

105TH CONGRESS
1ST SESSION

S. 725

To direct the Secretary of the Interior to convey the Collbran Reclamation Project to the Ute Water Conservancy District and the Collbran Conservancy District.

IN THE SENATE OF THE UNITED STATES

MAY 8, 1997

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To direct the Secretary of the Interior to convey the Collbran Reclamation Project to the Ute Water Conservancy District and the Collbran Conservancy District.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Collbran Project Unit
5 Conveyance Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) DISTRICT.—The term “District” means the
9 Ute Water Conservancy District and the Collbran

1 Conservancy District (including their successors and
 2 assigns), which are political subdivisions of the State
 3 of Colorado.

4 (2) FEDERAL RECLAMATION LAWS.—The term
 5 “Federal reclamation laws” means the Act of June
 6 17, 1902, and Acts amendatory thereof or supple-
 7 mentary thereto (32 Stat. 388, chapter 1093; 43
 8 U.S.C. 371 et seq.) (including regulations adopted
 9 under those Acts).

10 (3) PROJECT.—The term “project” means the
 11 Collbran Reclamation project, as constructed and
 12 operated under the Act of July 3, 1952 (66 Stat.
 13 325, chapter 565), including all property, equip-
 14 ment, and assets of or relating to the project that
 15 are owned by the United States, including—

16 (A) Vega Dam and Reservoir (but not in-
 17 cluding the Vega Recreation Facilities);

18 (B) Leon-Park dams and feeder canal;

19 (C) Southside Canal;

20 (D) East Fork diversion dam and feeder
 21 canal;

22 (E) Bonham-Cottonwood pipeline;

23 (F) Snowcat shed and diesel storage;

24 (G) Upper Molina penstock and power
 25 plant;

1 (H) Lower Molina penstock and power
2 plant;

3 (I) the diversion structure in the tailrace of
4 the Lower Molina power plant;

5 (J) all substations and switchyards;

6 (K) a nonexclusive easement for the use of
7 existing easements or rights-of-way owned by
8 the United States on or across non-Federal
9 land that are necessary for access to project fa-
10 cilities;

11 (L) title to land reasonably necessary for
12 all project facilities (except land described in
13 subparagraph (K) or paragraph (1) or (2) of
14 section 3(a));

15 (M) all permits and contract rights held by
16 the Bureau of Reclamation, including contract
17 or other rights relating to the operation, use,
18 maintenance, repair, or replacement of the
19 water storage reservoirs located on the Grand
20 Mesa that are operated as part of the project;

21 (N) all equipment, parts inventories, and
22 tools;

23 (O) all additions, replacements, better-
24 ments, and appurtenances to any of the land,

1 interests in land, or facilities described in sub-
2 paragraphs (A) through (N); and

3 (P) a copy of all data, plans, designs, re-
4 ports, records, or other materials, whether in
5 writing or in any form of electronic storage, re-
6 lating specifically to the project.

7 (4) VEGA RECREATION FACILITIES.—The term
8 “Vega Recreation Facilities” includes—

9 (A) buildings, campgrounds, picnic areas,
10 parking lots, fences, boat docks and ramps,
11 electrical lines, water and sewer systems, trash
12 and toilet facilities, roads and trails, and other
13 structures and equipment used for State park
14 purposes (such as recreation, maintenance, and
15 daily and overnight visitor use), at and near
16 Vega Reservoir;

17 (B) lands above the high water level of
18 Vega Reservoir within the area previously de-
19 fined by the Secretary as the “Reservoir Area
20 Boundary” that have not historically been uti-
21 lized for Collbran project water storage and de-
22 livery facilities, together with an easement for
23 public access for recreational purposes to Vega
24 Reservoir and the water surface of Vega Res-
25 ervoir and for construction, operation, mainte-

1 nance, and replacement of facilities for rec-
2 reational purposes below the high water line;
3 and

4 (C) improvements constructed or added
5 under the agreements referred to in section
6 3(f).

