

Calendar No. 724

108TH CONGRESS
2D SESSION**S. 1876****[Report No. 108–365]**

To authorize the Secretary of the Interior to convey certain lands and facilities
of the Provo River Project.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2003

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

SEPTEMBER 28, 2004

Reported by Mr. DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To authorize the Secretary of the Interior to convey certain
lands and facilities of the Provo River Project.

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 “Provo River Project
5 Transfer Act”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **SECRETARY.**—The term “Secretary” means
4 the Secretary of the Interior.

5 (2) **RECLAMATION.**—The term “Reclamation”
6 means the Bureau of Reclamation.

7 (3) **ASSOCIATION.**—The term “Association”
8 means the Provo River Water Users Association, a
9 nonprofit corporation organized and existing under
10 the laws of the State of Utah.

11 (4) **DISTRICT.**—The term “District” means the
12 Metropolitan Water District of Salt Lake & Sandy,
13 a political subdivision of the State of Utah.

14 (5) **PROVO RESERVOIR CANAL.**—The term
15 “Provo Reservoir Canal” means the canal, and asso-
16 ciated lands, rights-of-way, and facilities acquired,
17 constructed, or improved by the United States as
18 part of the Provo River Project, Deer Creek Divi-
19 sion, extending from, and including, the Murdock
20 Diversion Dam at the mouth of Provo Canyon,
21 Utah, to and including the Provo Reservoir Canal
22 Siphon and Penstock.

23 (6) **PLEASANT GROVE PROPERTY.**—The term
24 “Pleasant Grove Property” means a 3.79-acre parcel
25 of land acquired by the United States for the Provo
26 River Project, Deer Creek Division, located at ap-

proximately 285 West 1100 North, Pleasant Grove,
Utah, including the office building and shop complex
constructed by the Association.

(7) SALT LAKE AQUEDUCT.—The term “Salt
Lake Aqueduct” means the aqueduct and associated
lands, rights-of-way, and facilities acquired, con-
structed or improved by the United States as part
of the Provo River Project, Aqueduct Division, ex-
tending from, and including, the Salt Lake Aqueduct
Intake at the base of Deer Creek Dam to and in-
cluding the Terminal Reservoir located at 3300
South and I-215 in Salt Lake City, Utah.

(8) AGREEMENT.—The term “Agreement”
means Contract No. _____, dated
_____, and entitled “Agreement
Among the United States, the Provo River Water
Users Association and the Metropolitan Water Dis-
trict of Salt Lake & Sandy to Transfer Title to Cer-
tain Lands and Facilities of the Provo River
Project”.

SEC. 3. TRANSFER.

(a) PROVO RESERVOIR CANAL.—The Secretary shall
convey to the Association, pursuant to the terms and con-
ditions of the Agreement, all right, title, and interest of
the United States in and to the Provo Reservoir Canal,

1 as it exists on the date of enactment of this Act and as
2 generally depicted on the Map marked Exhibit A attached
3 to the Agreement, when the Association has certified to
4 the Secretary that agreements have been entered into sat-
5 isfactory to the Association, the District, Central Utah
6 Water Conservancy District, Jordan Valley Water Conser-
7 vancy District providing for operation of the Provo Res-
8 ervoir Canal after title transfer, and future ownership, fi-
9 nancing, and improvement of the Provo Reservoir Canal.

10 (b) PLEASANT GROVE PROPERTY.—The Secretary
11 shall convey to the Association, pursuant to the terms and
12 conditions of the Agreement, all right, title, and interest
13 of the United States in and to the Pleasant Grove Prop-
14 erty, as it exists on the date of enactment of this Act and
15 as generally depicted on the Map marked Exhibit B at-
16 tached to the Agreement.

17 (c) SALT LAKE AQUEDUCT.—The Secretary shall
18 convey to the District, pursuant to the terms and condi-
19 tions of the Agreement, all right, title, and interest of the
20 United States in and to Salt Lake Aqueduct, as it exists
21 on the date of enactment of this Act and as generally de-
22 picted on the Map marked Exhibit C attached to the
23 Agreement.

