

Committee on Resources

Witness Testimony

Testimony of the

HONORABLE DOC HASTINGS

Subcommittee on Water and Power Resources

Hearing on H.R. 3777

Oroville-Tonasket Irrigation District Settlement Agreement

September 26, 1996

Mr. Chairman, I want to thank you for holding this hearing this afternoon on my legislation, H.R. 3777, the Oroville-Tonasket Claim Settlement and Conveyance Act.

This important and time sensitive legislation resolves a long standing dispute between the Oroville-Tonasket Irrigation District and the Bureau of Reclamation that will save taxpayers the considerable cost of financing the continuation of a long, drawn out court battle. I am also pleased to report to you that this legislation has strong bipartisan support within the Washington State Congressional delegation, having been introduced by Senator Slade Gorton and co-sponsored by Senator Patty Murray.

The Oroville-Tonasket Irrigation District is a vital component of the local economy of North Central Washington State. Beginning at the Canadian border north of Oroville and extending south on both sides of the Okanogan River for 26 miles, the OTID delivers water to 10,000 acres of arid land serving 900 family farms.

In 1976, the district and the Bureau agreed to replace the OTID's deteriorating system of flumes, siphons, tunnels and open canals. The plan provided for construction of a pressurized irrigation system. In 1979, the OTID executed a repayment contract, and construction commenced the following year.

Since that time, the Project has been plagued by the inability of its facilities to cope with substantial amounts of silt in the Okanogan River. The problem at the project was so severe that Congressional reauthorization was needed in 1987 to increase the cost ceiling from \$17.5 million to \$88 million for pumping plant modifications intended to reduce the amount of silt entering the irrigation system.

In 1990, the Bureau notified the irrigation district that the project was "substantially completed," and its first annual payment was due the following year. However, the District, disputing the Bureau's claim that the project is substantially completed, has refused to initiate repayment. The District has consistently maintained that the Bureau has failed to meet its obligations. The irrigation system fails on a regular basis and the annual operation and maintenance costs are 200% higher than Reclamation originally projected.

Mr. Chairman, when I first came to Congress in January 1995, both sides were still engaged in a protracted court battle on this issue. While the Court of Federal Claims dismissed the District's original claim and the Bureau's counterclaim without prejudice, in April of 1995, the OTID submitted a separate claim under the Contract Disputes Act seeking \$51 million in damages, rescission of its \$13,000,000 repayment obligation, and a reduction of and cap on power rates. At this point, both sides agreed to enter into settlement negotiations.

I am pleased to report that on April 15, 1996 a settlement agreement was at long last reached. In order for this agreement to comply with the terms of the original contract, it must be legislatively enacted by Congress which is why I have introduced this bill.

Upon reviewing the terms of the agreement and listening to this afternoon's testimony, I think you will agree that this is a good deal not only for my constituents, who are depending on this project for their economic well being but also the U.S. taxpayer, for fish and wildlife restoration, and for local tribal interests.

In addition to having already received a one time payment of \$350,000 from the irrigation district, the Bureau is relieved of all past, present, and future liability, responsibility for operations and maintenance of the project irrigation works, and responsibility to defend against 3rd party claims.

Most importantly, the U.S. government avoids further costs and risks of litigation. Were the District to recover a mere 10 percent of its claim, cost to the U.S. taxpayer would exceed District obligations. Finally under the terms of the agreement, the District has agreed to limit its current open-ended entitlement to low cost "reserved" pumping power to 44 years.

To more effectively upgrade the system to the level of quality that water users believed they would receive when they accepted the original repayment contract, the OTID will take on significant financial risk. Assuming responsibility for the maintenance of the project irrigation works will not be easy on this relatively small system and its customers.

However, I support this settlement agreement and introduced H.R. 3777 because of my strong commitment to enhanced local decision making authority. I believe that at this stage the irrigation district is in a stronger position to make these urgent repairs in a cost effective manner than is the federal government. Most importantly, the agreement allows the Bureau and the district to spend less time fighting one another in the court room and more time meeting the needs of their customers.

I would also like to point out that before transfer of title of the project irrigation works can proceed, the federal government is required to perform all required cultural and environmental surveys. The settlement agreement implements a wildlife mitigation program which increases the District's obligation from approximately thirty acres to over 900. While the District will have primary responsibility over maintaining these precious resources, the federal government will continue to play an important role by retaining ownership of these lands. In addition, all oil, gas, and other mineral deposits and perpetual right to existing public access for outdoor recreation purposes are reserved for the federal government.

Mr. Chairman, I believe that both sides in this long running dispute are to be commended and congratulated on their efforts to reach a balanced solution to this serious problem. The urgency of passing this legislation cannot be understated. Under the Contract Disputes Act, if implementing legislation cannot be enacted by April 15, 1997, the agreement is off and litigation will resume.

I hope this afternoon's hearing will serve as a positive first step toward ensuring that this bill becomes law before next year's deadline. I look forward to hearing the testimony and, again, thank you for your efforts.

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