

TESTIMONY OF ROBERT S. LYNCH,
ROBERT S. LYNCH & ASSOCIATES,
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER, CONCERNING
H.R. 795, THE SMALL-SCALE HYDROPOWER ENHANCEMENT ACT OF 2011,
HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

JUNE 23, 2011

Chairman McClintock, Ranking Member Napolitano, Members of the Subcommittee, I am pleased to have the opportunity to present testimony in support of H.R. 795, the Small-Scale Hydropower Enhancement Act of 2011.

Our firm, among other clients, represents a state association, the Irrigation & Electrical Districts Association of Arizona (IEDA). Numbered among its 25 members are most of the special districts that manage water delivery systems in Arizona as well as several of the municipalities that provide water service to their citizens. Each of these water service entities as well as other municipalities and water service entities in Arizona are potentially small hydropower generators.

In Arizona, as in most Western states, many of the canal systems that move our water supplies are owned by the federal government and under the jurisdiction of the Bureau of Reclamation (Reclamation). A number of these systems are managed and operated by non-federal entities, typically irrigation districts and water users associations. For instance, the Central Arizona Project (CAP) is operated by the Central Arizona Water Conservation District (CAWCD), a multi-county water conservation district specifically authorized for this purpose by Arizona law. CAP's mainstem system, as well as its delivery facilities such as the Santa Rosa Aqueduct, could be the target for hydropower development. So could many other Arizona district canals, laterals and ditches as well as municipal water pipes, if we reduce the paperwork and cost these facilities would face now before they could be built.

I am appearing here today to enthusiastically support the study that Section 4 of H.R. 795 directs be undertaken. The Department of the Interior can become the small-scale hydropower capitol of the United States. While it and Reclamation are beginning to move in that direction, Congress needs to assign them this role so there is no question about their authority.

I would ask that you clarify the study's intent in report language in two ways: First, direct that the report include a description of the non-federal consultation accomplished; and second, direct the study to separate Reclamation canal systems into two lists: those that are operated by Reclamation and those that are operated by non-federal operators so we know what we are dealing with. Such a list will guide future development of small-scale hydropower.

I am also appearing here today to equally enthusiastically support the substantive provision of H.R. 795, found in Section 3. One of our client association's members recently went through the exemption process.

Buckeye Water Conservation & Drainage District in southwest Maricopa County on the Gila River southwest of Phoenix has installed a small turbine on one of its canals. It is a 12 kV

turbine that is producing about 9 kV-capacity electricity as we speak. To put that in context, 12 kV is the size of the power line behind your house going to your transformer, in other words, not a very large capacity facility. In order to make this installation, it was necessary for Buckeye to apply under Section 30 of the Federal Power Act for an exemption from the licensing requirements of that Act. In turn, in order to get the exemption, the District had to prepare an environmental report because Section 30 requires that the U.S. Fish and Wildlife Service be consulted under the Fish and Wildlife Coordination Act. The cost of the “coordination” and the cost of installing the facility were relatively the same. In other words, the so-called coordination doubled the price of doing business in this fashion.

This additional cost is a serious impediment to the installation of these small facilities in water systems, not only in the Western United States and in irrigation systems but across the board in any water system, municipal or agricultural.

The experience Buckeye has had demonstrates the impediment that the exemption statute presents to the myriad small water agencies, especially in the West, that would jump at the chance to develop these small generators in their ditches, canals and pipelines if the cost and red tape of the exemption process were set aside.

The Section 30 coordination requirement has been part of the law since it was added to the Federal Power Act in 1978. The addition of the fees provision occurred in 1986. The incongruity of continuing coordination under the Fish and Wildlife Coordination Act for these little facilities is easily demonstrated by looking at the Federal Energy Regulatory Commission (FERC) regulations concerning licensing and requirements under the National Environmental Policy Act (NEPA). FERC has created a list of categorical exemptions under NEPA, as other federal agencies have. This means that no screening under NEPA is required for things that make this list. FERC’s list includes exemptions under Section 30 of the Federal Power Act. (18 CFR 380.4(b)(28)). What public policy drives this effort toward the Fish and Wildlife Coordination Act but allows it to escape untouched by the National Environmental Policy Act?

I hasten to point out that this legislation only impacts the very smallest facilities now subject to the exemption provision of Section 30 of the Federal Power Act. That section allows exemptions for up to 15 megawatts of conduit and increases the exemption to 40 megawatts if the facility is used for delivering water for municipal purposes.

This bill only treats the very smallest of these turbines, turbines that will generate enough electricity to assist a district in keeping the lights on at its headquarters office or maintenance building. Yet, cumulatively, these little turbines could produce a great deal of electricity for local use if they become widespread because it makes economic sense to install them.

H.R. 795 clears the way for installation of the very smallest of these facilities without the unnecessary red tape that has proven to be a significant impediment toward use of this valuable resource.

Thank you for the opportunity to comment on this important program and this very helpful legislation.