1 **SEC. 4. EXISTING CONTRACTS CONFIRMED.**

2 Notwithstanding any transfer provided for in this
3 Act, those portions of the Deer Creek Division, Provo
4 River Project, Utah, that are not transferred shall con-
5 tinue to be operated and maintained by the Association,
6 pursuant to the Contract Between the United States and
7 Provo River Water Users Association Providing for the
8 Construction of the Deer Creek Division of the Provo
9 River Project, Utah, Contract No. Hr-874, dated June 27,
10 1936, including any amendments or supplements thereto
11 or extensions thereof. This Act shall not be construed to
12 impair any existing contracts, including subscription con-
13 tracts, that allow for or create a right to convey water
14 through the Provo Reservoir Canal.

15 **SEC. 5. REPORT.**

16 If conveyance of any of the lands and facilities re-
17 quired by this Act and described in the Agreement is not
18 completed within 18 months following the date of enact-
19 ment of this Act, the Secretary shall submit a report to
20 the Congress that describes the status of the conveyance,
21 any obstacles to completion of the conveyance, and an an-
22 ticipated date for completion of the conveyance.

23 **SEC. 6. COSTS.**

24 (a) IN GENERAL.—The Secretary shall require, as a
25 condition of the conveyance under section 3, that the Asso-
26 ciation and the District pay or contribute to administra-

1 tive costs, real estate transfer costs, and the costs associ-
 2 ated with compliance with the National Environmental
 3 Policy Act of 1969, the Endangered Species Act of 1973,
 4 the National Historic Preservation Act, and other Federal
 5 cultural resource laws, all as described in the Agreement.

6 (b) VALUE OF FACILITIES TO BE TRANSFERRED.—

7 (1) PAYMENT BY ASSOCIATION.—In addition to
 8 subsection (a), the Secretary shall also require, as a
 9 condition of the conveyance under section 3(a), that
 10 the Association pay to the United States the net
 11 present value of the Provo Reservoir Canal and the
 12 Pleasant Grove Property, as described in the Agree-
 13 ment: *Provided, however,* That the Association may
 14 deduct from the net present value such sums as are
 15 required to accomplish the reimbursement described
 16 in the Contributed Funds Act Agreement.

17 (2) PAYMENT BY DISTRICT.—In addition to
 18 subsection (a) the Secretary shall also require, as a
 19 condition of the conveyance under section 3(b), that
 20 the District pay the United States the net present
 21 value of the Salt Lake Aqueduct, as described in the
 22 Agreement: *Provided, however,* That the District
 23 may deduct from the net present value such sums as
 24 are required to accomplish the reimbursement de-
 25 scribed in the Contributed Funds Act Agreement.

1 **SEC. 7. NATIONAL ENVIRONMENTAL POLICY ACT.**

2 Prior to any conveyance under this Act, the Secretary
3 shall complete all actions required under the National En-
4 vironmental Policy Act of 1969 (72 U.S.C. 4321 et seq.),
5 the Endangered Species Act of 1973 (16 U.S.C. 1531 et
6 seq.); and all other applicable laws.

7 **SEC. 8. LIABILITY.**

8 Effective on the date of the conveyance required by
9 this Act, the United States shall not be held liable by any
10 court for damages of any kind arising out of any act, omis-
11 sion, or occurrence relating to the transferred lands and
12 facilities, except for damages caused by acts of negligence
13 committed by the United States or by its employees or
14 agents prior to the date of conveyance. Nothing in this
15 section shall be considered to increase the liability of the
16 United States beyond that currently provided in chapter
17 171 of title 28, United States Code, popularly known as
18 the “Federal Tort Claims Act”.

