

TO DIRECT THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN FACILITIES, EASEMENTS, AND RIGHTS-OF-WAY TO THE KENNEWICK IRRIGATION DISTRICT, AND FOR OTHER PURPOSES

DECEMBER 19, 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. 6652]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6652) to direct the Secretary of the Interior to convey certain facilities, easements, and rights-of-way to the Kennewick 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 all after the enacting clause and insert the following:

**SECTION 1. DEFINITIONS.**

In this Act:

(1) AGREEMENT.—The term “Agreement” means the agreement required under section 2(a).

(2) DISTRICT.—The term “District” means the Kennewick Irrigation District, located in Benton County, Washington, which operates and maintains a portion of the Kennewick Division of the Yakima Project constructed by the United States to enable the Kennewick Irrigation District to carry out authorized purposes pursuant to the Act of June 12, 1948 (62 Stat. 382).

(3) DISTRICT’S HEAD GATE.—The term “District’s head gate” means the point of diversion for the Kennewick Irrigation District, identified as the KID Main Canal Headworks at the following location: KID Main Canal Headworks, 200 feet east and 1100 feet north, more or less, from the southwest corner of section 16, being within the northwest  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of section 16, T. 9 N., 26 E.W.M.

(4) DIVISION.—The term “Division” means the Kennewick Division, including the Transferred Works.

(5) TRANSFERRED WORKS.—The term “Transferred Works” means the canals, laterals, and appurtenant works and lands, which begin at the District’s head gate and extends approximately 40 miles east to the Columbia River built to serve the place of use of the 20,201 acres of currently irrigated irritable lands entitled to delivery of water within the Kennewick Irrigation District.

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

**SEC. 2. AGREEMENT, CONVEYANCE, REPORT.**

(a) **AGREEMENT.**—Not later than 2 years after the date of the enactment of this Act, the Secretary, acting through the Bureau of Reclamation, shall enter into an agreement with the District to determine the legal, institutional, and financial terms related to the conveyance of the Transferred Works. The Agreement shall be completed after the requirements in section 5(a) are satisfied. This Agreement shall be in accordance with and subject to Memorandum of Agreement No: R18MA13703 between the District and the Bureau of Reclamation.

(b) **CONVEYANCE.**—Subject to valid leases, permits, rights-of-way, easements, and other existing rights and in accordance the terms and conditions set forth in the Agreement and this Act, the Secretary shall convey to the District all right, title, and interest of the United States in and to the Transferred Works.

(c) **REPORT.**—If the conveyance authorized by subsection (b) is not completed within 2 years after the date of the enactment of this Act, the Secretary shall submit to Congress a report that—

- (1) describes the status of the conveyance;
- (2) describes any obstacles to completing the conveyance; and
- (3) specifies an anticipated date for completion of the conveyance.

**SEC. 3. LIABILITY.**

(a) **DAMAGES.**—Except as otherwise provided by law and for damages caused by acts of negligence committed by the United States or by its employees or agents, effective upon the date of the conveyance authorized by section 2, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the Transferred Works.

(b) **TORTS CLAIMS.**—Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (popularly known as the “Federal Tort Claims Act”).

**SEC. 4. BENEFITS.**

(a) **STATUS OF LAND.**—After conveyance of the Transferred Works under this Act, the Transferred Works shall not be considered to be a part of a Federal reclamation project.

(b) **BENEFITS IF ENTIRE DIVISION CONVEYED.**—If the entire Division is conveyed out of Federal ownership, the District shall not be eligible to receive any benefits, including project power, with respect to the conveyed Division, except benefits that would be available to a similarly situated entity with respect to property that is not part of a Federal reclamation project.

**SEC. 5. COMPLIANCE WITH OTHER LAWS.**

(a) **COMPLIANCE WITH ENVIRONMENTAL AND HISTORIC PRESERVATION LAWS.**—Before making the conveyance authorized by this Act, the Secretary shall complete all actions required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), subtitle III of title 54, United States Code, and all other applicable laws.

(b) **COMPLIANCE BY THE DISTRICT.**—After conveyance of the Transferred Works under this Act, the District shall comply with all applicable Federal, State, and local laws and regulations in its operation of the Transferred Works.

(c) **APPLICABLE AUTHORITY.**—All provisions of Federal reclamation law (the Act of June 17, 1902 (43 U.S.C. 371 et seq.), and Acts supplemental to and amendatory of that Act) shall continue to be applicable to project water provided to the District.

