

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

November 14, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff— Calvin Frauenfelder
Subcommittee on Water, Power and Oceans (x58331)

Markup: **H.R. 6652 (Rep. Dan Newhouse, R-WA)**, 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
November 15, 2018, 9:30am; 1324 Longworth HOB

H.R. 6652 (Rep. Dan Newhouse, R-WA), 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

Summary of the Bill

H.R. 6652 requires the Secretary of the Interior to enter into an agreement with the Kennewick Irrigation District to determine the legal, institutional, and financial terms related to the conveyance of certain canals, laterals, and appurtenant works and lands of the Kennewick Division of the Yakima Project constructed by the Bureau of Reclamation. H.R. 6652 also authorizes the Secretary to convey all U.S. right, title and interest in these works to the Kennewick Irrigation District.

Background

Authorized in 1948 by Public Law 80-629,¹ and originally constructed in 1958,² the Kennewick Division (Division) is one of seven divisions of the Bureau of Reclamation's Yakima Project.³ 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.⁴ KID was initially built for agricultural purposes in the tristate area. Today, however, the majority of rate payers who reimburse the federal government for the cost of the water project live in residential developments.⁵

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

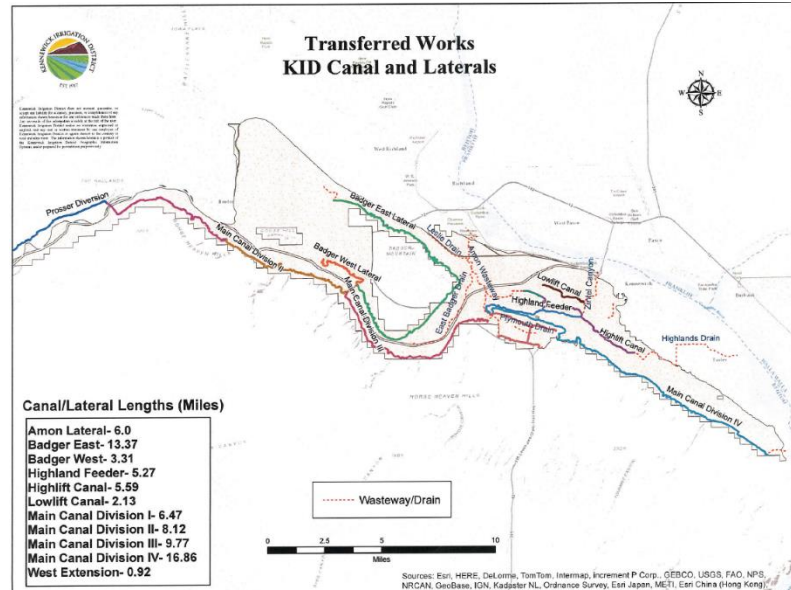
² <https://www.usbr.gov/projects/index.php?id=400>

³ Id. At "History"

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

⁵ Id.

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 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.”⁶ 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.”⁷



*Transferred works of the Kennewick Irrigation District.
Source: Kennewick Irrigation District*

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.⁸ 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.⁹ Since 1996, more than three dozen Reclamation projects have been transferred or authorized to be transferred to local entities.¹⁰

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

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

⁷ [Submitted Testimony of Mr. Charles Freeman, General Manager, Kennewick Irrigation District, before the House Water and Power Subcommittee, February 14, 2018, p. 2.](#)

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

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

¹⁰ 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/>

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."¹¹ 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.¹²

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 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.

Major Provisions of H.R. 6652

Section 2 of the bill authorizes the Secretary of the Interior to convey to KID all right title and interest of the Transferred Works under an agreement entered into between the Secretary and KID in accordance with and subject to the existing Memorandum of Agreement No: R18MA13703 between the two parties.

Section 3 of the bill provides that once conveyed, the United States will be relieved of all future liability and financial responsibilities related to the Transferred Works and will only be held liable for acts of negligence committed by the United States or by its employees prior to the date of conveyance.

Section 4 of the bill provides that after its conveyance, the Transferred Works shall no longer be considered a part of a federal reclamation project. As such, if the entire Division is conveyed out of federal ownership, KID shall not be eligible to receive any benefits, except those that would be available to a similarly-situated entity with respect to property that is not part of a federal reclamation project.

¹¹ [Submitted Testimony of Mr. Charles Freeman, General Manager, Kennewick Irrigation District, before the House Water and Power Subcommittee, February 14, 2018, p. 2.](#)

¹² [Bureau of Reclamation Fiscal Year 2018 Budget in Brief, p. BH-36](#)

Section 5 of the bill ensures compliance with federal laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Section 6 of the bill details cost allocations between the parties for various aspects of the transfer.

Cost

The Congressional Budget Office has not completed a cost estimate of this bill.

Administration Position

The Administration indicated support for the transfer in written testimony submitted to the Subcommittee on Water, Power and Oceans on September 5, 2018, stating, “We believe that the District has effectively managed these facilities for many years and would be a good and responsible candidate to take title pursuant to a title transfer agreement that protects the interests of the District, the local community, the Department [of the Interior], U.S. taxpayers and other stakeholders.”¹³

Anticipated Amendments

The Minority will offer an amendment that will codify an agreement between the Kennewick Irrigation District and the Spokane Tribe specific to this title transfer and the associated water rights.¹⁴ The amendment will also impose certain general eligibility criteria on the title transfer; this language is taken from H.R. 3281 (Lamborn), the Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act, which passed the House on July 12, 2018.

Effect on Current Law (Ramseyer)

None.

¹³ [Submitted testimony of Mr. Austin Ewell, Deputy Assistant Secretary for Water and Science at the Department of the Interior, before the House Water, Power and Oceans Subcommittee, September 5, 2018, p.1](#)

¹⁴ Confederated Tribes and Bands of the Yakima Nation letter to Chairman Rob Bishop, Re: HR 6652, Conveying Components of the Kennewick Irrigation District, August 21, 2018.