19 **SEC. 9. FUTURE BENEFITS.**

20 Upon conveyance of the lands and facilities by the
21 Secretary under this Act, the transferred facilities and
22 lands shall no longer be part of a Federal reclamation
23 project and the Association and the District shall not be
24 entitled to receive any future reclamation benefits with re-
25 spect to the transferred facilities and lands, except those

1 benefits that would be available to other nonreclamation
2 facilities.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Provo River Project*
5 *Transfer Act”.*

6 **SEC. 2. DEFINITIONS.**

7 *In this Act:*

8 (1) *AGREEMENT.*—*The term “Agreement” means*
9 *the contract numbered 04–WC-40-8950 and entitled*
10 *“Agreement Among the United States, the Provo*
11 *River Water Users Association, and the Metropolitan*
12 *Water District of Salt Lake & Sandy to Transfer*
13 *Title to Certain Lands and Facilities of the Provo*
14 *River Project”.*

15 (2) *ASSOCIATION.*—*The term “Association”*
16 *means the Provo River Water Users Association, a*
17 *nonprofit corporation organized under the laws of the*
18 *State.*

19 (3) *DISTRICT.*—*The term “District” means the*
20 *Metropolitan Water District of Salt Lake & Sandy,*
21 *a political subdivision of the State.*

22 (4) *PLEASANT GROVE PROPERTY.*—

23 (A) *IN GENERAL.*—*The term “Pleasant*
24 *Grove Property” means the 3.79-acre parcel of*
25 *land acquired by the United States for the Provo*

1 *River Project, Deer Creek Division, located at*
 2 *approximately 285 West 1100 North, Pleasant*
 3 *Grove, Utah, as in existence on the date of enact-*
 4 *ment of this Act.*

5 (B) *INCLUSIONS.—The term “Pleasant*
 6 *Grove Property” includes the office building and*
 7 *shop complex constructed by the Association on*
 8 *the parcel of land described in subparagraph*
 9 *(A).*

10 (5) *PROVO RESERVOIR CANAL.—The term “Provo*
 11 *Reservoir Canal” means the canal, and any associ-*
 12 *ated land, rights-of-way, and facilities acquired, con-*
 13 *structed, or improved by the United States as part of*
 14 *the Provo River Project, Deer Creek Division, extend-*
 15 *ing from, and including, the Murdock Diversion Dam*
 16 *at the mouth of Provo Canyon, Utah, to and includ-*
 17 *ing the Provo Reservoir Canal Siphon and Penstock,*
 18 *as in existence on the date of enactment of this Act.*

19 (6) *SALT LAKE AQUEDUCT.—The term “Salt*
 20 *Lake Aqueduct” means the aqueduct and associated*
 21 *land, rights-of-way, and facilities acquired, con-*
 22 *structed, or improved by the United States as part of*
 23 *the Provo River Project, Aqueduct Division, extending*
 24 *from, and including, the Salt Lake Aqueduct Intake*
 25 *at the base of Deer Creek Dam to and including the*

1 *Terminal Reservoirs located at 3300 South St. and*
 2 *Interstate Route 215 in Salt Lake City, Utah, as in*
 3 *existence on the date of enactment of this Act.*

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

6 (8) *STATE.*—*The term “State” means the State*
 7 *of Utah.*

8 **SEC. 3. CONVEYANCE OF LAND AND FACILITIES.**

9 (a) *CONVEYANCES TO ASSOCIATION.*—

10 (1) *PROVO RESERVOIR CANAL.*—

11 (A) *IN GENERAL.*—*In accordance with the*
 12 *terms and conditions of the Agreement and sub-*
 13 *ject to subparagraph (B), the Secretary shall*
 14 *convey to the Association, all right, title, and in-*
 15 *terest of the United States in and to the Provo*
 16 *Reservoir Canal.*

17 (B) *CONDITION.*—*The conveyance under*
 18 *subparagraph (A) shall not be completed until*
 19 *the Secretary accepts future arrangements en-*
 20 *tered into by the Association, the District, the*
 21 *Central Utah Water Conservancy District, and*
 22 *the Jordan Valley Water Conservancy District*
 23 *providing for the operation, ownership, financ-*
 24 *ing, and improvement of the Provo Reservoir*
 25 *Canal.*

1 (2) *PLEASANT GROVE PROPERTY.*—*In accordance*
 2 *with the terms and conditions of the Agreement, the*
 3 *Secretary shall convey to the Association, all right,*
 4 *title, and interest of the United States in and to the*
 5 *Pleasant Grove Property.*