**SEC. 6. PAYMENT.**

(a) **ADMINISTRATIVE COSTS.**—Except as provided in subsection (b), administrative costs for conveyance of the Transferred Works under this Act shall be paid in equal shares by the Secretary and the District.

(b) **REAL ESTATE TRANSFER COST.**—Costs of all boundary surveys, title searches, cadastral surveys, appraisals, and other real estate transactions required for the conveyance of the Transferred Works shall be paid by the District.

(c) **COSTS OF COMPLIANCE WITH OTHER LAWS.**—Costs associated with any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), subtitle III of title 54, United States Code, and all other applicable laws for conveyance of the Transferred Works shall be paid in equal shares by the Secretary and the District.

**SEC. 7. MISCELLANEOUS.**

(a) **APPLICABILITY OF OTHER LAW.**—Section 1212 of Public Law 103–434 shall apply to and be incorporated into this Act.

(b) **STATUTORY CONSTRUCTION.**—Nothing in this Act shall or shall be construed for any purpose—

(1) to transfer, affect, reduce, modify, or impair the water rights of any person;

(2) to affect, reduce, modify, or impair the United States' authority to regulate and manage water in the Yakima Basin, including water diverted into the Chandler Power Canal and Prosser Dam through and including the Kennewick Irrigation District's head gate;

(3) to change how water is diverted at Prosser Dam and delivered to the Kennewick Irrigation District through the Chandler pumps through the District's head gate; and

(4) to affect reduce, modify, or impair the United States' control, management, and ownership of the "Reserved works" as defined in the United States Bureau of Reclamation and Kennewick Irrigation District Amendatory Repayment Contract (1953) (Contract No. 14-06-W-56) as amended, at pp. 2-3, which Reserved works include but are not limited to Prosser Dam, the Chandler Power Canal and hydroelectric and pumping plant, all Yakima Project facilities, and the siphon under the Yakima River to the District's head gate.

#### SEC. 8. LIMITATIONS.

After completing the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary of the Interior shall convey title, if the Secretary affirms in writing to the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources that the following criteria have been met:

(1) The Kennewick Irrigation District agrees to accept title to the property proposed for transfer.

(2) The proposed title transfer will not have an unmitigated negative effect on the environment.

(3) The transfer is consistent with the Secretary's responsibility to protect land and water resources held in trust for federally recognized Indian Tribes.

(4) The transfer is consistent with the Secretary's responsibility to ensure compliance with international treaties and interstate compacts.

(5) The Kennewick Irrigation District agrees to provide, as consideration for the assets to be conveyed, compensation to the United States worth the equivalent of the present value of any repayment obligation to the United States or other income stream the United States derives from the assets to be transferred at the time of the transfer.

#### PURPOSE OF THE BILL

The purpose of H.R. 6652 is to direct the Secretary of the Interior to convey certain facilities, easements, and rights-of-way to the Kennewick Irrigation District.

#### BACKGROUND AND NEED FOR LEGISLATION

Authorized in 1948 by Public Law 80-629,<sup>1</sup> and originally constructed in 1958,<sup>2</sup> the Kennewick Division is one of seven divisions of the Bureau of Reclamation's Yakima Project.<sup>3</sup> The Kennewick Irrigation District (KID) diverts water from the Division, which is a combined irrigation and power development project that includes a 12-megawatt power plant and pump station serving water to over 20,200 acres of land.<sup>4</sup> KID was initially built for agricultural purposes in the tristate area. Today, however, most rate payers who reimburse the federal government for the cost of the water project live in residential developments.<sup>5</sup>

Taking a system designed for agricultural use to provide for a growing number of urban water users has created unique problems for KID. At a 2018 Water and Power and Oceans Subcommittee oversight hearing, Mr. Charles Freeman, General Manager of KID, stated, "[T]he reality of it is our particular circumstance, we are

<sup>1</sup> <https://www.loc.gov/law/help/statutes-at-large/80th-congress/session-2/c80s2ch453.pdf>.

<sup>2</sup> <https://www.usbr.gov/projects/index.php?id=400>.

<sup>3</sup> Id. At "History".

<sup>4</sup> <https://www.kid.org/your-kid/history-of-kid/>.

