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MCGEE GREEK PROJECT PIPELINE AND ASSOCIATED FACILITIES CONVEYANCE ACT

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JUNE 16, 2008.—Ordered to be printed
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Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany H.R. 2085]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2085) to authorize the Secretary of the Interior to convey to the McGee Creek Authority certain facilities of the McGee Creek Project, Oklahoma, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 2085 is to authorize the Secretary of the Interior to convey to the McGee Creek Authority certain facilities of the McGee Creek Project, Oklahoma, and for other purposes.

BACKGROUND AND NEED

The McGee Creek Project, near Atoka, Oklahoma, was authorized in Title VII of the Reclamation Authorizations Act of 1976 for the purpose of storing, regulating, and conveying water for municipal and industrial use. Oklahoma City, Soda, Atoka County, and the City of Atoka are provided with a supplemental municipal and industrial water supply from the McGee Project.

The McGee Creek Authority (Authority) was established to develop, finance, operate, and maintain the water supply in the McGee Creek Reservoir. The Authority became responsible for the operation and maintenance of the project on September 1, 1990. Section 205(a) of Public Law 101-514 authorized the Secretary to enter into a contract with the McGee Creek Authority to accept final payment of the original repayment obligation for the McGee

Creek Project. Section 205(c) specifically states that the title to the McGee Creek project facilities shall remain with the United States even if the repayment obligation has been satisfied. The Authority's repayment obligation was satisfied on October 30, 1992, with a final payment of \$88,600,000. The Authority is still obligated to pay or provide for the operation and maintenance of the project.

H.R. 2085 would transfer ownership of certain facilities of the McGee Creek Project, currently held by the United States through the Bureau of Reclamation, to the McGee Creek Authority. The title transfer includes 23.83 acres of land, 17 miles of raw water pipeline, all control structures and related appurtenances, as well as the Rate of Flow Control Station at Lake Atoka. This transfer does not include the Dam or Reservoir.

In April 2006, a Memorandum of Agreement (MOA) was signed by the Bureau of Reclamation and the Authority in which they agreed to seek legislation to authorize transfer of facilities to the Authority. The MOA also outlined the responsibilities of the Bureau and the Authority, including payment agreements.

LEGISLATIVE HISTORY

H.R. 2085 was introduced by Rep. Mary Fallin on May 1, 2007 and referred to the Committee on Natural Resources. Rep. Dan Boren is a co-sponsor of the bill. Under suspension of the rules, H.R. 2085 passed the House of Representatives on December 6, 2007, and was referred to the Committee on Energy and Natural Resources. A companion measure, S. 177 was introduced by Senator Inhofe on January 4, 2007 and referred to the Committee on Energy and Natural Resources. On February 28, 2008, the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources held a hearing on S. 177 and H.R. 2085. At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered H.R. 2085 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 7, 2008, by voice vote of a quorum present, recommends that the Senate pass H.R. 2085.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the Act.

Section 2 defines terms used in the Act.

Section 3(a) authorizes the Secretary, in accordance with applicable law and the MOA, to convey certain specified facilities to the Authority, but excludes the mineral estate from the conveyance.

Section 3(b) requires the Authority to comply with all applicable laws upon conveyance of the identified facilities, to assume all responsibility for operation and maintenance costs, and limits the Authority's eligibility for certain identified funding.

Section 3(c) limits the United States liability for damages associated with the land and facilities being conveyed.

Section 3(d) specifies that an existing Contract between the Authority and the United States shall remain in effect, except as authorized to be amended.

Section 3(e) continues the application of the reclamation laws to project water provided to the Authority.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

H.R. 2085—McGee Creek Project Pipeline and Associated Facilities Conveyance Act

H.R. 2085 would authorize the Secretary of the Interior to convey a pipeline and associated water facilities to the McGee Creek Authority of Oklahoma City, Oklahoma. The Authority would be responsible for all operation and maintenance costs of the pipeline and facilities after the conveyance.

CBO estimates that implementing H.R. 2085 would have no significant effect on the federal budget. The Authority has repaid the federal government its obligation for building the pipeline and related facilities. Under the act, any administrative costs to the federal government for conveying the facilities would be paid by the McGee Creek Authority. Enacting H.R. 2085 would not affect direct spending or revenues.

H.R. 2085 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The state of Oklahoma and certain local governments would benefit from the conveyances authorized in this act. Any costs to those governments would be incurred voluntarily.

On November 28, 2007, CBO transmitted a cost estimate for H.R. 2085, the McGee Creek Project Pipeline and Associated Facilities Conveyance Act, as ordered reported by the House Committee on Natural Resources on November 15, 2007. The versions of the legislation are identical, as are the estimated costs.

The CBO staff contact for this estimate is Tyler Kruzich. This estimate was approved by Theresa Gullo, 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 H.R. 2085. 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 H.R. 2085, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 2085, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined by rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Senate Committee on Energy and Natural Resources subcommittee hearing on companion measure S. 177 follows:

STATEMENT OF ROBERT J. QUINT, DIRECTOR OF OPERATIONS, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee, I am Robert J. Quint, Director of Operations for the Bureau of Reclamation. I am pleased to appear before this Subcommittee to provide testimony on S. 177, legislation to authorize the Secretary of the Interior to convey certain lands and facilities of the McGee Creek Project in Oklahoma to the McGee Creek Authority (Authority). The Administration supports this bill and we thank the committee for considering it today.

The Department of the Interior has an active title transfer program and supports transferring ownership of certain Reclamation project facilities to non-Federal entities. Initial discussions on this transfer began in 1997, and Reclamation and the McGee Creek Authority have been working collaboratively to lay the groundwork for this title transfer since that time. Reclamation and the Authority entered into a Memorandum of Agreement (MOA) in 1998 for the purpose of defining the activities and responsibilities necessary to move forward with the proposed transfer. Before the transfer could be finalized and the necessary legislation could be proposed, the agreement expired in September 2002. In 2006, the Authority again expressed interest in the transfer and in April of that year, a new MOA was executed.

Through cooperative efforts with the Authority, all elements required by Reclamation for title transfer have been successfully addressed for the McGee Creek project. The Authority has provided funding for Reclamation to complete the necessary environmental, legal, and historic preservation documentation for this transfer, including a Final Environmental Assessment and Finding of No Significant Impact, concurrence from the State Historic Preservation Officer, a hazardous materials clearance, and conveyance documents.

The costs of the lands, buildings and facilities to be transferred have already been repaid pursuant to the Authority's original repayment contract. All of the lands to be transferred were acquired by Reclamation when the project was built and the original repayment contract incorporated acquisition costs together with the costs associated with the construction of the project facilities and associated easements, lands and buildings. There are no ongoing revenue streams associated with these lands and facilities. As such, no additional payment for this transfer is required.

In addition, this title transfer protects the financial interest of the United States. Transferring title to these facilities will reduce a number of administrative burdens on Reclamation including periodic facility reviews that are currently required because it is a Reclamation owned facility, and the processing of paperwork that currently consumes significant staff time. It will also ensure that long term responsibility for the operation, maintenance, management, and regulation, as well as liability, for the transferred lands and facilities will rest with the Authority.

Again, we support passage of S. 177 and thank the subcommittee for holding this hearing. It reflects a cooperative and cost effective process that will provide a benefit to the Authority and Reclamation.

This concludes my testimony and I would be pleased to answer any questions.

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 H.R. 2085, as ordered reported.

