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SENATE

{ REPORT
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PILOT BUTTE POWER PLANT CONVEYANCE ACT

APRIL 9, 2024.—Ordered to be printed

Mr. MANCHIN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1662]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1662) to direct the Secretary of the Interior to convey to the Midvale Irrigation District the Pilot Butte Power Plant in the State of Wyoming, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pilot Butte Power Plant Conveyance Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the agreement entered into under section 3(a).

(2) DISTRICT.—The term “District” means the Midvale Irrigation District located in Pavillion, Wyoming.

(3) POWER PLANT.—The term “Power Plant” means the Pilot Butte Power Plant and other appurtenant facilities in the State of Wyoming authorized under the Act of March 2, 1917 (39 Stat. 969, chapter 146), transferred to the jurisdiction of the Bureau of Reclamation under the Act of June 5, 1920 (41 Stat. 874, chapter 235), and incorporated into the Riverton Unit of the Pick-Sloan Missouri Basin Program under Public Law 91-409 (84 Stat. 861), including the underlying land.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

SEC. 3. AGREEMENT, CONVEYANCE, AND REPORT.

(a) AGREEMENT.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into good faith negotiations with the District to enter into an agreement to determine the legal, institutional, and financial terms for the conveyance of the Power Plant from the Secretary to the District.

(2) REQUIREMENT.—Notwithstanding section 8002(3)(B) of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (43 U.S.C. 2902(3)(B)), the Secretary shall negotiate the agreement under paragraph (1) in accordance with the criteria, terms, and conditions described in subtitle A of title VIII of that Act (43 U.S.C. 2901 et seq.).

(b) CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall offer to convey and assign to the District all right, title, and interest of the United States in and to the Power Plant—

(A) subject to valid leases, permits, rights-of-way, easements, and other existing rights; and

(B) in accordance with—

(i) the terms and conditions described in the Agreement; and

(ii) this Act.

(2) STATUS OF LAND.—Effective on the date of the conveyance of the Power Plant to the District under paragraph (1), the Power Plant shall not be considered to be a part of a Federal reclamation project.

(c) REPORT.—If the conveyance authorized under subsection (b)(1) is not completed by the date that is 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes—

(1) the status of the conveyance under that subsection;

(2) any obstacles to completing the conveyance under that subsection; and

(3) an anticipated date for the completion of the conveyance under that subsection.

SEC. 4. COMPLIANCE WITH OTHER LAWS.

Effective on the date of the conveyance of the Power Plant to the District under section 3(b)(1), the District shall comply with all applicable Federal, State, and local laws (including regulations) with respect to the operation of the Power Plant.

PURPOSE

The purpose of S. 1662 is to direct the Secretary of the Interior to convey to the Midvale Irrigation District the Pilot Butte Power Plant in the State of Wyoming.

BACKGROUND AND NEED

The Pilot Butte Power Plant located in central Wyoming was authorized in 1918 and is part of the Bureau of Reclamation’s Riverton Unit (Public Law 64–369). The Pilot Butte Power Plant is located at the drop from the Wyoming Canal to Pilot Butte Reservoir. The plant began generating power in 1925 and has two generating units which operate under a maximum head of 105 feet with a total capacity of 1,600 kilowatts. Power was distributed over 76 miles of transmission lines. The power plant was originally designed to provide power to the Reclamation project. Midvale Irrigation District was formed in 1921 and serves approximately 73,000 acres of irrigable lands with water from the Wind River and storage from Bull Lake and Pilot Butte Reservoirs. In 1951, Reclamation transferred the operation and maintenance of portions of the Riverton Unit to the Midvale Irrigation District but retained ownership and operation of the Pilot Butte Power Plant.

In 1973, the Pilot Butte Power Plant was shut down in 1973 on account of high operation and maintenance costs and penstock problems. The penstock was replaced and the units were placed back in service in June 1990. The units continued to be in service until 2008. Following an economic analysis, the Bureau of Reclamation decided to shut down the power plant in 2008 due to increasing operation and maintenance costs and needed plant repairs. With the facility in mothball status, Reclamation has plans to demolish the site. Instead, Midvale Irrigation District has stated that they wish to take control of and retrofit the facility. Proponents argue that legislation is needed to transfer the Pilot Butte Power Plant from the Bureau of Reclamation to the Midvale Irrigation District to retrofit the facility.