6 (b) *CONVEYANCE TO DISTRICT.*—

7 (1) *IN GENERAL.*—*In accordance with the terms*
 8 *and conditions of the Agreement, the Secretary shall*
 9 *convey to the District, all right, title, and interest of*
 10 *the United States in and to the Salt Lake Aqueduct.*

11 (2) *EASEMENTS.*—

12 (A) *IN GENERAL.*—*As part of the convey-*
 13 *ance under paragraph (1), the Secretary shall*
 14 *grant to the District permanent easements to—*

15 (i) *the National Forest System land on*
 16 *which the Salt Lake Aqueduct is located;*
 17 *and*

18 (ii) *land of the Aqueduct Division of*
 19 *the Provo River Project that intersects the*
 20 *parcel of non-Federal land authorized to be*
 21 *conveyed to the United States under section*
 22 *104(a) of Public Law 107–329 (116 Stat.*
 23 *2816).*

24 (B) *PURPOSE.*—*The easements conveyed*
 25 *under subparagraph (A) shall be for the use, op-*

1 *eration, maintenance, repair, improvement, or*
2 *replacement of the Salt Lake Aqueduct by the*
3 *District.*

4 (C) *LIMITATION.*—*The United States shall*
5 *not carry out any activity on the land subject to*
6 *the easements conveyed under subparagraph (A)*
7 *that would materially interfere with the use, op-*
8 *eration, maintenance, repair, improvement, or*
9 *replacement of the Salt Lake Aqueduct by the*
10 *District.*

11 (D) *BOUNDARIES.*—*The boundaries of the*
12 *easements conveyed under subparagraph (A)*
13 *shall be determined by the Secretary, in con-*
14 *sultation with the District.*

15 (E) *REVOCATION OF WITHDRAWALS.*—*On*
16 *conveyance of the easement to the land described*
17 *in subparagraph (A)(i), the Secretary, subject to*
18 *the easement and any terms and conditions of*
19 *the Agreement, shall revoke any public land or-*
20 *ders withdrawing National Forest System land*
21 *for the Aqueduct Division of the Provo River*
22 *Project.*

23 (F) *TRANSFER OF ADMINISTRATIVE JURIS-*
24 *DICTION.*—

1 (i) *IN GENERAL.*—On conveyance of
 2 the easement to the land described in sub-
 3 paragraph (A)(ii), the Secretary, subject to
 4 the easement, shall transfer to the Secretary
 5 of Agriculture administrative jurisdiction
 6 over the land.

7 (ii) *ADMINISTRATIVE SITE.*—The land
 8 transferred under clause (i) shall be admin-
 9 istered by the Secretary of Agriculture as an
 10 administrative site.

11 (G) *ADMINISTRATION.*—The easements con-
 12 veyed under subparagraph (A) shall be adminis-
 13 tered by the Secretary of Agriculture in accord-
 14 ance with section 501(b)(3) of the Federal Land
 15 Policy and Management Act of 1976 (43 U.S.C.
 16 1761(b)(3)).

17 (c) *CONSIDERATION.*—

18 (1) *ASSOCIATION.*—

19 (A) *IN GENERAL.*—In exchange for the con-
 20 veyance under subsection (a)(1), the Association
 21 shall pay the Secretary an amount that is equal
 22 to the sum of—

23 (i) the net present value of any re-
 24 maining debt obligation of the United

1 *States with respect to the Provo Reservoir*
 2 *Canal; and*

3 (ii) *the net present value of any reve-*
 4 *nues from the Provo Reservoir Canal that,*
 5 *based on past history—*

6 (I) *would be available to the*
 7 *United States but for the conveyance of*
 8 *the Provo Reservoir Canal under sub-*
 9 *section (a)(1); and*

10 (II) *would be deposited in the rec-*
 11 *lamation fund established under the*
 12 *first section of the Act of June 17, 1902*
 13 *(43 U.S.C. 391), and credited under*
 14 *the terms of Reclamation Manual/Di-*
 15 *rectives and Standards PEC 03–01.*

16 (B) *DEDUCTION.—In determining the net*
 17 *present values under clauses (i) and (ii) of sub-*
 18 *paragraph (A), the Association may deduct from*
 19 *the net present value such sums as are required*
 20 *for the reimbursement described in the Agree-*
 21 *ment.*