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

9 **SEC. 3. CONVEYANCE.**

10 (a) IN GENERAL.—

11 (1) CONVEYANCE TO DISTRICTS.—

12 (A) IN GENERAL.—On or before the date
13 that is 1 year after the date of enactment of
14 this Act, the Secretary shall convey to the Dis-
15 tricts all right, title, and interest of the United
16 States in and to the project by quitclaim deed
17 and bill of sale, without warranties, subject only
18 to the requirements of this Act.

19 (B) ACTION PENDING CONVEYANCE.—
20 Until the conveyance under subparagraph (A)
21 occurs, the Director of the Bureau of Reclama-
22 tion shall continue to exercise the responsibility
23 to provide for the operation, maintenance, re-
24 pair, and replacement of project facilities and
25 the storage reservoirs on the Grand Mesa to the

1 extent that the responsibility is the responsibil-
2 ity of the Bureau of Reclamation and has not
3 been delegated to the Districts before the date
4 of enactment of this Act or is delegated or
5 transferred to the Districts by agreement after
6 that date, so that at the time of the conveyance
7 the facilities are in the same condition as, or
8 better condition than, the condition of the facili-
9 ties on the date of enactment of this Act.

10 (2) EASEMENTS ON NATIONAL FOREST SYSTEM

11 LANDS.—

12 (A) IN GENERAL.—On or before the date
13 that is 1 year after the date of enactment of
14 this Act, the Secretary of Agriculture shall
15 grant, subject only to the requirements of this
16 section—

17 (i) a nonexclusive easement on and
18 across National Forest System land to the
19 Districts for ingress and egress on access
20 routes in existence on the date of enact-
21 ment of this Act to each component of the
22 project and storage reservoir on the Grand
23 Mesa in existence on the date of enactment
24 of this Act that is operated as part of the
25 project;

(ii) a nonexclusive easement on National Forest System land for the operation, use, maintenance, repair, and replacement (but not enlargement) of the storage reservoirs on the Grand Mesa in existence on the date of enactment of this Act to the owners and operators of the reservoirs that are operated as a part of the project; and

(iii) a nonexclusive easement to the Districts for the operation, use, maintenance, repair, and replacement (but not enlargement) of the components of project facilities that are located on National Forest System land, subject to the requirement that the Districts shall provide reasonable notice to and the opportunity for consultation with the designated representative of the Secretary of Agriculture for nonroutine, nonemergency activities that occur on the easements.

(B) EXERCISE OF EASEMENT.—The easement under subparagraph (A)(ii) may be exercised if the land use authorizations for the storage reservoirs described in subparagraph (A)(ii)

are restricted, terminated, relinquished, or abandoned, and the easement shall not be subject to conditions or requirements that interfere with or limit the use of the reservoirs for water supply or power purposes.

(3) EASEMENTS TO DISTRICTS FOR SOUTHSIDE CANAL.—On or before the date that is 1 year after the date of enactment of this Act, the Secretary shall grant to the Districts, subject only to the requirements of this section—

(A) a nonexclusive easement on and across land administered by agencies within the Department of the Interior for ingress and egress on access routes to and along the Southside Canal in existence on the date of enactment of this Act; and

(B) a nonexclusive easement for the operation, use, maintenance, repair, and replacement of the Southside Canal, subject to the requirement that the Districts shall provide reasonable notice to and the opportunity for consultation with the designated representative of the Secretary for nonroutine, nonemergency activities that occur on the easements.

(b) RESERVATION.—

1 (1) IN GENERAL.—The conveyance of ease-
2 ments under subsection (a) shall reserve to the Unit-
3 ed States all minerals (including hydrocarbons) and
4 a perpetual right of public access over, across,
5 under, and to the portions of the project that on the
6 date of enactment of this Act were open to public
7 use for fishing, boating, hunting, and other outdoor
8 recreation purposes and other public uses such as
9 grazing, mineral development, and logging.

10 (2) RECREATIONAL ACTIVITIES.—The United
11 States may allow for continued public use and enjoy-
12 ment of such portions of the project for recreational
13 activities and other public uses as are conducted as
14 of the date of enactment of this Act.

15 (c) CONVEYANCE TO STATE OF COLORADO.—All
16 right, title, and interest in the Vega Recreation Facilities
17 shall remain in the United States until the terms of the
18 agreements referred to in subsection (f) have been fulfilled
19 by the United States, at which time all right, title, and
20 interest in the Vega Recreation Facilities shall be con-
21 veyed by the Secretary to the State of Colorado, Division
22 of Parks and Outdoor Recreation.