LEGISLATIVE HISTORY

S. 1662 was introduced by Senators Barrasso and Lummis on May 17, 2023. The Subcommittee on Water and Power held a hearing on S. 1662 on July 19, 2023.

Companion legislation, H.R. 3415, was introduced in the House of Representatives on the same day by Representative Hageman. The Subcommittee on Water, Wildlife, and Fisheries of the House Committee on Natural Resources held a hearing on H.R. 3415 on September 28, 2023. The House Committee on Natural Resources favorably reported H.R. 3415 at its business meeting on October 26, 2023.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on December 14, 2023, by a voice vote of a quorum present, recommends that the Senate pass S. 1662, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1662, the Committee adopted an amendment in the nature of a substitute. The amendment directs the Secretary of the Interior, acting through the Commissioner of Reclamation, to enter into negotiations with Midvale Irrigation District to determine the terms of the conveyance of the Pilot Butte Power Plant from the Secretary to the Irrigation District. It requires the Secretary to negotiate the agreement in accordance with the criteria, terms and conditions specified in the Bureau of Reclamation's title transfer authority (subtitle A of title VII of Public Law 116-9).

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the Act as the "Pilot Butte Power Plant Conveyance Act."

Section 2. Definitions

Section 2 provides definitions of the Act.

Section 3. Agreement, conveyance, and report

Subsection (a) directs the Secretary of the Interior, acting through the Commissioner of Reclamation, to enter into negotiations with Midvale Irrigation District to determine the terms of the conveyance of the Pilot Butte Power Plant from the Secretary to the Irrigation District. It requires the Secretary to negotiate the agreement in accordance with the criteria, terms and conditions specified in the Bureau of Reclamation's title transfer authority (subtitle A of title VIII of Public Law 116–9).

Subsection (b) directs the Secretary of the Interior to offer and convey all right, title and interest of the Pilot Butte Power Plant to Midvale Irrigation District.

Subsection (c) directs the Secretary of the Interior to submit a report 1 year after the date of enactment to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources on the status and anticipated completion of the conveyance.

Section 4. Compliance with other laws

Section 4 requires the Secretary to comply with applicable Federal and state environmental laws.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1662, Pilot Butte Power Plant Conveyance Act			
As ordered reported by the Senate Committee on Energy and Natural Resources on December 14, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	*	*	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

S. 1662 would require the Bureau of Reclamation (BOR) to negotiate an agreement within two years with the Midvale Irrigation District located in Pavillion, Wyoming, to convey the Pilot Butte Power Plant and related facilities to the district.

Under current law, BOR holds title to the power plant and related facilities, and ownership of the power plant cannot be transferred unless authorized by the Congress. The plant has not produced electricity since 2008 when BOR determined that increasing operation and maintenance costs made electricity generation at the plant economically infeasible. The district has expressed interest in

taking ownership and rehabilitating and operating the power plant and related facilities to provide power to the district's water users.

Using information from BOR, CBO estimates that total costs to implement the bill would be less than \$20,000 for staff to coordinate surveys, complete reviews under the National Environmental Policy Act, and transfer the title to the district. Under the bill, the district and BOR would negotiate the distribution of these costs. Spending by BOR for those costs would be subject to the availability of appropriated funds.

CBO estimates that enacting the bill would insignificantly increase offsetting receipts, which are recorded as reductions in direct spending, from amounts transferred to the government to pay for the district's share of the cost of administrative activities to complete the transfer. The spending of those receipts would increase direct spending and any excess contributions would be returned to the district. Thus, CBO estimates that by the end of 2033 there would be no net effect on direct spending under S. 1662.

On December 15, 2023, CBO transmitted a cost estimate for H.R. 3415, the Pilot Butte Power Plant Conveyance Act, as ordered reported by the House Committee on Natural Resources on October 26, 2023. The two bills are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Alaina Rhee. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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 S. 1662.