22 (2) *DISTRICT.—*

23 (A) *IN GENERAL.—In exchange for the con-*
 24 *veyance under subsection (b)(1), the District*

1 *shall pay the Secretary an amount that is equal*
 2 *to the sum of—*

3 *(i) the net present value of any re-*
 4 *maining debt obligation of the United*
 5 *States with respect to the Salt Lake Aque-*
 6 *duct; and*

7 *(ii) the net present value of any reve-*
 8 *nues from the Salt Lake Aqueduct that,*
 9 *based on past history—*

10 *(I) would have been available to*
 11 *the United States but for the convey-*
 12 *ance of the Salt Lake Aqueduct under*
 13 *subsection (b)(1); and*

14 *(II) would be deposited in the rec-*
 15 *lamation fund established under the*
 16 *first section of the Act of June 17, 1902*
 17 *(43 U.S.C. 391), and credited under*
 18 *the terms of Reclamation Manual/Di-*
 19 *rectives and Standards PEC 03–01.*

20 *(B) DEDUCTION.—In determining the net*
 21 *present values under clauses (i) and (ii) of sub-*
 22 *paragraph (A), the District may deduct from the*
 23 *net present value such sums as are required for*
 24 *the reimbursement described in the Agreement.*

1 (d) *PAYMENT OF COSTS.*—*In addition to amounts*
 2 *paid to the Secretary under subsection (c), the Association*
 3 *and the District shall, in accordance with the Agreement,*
 4 *pay the Secretary—*

5 (1) *any necessary and reasonable administrative*
 6 *and real estate transfer costs incurred by the Sec-*
 7 *retary in carrying out the conveyance; and*

8 (2) *½ of any necessary and reasonable costs as-*
 9 *sociated with complying with—*

10 (A) *the National Environmental Policy Act*
 11 *of 1969 (42 U.S.C. 4321 et seq.);*

12 (B) *the Endangered Species Act of 1973 (16*
 13 *U.S.C. 1531 et seq.); and*

14 (C)(i) *the National Historic Preservation*
 15 *Act (16 U.S.C. 470 et seq.); and*

16 (ii) *any other Federal cultural resource*
 17 *laws.*

18 (e) *COMPLIANCE WITH ENVIRONMENTAL LAWS.*—

19 (1) *IN GENERAL.*—*Before conveying land and fa-*
 20 *cilities under subsections (a) and (b), the Secretary*
 21 *shall comply with all applicable requirements*
 22 *under—*

23 (A) *the National Environmental Policy Act*
 24 *of 1969 (42 U.S.C. 4321 et seq.);*

1 (B) the *Endangered Species Act of 1973* (16
2 U.S.C. 1531 *et seq.*); and

3 (C) any other law applicable to the land
4 and facilities.

5 (2) *EFFECT.*—Nothing in this Act modifies or
6 alters any obligations under—

7 (A) the *National Environmental Policy Act*
8 of 1969 (42 U.S.C. 4321 *et seq.*); or

9 (B) the *Endangered Species Act of 1973* (16
10 U.S.C. 1531 *et seq.*).

11 **SEC. 4. EXISTING CONTRACTS.**

12 (a) *DEER CREEK DIVISION CONSTRUCTION CON-*
13 *TRACT.*—Notwithstanding the conveyances under sub-
14 sections (a) and (b)(1) of section 3, any portion of the *Deer*
15 *Creek Division, Provo River Project, Utah*, that is not con-
16 veyed under that section shall continue to be operated and
17 maintained by the Association, in accordance with the con-
18 tract numbered I1r-874, dated June 27, 1936, and entitled
19 the “*Contract Between the United States and Provo River*
20 *Water Users Association Providing for the Construction of*
21 *the Deer Creek Division of the Provo River Project, Utah*”.