23 (d) PAYMENT.—

24 (1) IN GENERAL.—At the time of the convey-
25 ance under subsection (a)(1), the Districts shall pay

1 to the United States \$12,900,000 (\$12,300,000 of
2 which represents the net present value of the out-
3 standing repayment obligations for the project), of
4 which—

5 (A) \$12,300,000 shall be deposited in the
6 general fund of the Treasury of the United
7 States; and

8 (B) \$600,000 shall be deposited in a spe-
9 cial account in the Treasury of the United
10 States and shall be available to the United
11 States Fish and Wildlife Service, Region 6,
12 without further Act of appropriation, for use in
13 funding Colorado operations and capital ex-
14 penditures associated with the Grand Valley
15 Water Management Project for the purpose of
16 recovering endangered fish in the Upper Colo-
17 rado River Basin, as identified in the Recovery
18 Implementation Program for Endangered Fish
19 Species in the Upper Colorado River Basin, or
20 such other component of the Recovery Imple-
21 mentation Program within Colorado as may be
22 selected with the concurrence of the Governor
23 of the State of Colorado.

24 (2) SOURCE OF FUNDS.—Funds for the pay-
25 ment to the extent of the amount specified in para-

graph (1) shall not be derived from the issuance or sale, prior to the conveyance, of State or local bonds the interest on which is exempt from taxation under section 103 of the Internal Revenue Code of 1986.

(e) OPERATION OF PROJECT.—

(1) IN GENERAL.—

(A) DECLARATION.—The project was authorized and constructed under the Act of July 3, 1952 (66 Stat. 325, chapter 565) for the purpose of placing water to beneficial use for authorized purposes within the State of Colorado.

(B) OPERATION.—The project shall be operated and used by the Districts for a period of 40 years after the date of enactment of this Act for the purpose for which the project was authorized.

(C) CHANGES IN OPERATION.—The Districts shall attempt, to the extent practicable, taking into consideration historic project operations, to notify the State of Colorado of changes in historic project operations which may adversely affect State park operations.

(2) REQUIREMENTS.—During the 40-year period described in paragraph (1)(B)—

(A) the Districts shall annually submit to the Secretary of Agriculture and the Colorado Department of Natural Resources a plan for operation of the project, which plan shall—

(i) report on project operations for the previous year;

(ii) provide a description of the manner of project operations anticipated for the forthcoming year, which shall be prepared after consultation with the designated representatives of the Secretary of Agriculture, the Board of County Commissioners of Mesa County, Colorado, and the Colorado Department of Natural Resources; and

(iii) certify that the Districts have operated and will operate and maintain the project facilities in accordance with sound engineering practices; and

(B) subject to section 4, all electric power generated by operation of the project shall be made available to and be marketed by the Western Area Power Administration.

(f) AGREEMENTS.—Conveyance of the project shall be subject to the agreements between the United States

1 and the State of Colorado dated August 22, 1994, and
 2 September 23, 1994, relating to the construction and op-
 3 eration of recreational facilities at Vega Reservoir, which
 4 agreements shall continue to be performed by the parties
 5 to the agreements according to the terms of the agree-
 6 ments.

7 **SEC. 4. OPERATION OF THE POWER COMPONENT.**

8 (a) CONFORMITY TO HISTORIC OPERATIONS.—The
 9 power component and facilities of the project shall be oper-
 10 ated in substantial conformity with the historic operations
 11 of the power component and facilities (including recent op-
 12 erations in a peaking mode).

13 (b) POWER MARKETING.—

14 (1) EXISTING MARKETING ARRANGEMENT.—

15 The post-1989 marketing criteria, which provide for
 16 the marketing of power generated by the power com-
 17 ponent of the project as part of the output of the
 18 Salt Lake City area integrated projects, shall no
 19 longer be binding on the project upon conveyance of
 20 the project under section 3(a).