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 S. 1662, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1662, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Subcommittee on Water and Power on July 19, 2023, on S. 1662 follows:

STATEMENT OF CAMILLE CALIMLIM TOUTON,
COMMISSIONER, U.S. BUREAU OF RECLAMATION

S. 1662, PILOT BUTTE POWER PLANT CONVEYANCE ACT

The Bureau of Reclamation has constructed numerous dams, canals, and hydropower plants that provide water and power across the 17 western states. For most of these project facilities, Reclamation has transferred all or part of the responsibility for operation, maintenance, and replacement to a project beneficiary. Title, or ownership, to Reclamation facilities, however, remains with the United States Government unless Congress passes legislation directing otherwise.

The transfer of title divests Reclamation of responsibility for the operation, maintenance, replacement, management, regulation of, and most of the liability for Federal interests in lands and project facilities, while providing non-Federal entities with greater autonomy and flexibility to manage the facilities.

From 1995 through 2019, Reclamation conveyed title of thirty projects or parts of projects across the West pursuant to various acts of Congress. These title transfers generally have provided mutual benefits to both Reclamation and the non-federal entities involved. The title transfer process followed a framework that Reclamation and its partners collaboratively developed, but which required the passage of individual acts of Congress.

In 2019 the John D. Dingell, Jr. Conservation, Management and Recreation Act (P.L. 116–9) was signed into law. Title VIII of this Act provides Reclamation with new authority to transfer title to certain eligible facilities to qualifying entities without separate and individual acts of Congress. Section 8001(3)(B) of P.L. 116–9 included provisions that excluded title transfer authority for certain facilities, including for any reserved works as of the date of enactment. The term “reserved works” means any building, structure, facility, or equipment that is owned, operated, and maintained by Reclamation.

The Pilot Butte Power Plant is a reserved work and is part of Reclamation’s Riverton Unit, as incorporated into the Riverton Unit of the Pick-Sloan Missouri Basin Program by the Act of September 25, 1970 (Public Law 91–409). The Powerplant receives water through the Wyoming Canal and discharges water directly to the Pilot Butte Reservoir. The Wyoming Canal and Pilot Butte Reservoir are Reclamation facilities for which the operation and maintenance has been transferred to the Midvale Irrigation District (District) via contract with Reclamation.

The Powerplant started generating power in 1925. The Powerplant was taken out of service in 1973 due to high operation and maintenance (O&M) costs as well as a deteriorating penstock. The penstock was replaced and the Powerplant was put back into service in 1990. From 1990 through 2008, the Powerplant operated seasonally from mid-April through late September. In 2007, Reclamation

estimated the cost of needed repairs to continue to operate the Powerplant to be approximately \$3.2 million. In 2008, the Powerplant was placed in a mothballed status (removed from service) because it was no longer economically viable to operate it. In 2016, the Wyoming Water Development Office estimated these repairs to cost between \$4.4 and \$8.3 million.

As a reserved works, the transfer to the Pilot Butte Power Plant and related facilities is not eligible under the authority granted to Reclamation and requires an act of Congress. S. 1662 would provide Reclamation with the authority to convey title of the Power Plant to the district, subject to the necessary leases, permits, rights-of-way, easements, and terms necessary to ensure: the title transfer would not result in an adverse impact on existing water or power delivery obligations, that it complies with all applicable federal and state laws, and that conveyance of these facilities is in the financial interest of the United States. As the facilities have been removed from service, transfer of the facilities would minimally reduce costs associated with ongoing operation and maintenance and would potentially eliminate costs associated with removal and demolition, as necessary.

Section 3 further directs Reclamation to enter into good faith negotiations to enter into an agreement within two years with the District to determine and outline a framework for the terms of conveyance of the Power Plant. It requires a report to Congress, if conveyance is not completed within a year of enactment, outlining the status of the conveyance, any obstacles to completion, and the anticipated date of completion.

Section 6 directs Reclamation to provide an equal share with the District for the administrative costs for the conveyance of the Power Plant to the District. It should be noted, under P.L. 116-9, administrative costs for conveyance are fully the requester's expense.

The Department supports the conveyance of the Power Plant to the District, as outlined in S. 1662, and if enacted and subject to appropriations, Reclamation would work to negotiate an agreement that ensures the transfer is mutually beneficial to the United States and the District. The Department supports S. 1662 and looks forward to working with the bill sponsor to address any necessary technical edits.

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 as ordered reported.