<sup>5</sup> Id.

growing at such a fast rate that I have five engineers, three [project engineers], just to keep up with the commercial and residential growth in our cities.”<sup>6</sup> In his written testimony, Mr. Freeman further explained, “Reclamation is not always timely in meeting the needs of the communities KID serves. Developers in Kennewick have had to endure years long waiting times for Reclamation’s approval to move easement lines on properties the developer owns.”<sup>7</sup>

The Division, like many other water, power supply and delivery facilities constructed by Reclamation, is wholly owned by the federal government. Reclamation provided the initial capital contribution to build these projects; however, the water and power customers who benefitted from the facilities entered into long-term contracts with the federal government to repay their part of the initial taxpayer investment.<sup>8</sup> Under the Reclamation Act of 1902, 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.<sup>9</sup> Since 1996, more than three dozen Reclamation projects have been transferred or authorized to be transferred to local entities.<sup>10</sup>

A title transfer can provide a number of benefits to end users. A transfer can reduce regulatory paperwork and staff time at both the federal and local levels, reduce the federal backlog for repairs and upgrades to 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. KID General Manager Charles Freeman submitted testimony to the Subcommittee which stated, “Transfer of title in this instance will reduce federal liabilities and prepayment will provide a cost savings benefit to the federal government. Taking title will allow [KID] to more efficiently manage water supplies. This is a win-win for both parties.”<sup>11</sup> It is because of these and other benefits of title transfers that 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>12</sup>

H.R. 6652 authorizes the Secretary of the Interior to convey all right, title and interest to certain canals, laterals, and appurtenant works and lands that begin at KID’s head gate and extend approximately 40 miles east to the Columbia River (defined as “Transferred Works” by the bill) to KID. The goal of this legislation is to allow KID to reduce federal paperwork requirements while also relieving Reclamation of all future liability and responsibilities. The Secretary will comply with all environmental and historic preservation requirements and all other applicable laws when making the

<sup>6</sup> Oral Testimony of Mr. Charles Freeman, General Manager, Kennewick Irrigation District, before the House Water and Power Subcommittee, February 14, 2018.

<sup>7</sup> Submitted Testimony of Mr. Charles Freeman, General Manager, Kennewick Irrigation District, before the House Water and Power Subcommittee, February 14, 2018, p. 2.

<sup>8</sup> <https://www.loc.gov/law/help/statutes-at-large/80th-congress/session-2/c80s2ch453.pdf> at Sec. 4.

<sup>9</sup> <https://www.usbr.gov/lc/region/programs/contracts/Legislation.pdf>.

<sup>10</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>11</sup> Submitted Testimony of Mr. Charles Freeman, General Manager, Kennewick Irrigation District, before the House Water and Power Subcommittee, February 14, 2018, p. 2.

<sup>12</sup> Bureau of Reclamation Fiscal Year 2018 Budget in Brief, p. BH-36.

conveyance. The bill requires KID to comply with all applicable federal, State and local laws and regulations in its operation of the Transferred Works. Costs of the conveyance are allocated between the Secretary and KID.

COMMITTEE ACTION

H.R. 6652 was introduced on August 3, 2018, by Congressman Dan Newhouse (R-WA). The bill was referred to the Committee on Natural Resources and within the Committee to the Subcommittee on Water, Power and Oceans. The Subcommittee held a hearing on the bill on September 5, 2018. On November 15, 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 169; 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, December 18, 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. 6652, a bill to direct the Secretary of the Interior to convey certain facilities, easements, and rights-of-way to the Kennewick Irrigation District, and for other purposes.

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. 6652—A bill to direct the Secretary of the Interior to convey certain facilities, easements, and rights-of-way to the Kennewick Irrigation District, and for other purposes*

H.R. 6652 would direct the Bureau of Reclamation (BOR) to convey certain federal land and facilities to the Kennewick Irrigation District (district) in the state of Washington. Using information from BOR, CBO estimates that implementing H.R. 6652 would cost less than \$100,000 over the 2019–2028 period for staff to carry out the title transfer including coordinating surveys and National Environmental Policy Act reviews. Any spending would be subject to the availability of appropriated funds.

Under current law, the district pays the federal government about \$70,000 annually for outstanding capital obligations it owes for the costs of constructing the project. Under the bill, the district would discontinue those payments and instead would pay the federal government an amount equal to the net present value of its outstanding obligation in 2020. Those payments are recorded in the federal budget as offsetting receipts, or reductions in direct spending. Because enacting the bill would affect direct spending pay-as-you-go procedures apply; however, CBO estimates that the net effect on direct spending would not be significant. Enacting H.R. 6652 would not affect revenues.

CBO estimates that enacting H.R. 6652 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6652 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 direct the Secretary of the Interior to convey certain facilities, easements, and rights-of-way to the Kennewick Irrigation District.

#### 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.

