903 would make no changes in existing law.

ADDITIONAL VIEWS ON H.R. 3903

H.R. 3903 as reported by the Committee represents some significant improvements over the language of the bill as introduced. The price that the El Dorado Irrigation District will pay for the Sly Park Unit has been increased to more closely reflect the present value of payments that would have been received by the federal Treasury over the next 35 years if the project were not transferred. (The exact amount of future receipts is impossible to state with certainty, since it depends in part upon the amount of municipal and industrial water use by the District in the future and future rate-setting policies for municipal and industrial water.) Another change ensures that the District will retain its obligation to contribute to funding the Central Valley Project Restoration Fund over the next 35 years, rather than passing that obligation onto other project beneficiaries—an obligation that likely would have been born by project power customers. In addition, language that might have been construed to override California state water law has been removed.

However, a significant problem remains with the bill; it explicitly overrides the provisions of the National Environmental Policy Act and the Endangered Species Act with respect to the sale of the Sly Park Unit, declaring by legislative fiat that existing environmental documentation is sufficient to meet the requirements of those laws. Under normal application of these two environmental laws, the determination of what environmental analysis is sufficient would be left to the relevant agencies—the Bureau of Reclamation and the U.S. Fish and Wildlife Service. Instead, this bill substitutes a legislative judgment that existing environmental analysis is sufficient, although the Committee has received no evidence regarding the sufficiency of the analysis or the potential environmental impacts of the transfer.

In fact, H.R. 3903 places no restrictions on future operation of the Sly Park Unit, and thus the environmental implications of the transfer cannot be determined without a study of potential operating changes following transfer. As recently as last year, the Bureau of Reclamation and the Fish and Wildlife Service conducted a formal Endangered Species Act section 7 consultation on renewal of the Bureau's contract with the El Dorado Irrigation District. The environmental values represented by our federal environmental laws will be upheld only if the agencies are free to explore the environmental impacts of this more permanent facility transfer.

The problem with this environmental language might have been resolved earlier if this bill had followed the normal legislative process of introduction, hearings and mark-up. Instead, the bill was rushed before the Committee less than a week after introduction; the Subcommittee on Water and Power Resources had previously acted to mark up a similar "Subcommittee Print" on two days' no-

tice. No legislative hearings have been held in this Committee on Sly Park transfer since 1991. (The testimony of a single witness in a June 1995 oversight hearing is simply not sufficient to explore the need for and implications of this detailed legislative proposal.)

The serious problem of overrides of federal environmental laws should be resolved as H.R. 3903 moves through the legislative process.

GEORGE MILLER.

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