21 (2) AFTER TERMINATION OF EXISTING MAR-
 22 KETING ARRANGEMENT.—

23 (A) IN GENERAL.—

24 (i) FIRST OFFER.—After the convey-
 25 ance under section 3(a), the Districts shall

1 offer all power produced by the power com-
2 ponent of the project to the Western Area
3 Power Administration or its successors or
4 assigns (referred to in this paragraph as
5 “Western”), which, in consultation with its
6 affected preference customers, shall have
7 the first right to purchase such power at
8 the rates established under subparagraph
9 (B).

10 (ii) SECOND OFFER.—If Western de-
11 clines to purchase the power after con-
12 sultation with its affected preference cus-
13 tomers, the power shall be offered at the
14 same rates first to Western’s preference
15 customers located in the Salt Lake City
16 area integrated projects marketing area
17 (referred to in this paragraph as the
18 “SLCAIP preference customers”).

19 (iii) OTHER OFFERS.—After offers
20 have been made under clauses (i) and (ii),
21 power may be sold to any other party, but
22 no such sale may occur at a rate less than
23 a rate established under subparagraph (B)
24 unless the power is offered at the lesser

1 rate first to Western and second to the
2 SLCAIP preference customers.

3 (B) RATE.—The rate for power initially of-
4 fered to Western and the SLCAIP preference
5 customers under this paragraph shall not ex-
6 ceed that required to produce revenues suffi-
7 cient to provide for—

8 (i) annual debt service or recoupment
9 of the cost of capital for the amount speci-
10 fied in section 3(d)(1)(A) less the sum of
11 \$310,000 (which is the net present value
12 of the outstanding repayment obligation of
13 the Collbran Conservancy District); and

14 (ii) the cost of operation, mainte-
15 nance, and replacement of the power com-
16 ponent of the project.

17 (C) DETERMINATION OF COSTS AND
18 RATE.—Costs and a rate under subparagraph
19 (B) shall be determined in a manner that is
20 consistent with the principles followed, as of the
21 date of enactment of this Act, by the Secretary
22 and by Western in its annual power and repay-
23 ment study.

1 **SEC. 5. LICENSE.**

2 (a) IN GENERAL.—Before conveyance of the project
3 to the Districts, the Federal Energy Regulatory Commis-
4 sion shall issue to the Districts a license or licenses as
5 appropriate under part I of the Federal Power Act (16
6 U.S.C. 791 et seq.) authorizing for a term of 40 years
7 the continued operation and maintenance of the power
8 component of the project.

9 (b) TERMS OF LICENSE.—

10 (1) IN GENERAL.—The license under subsection

11 (a)—

12 (A) shall be for the purpose of operating,
13 using, maintaining, repairing, and replacing the
14 power component of the project as authorized
15 by the Act of July 3, 1952 (66 Stat. 325, chap-
16 ter 565);

17 (B) shall be subject to the condition that
18 the power component of the project continue to
19 be operated and maintained in accordance with
20 the authorized purposes of the project; and

21 (C) shall be subject to part I of the Fed-
22 eral Power Act (16 U.S.C. 791 et seq.) except
23 as stated in paragraph (2).

24 (2) LAWS NOT APPLICABLE.—

25 (A) FEDERAL POWER ACT.—

1 (i) IN GENERAL.—The license under
2 subsection (a) shall not be subject to the
3 following provisions of the Federal Power
4 Act: the 4 provisos of section 4(e) (16
5 U.S.C. 797(e)); section 6 (16 U.S.C. 799)
6 to the extent that the section requires ac-
7 ceptance by a licensee of terms and condi-
8 tions of the Act that this subsection
9 waives; subsection (e) (insofar as the sub-
10 section concerns annual charges for the
11 use and occupancy of Federal lands and
12 facilities), (f), or (j) of section 10 (16
13 U.S.C. 803); section 18 (16 U.S.C. 811);
14 section 19 (16 U.S.C. 812); section 20 (16
15 U.S.C. 813); or section 22 (16 U.S.C.
16 815).

17 (ii) NOT A GOVERNMENT DAM.—Not-
18 withstanding that any dam under the li-
19 cense under subsection (a) may have been
20 constructed by the United States for Gov-
21 ernment purposes, the dam shall not be
22 considered to be a Government dam, as
23 that term is defined in section 3 of the
24 Federal Power Act (16 U.S.C. 796).