22 (b) *PROVO RIVER PROJECT AND JORDAN AQUEDUCT*
23 *SYSTEM CONTRACTS.*—Any written contract of the United
24 States in existence on the date of enactment of this Act re-
25 lating to the operation and maintenance of any division

1 *or facility of the Provo River Project or the Jordan Aque-*
 2 *duct System is confirmed and declared to be a valid con-*
 3 *tract of the United States that is enforceable in accordance*
 4 *with the express terms of the contract.*

5 *(c) USE OF CENTRAL UTAH PROJECT WATER.—*

6 *(1) IN GENERAL.—Subject to paragraph (2), any*
 7 *entity with contractual Provo Reservoir Canal or Salt*
 8 *Lake Aqueduct capacity rights in existence on the*
 9 *date of enactment of this Act may, in addition to the*
 10 *uses described in the existing contracts, use the capac-*
 11 *ity rights, without additional charge or further ap-*
 12 *proval from the Secretary, to transport Central Utah*
 13 *Project water on behalf of the entity or others.*

14 *(2) LIMITATIONS.—An entity shall not use the*
 15 *capacity rights to transport Central Utah Project*
 16 *water under paragraph (1) unless—*

17 *(A) the use is expressly authorized by the*
 18 *entity responsible for operation and maintenance*
 19 *of the Central Utah Project water facility; and*

20 *(B) carrying Central Utah Project water*
 21 *through Provo River Project facilities would*
 22 *not—*

23 *(i) materially impair the ability of the*
 24 *Central Utah Water Conservancy District*
 25 *or the Secretary to meet existing express en-*

1 *vironmental commitments for the Bonne-*
 2 *ville Unit; or*

3 *(ii) require the release of additional*
 4 *Central Utah Project water to meet those*
 5 *environmental commitments.*

6 *(d) AUTHORIZED MODIFICATIONS.—The Agreement*
 7 *may provide for—*

8 *(1) the modification of the 1936 Repayment Con-*
 9 *tract for the Deer Creek Division of the Provo River*
 10 *Project to reflect the partial prepayment, the adjust-*
 11 *ment of the annual repayment amount, and the*
 12 *transfer of the Provo Reservoir Canal and the Pleas-*
 13 *ant Grove Property; and*

14 *(2) the modification or termination of the 1938*
 15 *Repayment Contract for the Aqueduct Division of the*
 16 *Provo River Project to reflect the complete payout and*
 17 *transfer of all facilities of the Aqueduct Division.*

18 *(e) EFFECT OF ACT.—Nothing in this Act impairs any*
 19 *contract (including subscription contracts) in effect on the*
 20 *date of enactment of this Act that allows for or creates a*
 21 *right to convey water through the Provo Reservoir Canal.*

22 **SEC. 5. EFFECT OF CONVEYANCE.**

23 *On conveyance of any land or facility under subsection*
 24 *(a) or (b)(1) of section 3—*

1 (1) *the land and facilities shall no longer be part*
 2 *of a Federal reclamation project;*

3 (2) *the Association and the District shall not be*
 4 *entitled to receive any future reclamation benefits*
 5 *with respect to the land and facilities, except for bene-*
 6 *fits that would be available to other nonreclamation*
 7 *facilities; and*

8 (3) *the United States shall not be liable for dam-*
 9 *ages arising out of any act, omission, or occurrence*
 10 *relating to the land and facilities, but shall continue*
 11 *to be liable for damages caused by acts of negligence*
 12 *committed by the United States or by any employee*
 13 *or agent of the United States before the date of con-*
 14 *veyance, consistent with chapter 171 of title 28,*
 15 *United States Code.*

16 **SEC. 6. REPORT.**

17 *If a conveyance required under subsection (a) or (b)(1)*
 18 *of section 3 is not completed by the date that is 18 months*
 19 *after the date of enactment of this Act, the Secretary shall*
 20 *submit to Congress a report that—*

21 (1) *describes the status of the conveyance;*

22 (2) *describes any obstacles to completing the con-*
 23 *veyance; and*

24 (3) *specifies an anticipated date for completion*
 25 *of the conveyance.*

Calendar No. 724

108TH CONGRESS
2D Session

S. 1876

[Report No. 108-365]

A BILL

To authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project.

SEPTEMBER 28, 2004

Reported with an amendment