

Subcommittee on Water, Power and Oceans  
Doug Lamborn, Chairman  
Hearing Memorandum

July 6, 2018

To: All Subcommittee on Water, Power and Oceans Members

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

Subject: **Legislative Hearing on H.R. 6040 (Rep. DeSaulnier, D-CA)**, To authorize the Secretary of the Interior to convey certain land and facilities of the Central Valley Project.

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**H.R. 6040, *Contra Costa Canal Transfer Act***

**Bill Summary**

H.R. 6040 would authorize the title transfer of the Contra Costa Canal System and the Rock Slough Fish Screen Facility to the Contra Costa Water District, pursuant to agreements between the District and the Bureau of Reclamation and local stakeholders.

**Cosponsors**

Reps. Jerry McNerney (D-CA) and Mike Thompson (D-CA).

**Witnesses** (*In alphabetical order*)

*Mr. Austin Ewell*

Deputy Assistant Secretary for Water and Science, U.S. Department of the Interior  
Washington, D.C

*Mr. Stephen Welch*

Assistant General Manager, Contra Costa Water District  
Concord, California

**Background**

The Contra Costa water district (District) is a public utility that delivers water to approximately 500,000 people.<sup>1</sup> The District's service area comprises much of Contra Costa County, located on the south side of the Sacramento-San Joaquin Delta (Delta) in California's Central Valley. Congress authorized key components of the California Central Valley Project in 1937 (50 Stat. 844, 850) including the Contra Costa Canal (Canal), which serves as the backbone of the District's water conveyance system. Currently, the United States Government holds title to the Canal.

The Bureau of Reclamation (Reclamation) holds title to the individual water, power supply and delivery, and recreational facilities it has constructed over the last century. The federal government provided the initial capital contribution to build the vast majority of these early projects. However, the water, power, and recreational customers who benefitted from the facilities entered into long-term contracts with the federal government to repay their part of the initial taxpayer investment. Under the Reclamation Act of 1902 (Public Law 57-161), 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. Since 1996, more than three dozen Reclamation projects have been transferred or authorized to be transferred to local entities.<sup>2</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 on repairing and upgrading 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. At a 2008 Water and Power Subcommittee legislative hearing, Mr. Dan Keppen, Executive Director for the Family Farm Alliance stated, "Experience throughout the West demonstrates that when control of projects is assumed by local interests, the projects are run more cost effectively and with far fewer items of deferred maintenance."<sup>3</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>4</sup>

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<sup>1</sup> <https://www.ccwater.com/27/About-Us>.

<sup>2</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>3</sup> Submitted Testimony of Mr. Dan Keppen, Executive Director, The Family Farm Alliance, before the House Water and Power Subcommittee legislative hearing, September 25, 2008, p. 2.

<sup>4</sup> [Bureau of Reclamation Fiscal Year 2018 Budget in Brief, pg BH-36](#)

The District seeks a title transfer of the Contra Costa Canal System which includes several pipelines, conduits, pumping plants and other support facilities, along with the Rock Slough Fish Screen Facility. The District believes that taking title to the Canal system would improve both water supply and public safety. The District has documented 81 drownings in the Canal, or approximately one every year.<sup>5</sup> The District wants to enclose the Canal and title transfer removes duplicative federal approvals and allows the District to leverage its ownership for additional financing. According to the District, the Canal system is a single-purpose facility well-suited to title transfer. The District claims that it has completed Reclamation’s administrative process to prepare for title transfer legislation.<sup>6</sup>

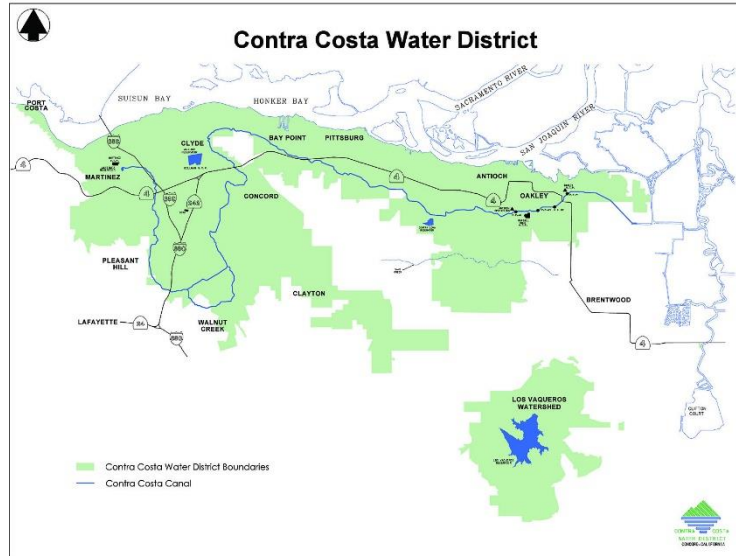


Figure 1: Map of District’s service area and the Canal  
Source: Contra Costa Water District

Rep. Mark DeSaulnier introduced H.R. 6040 to authorize the title transfer. The Senate Committee on Energy and Natural Resources’ Subcommittee on Water and Power held a legislative hearing on identical legislation, S. 3001, introduced by Sen. Dianne Feinstein (D-CA).<sup>7</sup> The Department of the Interior (DOI) stated concerns that environmental compliance activities still need to be completed and that DOI and local stakeholders still need to address some technical details and agreements.<sup>8</sup> Despite those concerns, DOI acknowledged that “the District has completed its repayment obligation for its share of construction costs of the Canal” and that, when their concerns are addressed, “the Department is pleased to support this legislation”.<sup>9</sup>

This legislation is supported by the Contra Costa Water District, the East Bay Regional Park District, and Defenders of Wildlife.

<sup>5</sup> Borba, L. M. (2018, June 11). June 13, 2018 Hearing -Contra Costa Canal Transfer Act (S. 3001) [Letter to Sen. Jeff Flake and Sen. Catherine Cortez Masto], at 2.

<sup>6</sup> *Id.*

<sup>7</sup> <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=6E245B44-DA4F-428D-96F2-BC6AD3E9DF49>.

<sup>8</sup> *Legislative Hearing on S. 3001, H.R. 132, and H.R. 1967 Before the S. Comm. on Energy Natural Resources, Subcomm. on Water and Power*, 115<sup>th</sup> Cong., 2, (2018) (Statement of Timothy Petty, U.S. Department of the Interior), available at [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=916FC45F-5A34-4515-B6F4-45741D357740](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=916FC45F-5A34-4515-B6F4-45741D357740), at 2.

<sup>9</sup> *Id.*

## **Major Provisions of H.R. 6039:**

*Section 2* defines the specific facilities to be transferred.

*Section 3* outlines the terms of the title transfer and ensures compliance with environmental laws.

*Section 4* preserves existing rights and obligations related to water deliveries and reclamation law. Section 4 also relieves the United States of future liability associated with the transferred facilities after title transfer is complete.

*Section 5* requires a report to Congress from DOI if the title transfer is not completed within one year of enactment of H.R. 6040 that explains the obstacles to the title transfer and provides an updated schedule for completion.

### **Cost:**

The Congressional Budget Office has not completed a cost estimate of H.R. 6040.

### **Administration Position**

DOI testified in general support of the title transfer, but could not support the legislation at the time due to ongoing negotiations of the terms of the transfer and incomplete environmental compliance activities.<sup>10</sup>

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<sup>10</sup> *Id.*