1 (iii) STANDARD FORM LICENSE CON-
 2 DITIONS.—The license under subsection
 3 (a) shall not be subject to the standard
 4 “L-Form” license conditions published at
 5 54 FPC 1792–1928 (1975).

6 (B) OTHER LAWS.—The license under sub-
 7 section (a) shall not be subject to—

8 (i) the Federal Land Policy and Man-
 9 agement Act of 1976 (43 U.S.C. 1701 et
 10 seq.);

11 (ii) section 2402 of the Energy Policy
 12 Act of 1992 (16 U.S.C. 797c);

13 (iii) the National Environmental Pol-
 14 icy Act of 1969 (42 U.S.C. 4321 et seq.);

15 (iv) the Endangered Species Act of
 16 1973 (16 U.S.C. 1531 et seq.);

17 (v) the Wild and Scenic Rivers Act
 18 (16 U.S.C. 1271 et seq.);

19 (vi) the Federal Water Pollution Con-
 20 trol Act (commonly known as the “Clean
 21 Water Act”) (33 U.S.C. 1251 et seq.);

22 (vii) the National Historic Preserva-
 23 tion Act (16 U.S.C. 470 et seq.);

24 (viii) the Coastal Zone Management
 25 Act of 1972 (16 U.S.C. 1451 et seq.);

- 1 (ix) the Fish and Wildlife Coordina-
2 tion Act (16 U.S.C. 661 et seq.); or
3 (x) any other Act otherwise applicable
4 to the licensing of the project.

5 (3) LAWS ENACTED AFTER ISSUANCE OF LI-
6 CENSE.—The operation of the project shall be sub-
7 ject to all applicable State and Federal laws enacted
8 after the date of issuance of the license under sub-
9 section (a).

10 (c) LICENSING STANDARDS.—The license under sub-
11 section (a) is deemed to meet all licensing standards of
12 the Federal Power Act (16 U.S.C. 791 et seq.).

13 (d) POWER SITE RESERVATION.—Any power site res-
14 ervation established under section 24 of the Federal Power
15 Act (16 U.S.C. 818) or any other law that exists on any
16 land, whether federally or privately owned, that is included
17 within the boundaries of the project shall be vacated by
18 operation of law on issuance of the license for the project.

19 (e) EXPIRATION OF LICENSE.—All requirements of
20 part I of the Federal Power Act (16 U.S.C. 791 et seq.)
21 and of any other Act applicable to the licensing of a hydro-
22 electric project shall apply to the project on expiration of
23 the license issued under this section.

1 **SEC. 6. INAPPLICABILITY OF PRIOR AGREEMENTS AND OF**
2 **FEDERAL RECLAMATION LAWS.**

3 On conveyance of the project to the Districts—

4 (1) the repayment contract dated May 27,
5 1957, as amended April 12, 1962, between the
6 Collbran Conservancy District and the United
7 States, and the contract for use of project facilities
8 for diversion of water dated January 11, 1962, as
9 amended November 10, 1977, between the Ute
10 Water Conservancy District and the United States,
11 shall be terminated and of no further force or effect;
12 and

13 (2) the project shall no longer be subject to or
14 governed by the Federal reclamation laws.

15 **SEC. 7. LIABILITY OF THE DISTRICTS.**

16 The Districts shall be liable, to the extent allowed
17 under State law, for all acts or omissions relating to the
18 operation and use of the project by the Districts that occur
19 subsequent to the conveyance under section 3(a), including
20 damage to any Federal land or facility that results from
21 the failure of a project facility.

22 **SEC. 8. EFFECT ON STATE LAW.**

23 Nothing in this Act impairs the effectiveness of any
24 State or local law (including a regulation) relating to land
25 use.

1 **SEC. 9. TREATMENT OF SALES FOR PURPOSES OF CERTAIN**
2 **LAWS.**

3 The sales of assets under this subchapter shall not
4 be considered to be a disposal of Federal surplus property
5 under—

6 (1) section 203 of the Federal Property and
7 Administrative Services Act of 1949 (40 U.S.C.
8 484); or

9 (2) section 13 of the Surplus Property Act of
10 1944 (50 U.S.C. App. 1622).

○