

Committee on Resources

Subcommittee on Water & Power

Witness Statement

Statement of Eluid Martinez
Commissioner
U.S. Bureau of Reclamation
Department of the Interior
before the
Subcommittee on Water and Power
Committee on Resources
U.S. House of Representatives

October 21, 1999

My name is Eluid Martinez. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Department's views on H.R. 3067, to direct the Secretary of the Interior to convey certain canals, laterals and distribution, conveyance and drainage facilities associated with the Boise Project to the Nampa and Meridian Irrigation District (District) near Boise in Southwestern Idaho. While we believe these facilities to be good candidates for title transfer, the Administration is opposed to H.R. 3067 as currently drafted.

Background

Mr. Chairman, the facilities under consideration for transfer, which are technically part of the Boise Project, involve only a relatively small portion of the lateral and drain system used by the District. Title to a large portion of the existing "Ridenbaugh" system is held by the District. The facilities under consideration for transfer are used exclusively for irrigation purposes and they have always been operated and maintained by The District. The District completed its repayment obligation in 1987. The water rights are Boise River Flow Water Rights and Boise Project Storage Rights and are not subject to conveyance.

In 1995, the District's Board of Directors passed a resolution to formally request the Bureau of Reclamation to initiate the process to transfer title of all Federal interest in the distribution, conveyance and drainage system within the District boundaries.

In December 1998, a scoping letter was released as an initial step in the NEPA process to identify issues, comments and concerns from Federal, state and local agencies and individuals, or stakeholders, who may have an interest in these facilities. Numerous comments were received and are being reviewed and addressed in the Environmental Assessment (EA) which is being prepared.

In July, 1999, The District and Reclamation entered into the Memorandum of Agreement referenced in the bill, which delineates the process and responsibilities for completing the title transfer including activities to comply with Federal laws including the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and the Endangered Species Act, as well as to identify and deal with Native American Trust assets, cultural resources and other issues that may arise.

Subsequently, The District contracted with Ogden Environmental and Energy Services to prepare and draft the environmental analysis documents which, as we understand it, are being completed by the District. Reclamation awaits the opportunity to review these documents and to work with the District, the consultant and others to finalize them and then produce the appropriate NEPA document.

As you can see, a significant amount of work is well underway and we are very encouraged by the progress.

To date, Mr. Chairman, the major issue that was raised during the public scoping process, and that continues to come up, is related to the use of certain portions of the distribution, conveyance and drainage system's right-of-way for recreation bike/jogging/walking paths by local citizens. It is our view that this issue is local and not necessarily an issue for the Department. However, it should be resolved prior to title being transferred. It is our view that the process being carried out to comply with NEPA can provide the mechanism for working through this issue to develop a resolution that could be satisfactory both to the District, and to the entities which have raised concerns about this issue during the scoping process. These include the City of Meridian, Ada County, the City of Boise, the Ada County Planning Association, and the Foundation for Ada County Trail System.

Concerns about H.R. 3067, as drafted

While the Department supports transfer of title of these facilities, we have some concerns about the legislation as drafted. If modifications can be made to address these issues, we believe we could support this title transfer proposal.

1) **Deadline:** H.R. 3067, as introduced, requires that the transfer be completed "not later than one year after the date of enactment." The Administration strongly opposes this artificial deadline. The deadline severely diminishes the value of the NEPA process by removing the Secretary's discretion to make a decision on proposed title transfers based on the results of environmental analysis and public involvement. The Administration firmly believes that meaningful NEPA compliance is critical prior to title transfer to allow the Department, the Congress, and the public to fully explore the impacts of the proposed transfer, its alternatives, and opportunities to avoid undesirable effects on public resources and values. The Secretary's authority to condition the transfer to resolve important issues identified during the NEPA process prior to title transfer must also be clear.

While good progress is being made with the NEPA process, a great deal of work, at the local level will be required to deal with the recreational issues associated with the rights-of-way, as well as other concerns that may have been identified during the public scoping portion of the NEPA process. In addition, the deadline appears to preclude conveyance after the year has passed.

2) **Third Party Impacts:** During a recent meeting with other Boise Project contractors, concerns were raised about the possible impact on non-District facilities and water rights that are within the District boundaries but which are held by the United States, and/or operated and maintained by other Boise Project contractors such as the Black Canyon Irrigation District or the Boise Project Board of Control. As such, we suggest that the following provision be included at the end of Section 2:

Excluding facilities within the District's boundaries whose interests are held by the United States and are operated and maintained by other Boise Project contractors. Those lands and water rights shall be excluded from this Act and shall be protected in accordance with existing contracts with the United States.

3) **Land Ownership:** The lands and the interest in lands that are proposed to be transferred, are acquired fee land, acquired easements, and easements reserved under the Act of August 30, 1890. The transfer of the United States' interest in the easements, whether acquired or reserved, should not effect the rights of the underlying fee landowner. To address this issue, we suggest the additional subsection to Section 2:

Nothing in this Act shall affect the rights of any person or entity except as provided herein.

4) **Liability:** Section 3 proposes that the District assume liability for the facilities to be transferred. We would like to make this language consistent with language that we have worked out with other entities interested in title transfer. We will forward alternative language to you shortly.

In conclusion, Mr. Chairman, the Department believes these facilities to be good candidates for title transfer and are committed to working with this Subcommittee, Representative Chenoweth-Hage, the District and other stakeholders to resolve the outstanding issues. That concludes my statement, I would be pleased to answer any questions.

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