

Testimony of Blair R. Hamilton
Chairman of the Board of Directors
South Utah Valley Electric Service District
Before the
House Natural Resources Subcommittee on Water and Power Legislative
In Support of H.R. 461, the South Utah Valley Electric Conveyance Act
June 23, 2011
Washington, D.C.

Chairman McClintock, Congresswoman Napolitano and members of the Subcommittee, I am grateful to be able to appear here today and testify in support of **H.R. 461**, the South Utah Valley Electric Conveyance Act. My name is Blair Hamilton and I serve as Board Chairman of South Utah Valley Electric Service District (SESD). I want to also thank Rep. Jason Chaffetz and Rep. Rob Bishop for introducing this important legislation. SESD was formed by the Utah State legislature to deliver electricity to the unincorporated rural communities in south Utah County including the cities of Elk Ridge and Woodland Hills. SESD also provide service to many customers in the cities of Payson, Salem, Spanish Fork, Santaquin and Mapleton.

SESD's electrical distribution system overlaps land and system fixtures that are still owned by the United States. H.R. 461 would direct the Secretary of the Interior to convey and transfer title to those portions of the electrical distribution system that are owned by the United States, including the land on which those facilities are located. It will also

provide license and use of shared power poles and access to lands where distribution facilities are located. H.R. 461 will help to provide certainty to SESD as it continues to make improvements to the system and operate and maintain what is in place today.

On April 7, 1986, the Strawberry Water Users Association conveyed by sale to SESD both ownership and operation of the entire electric distribution system. The SESD electric distribution system was originally built as part of the Strawberry Valley Project, which was completed by June 30, 1922. The Strawberry Valley Project was one of the earliest Bureau of Reclamation irrigation projects to develop hydroelectric energy. Original project features included Strawberry Dam and Reservoir, Indian Creek Dike, Strawberry Tunnel, two diversion dams, three power plants, a main canal system, and a portion of the lateral system. Electric power from these facilities was used to construct the Strawberry Tunnel and Dam. Two of the power plants were constructed by the Strawberry Water Users Association (Association). Approximately 4,000 kilowatts of power are developed in three power plants on the project and are delivered through transmission lines to our distribution system. Today, most of the water conveyance features of the Strawberry Valley Project have been integrated into the Bonneville Unit of the Central Utah Project.

Historically, the Strawberry Water Project was governed by a 1926 Repayment contract between the Bureau of Reclamation and the Strawberry Water Users Association, which was amended on November 20, 1928 and again on October 9, 1940. This Repayment agreement transferred responsibility to the Association for the operation and maintenance of the power system, which included power generation, transmission and distribution facilities. The Repayment contract did not transfer title to any of these facilities to the

Association, which remained in the name of the United States. On August 8, 1972, the Office of the Solicitor stated in an opinion that the United States owned those portions of the power system constructed with project revenues or that “became fixtures on the lands to which title was in the United States.” An additional Solicitor’s Opinion dated August 14, 1985 clarified further that:

“Title was reserved in the United States to all project property (including the power system) as of the time of the 1940 contract, but title was not reserved in the United States to such additions to the project (including additions to the power system) as were made after the 1940 contract unless the additions became fixtures on the lands to which title was in the name of the United States or unless it was expressly provided in connection with and approval sought from the Secretary.”

Despite this clarification, it is difficult to determine exactly which parts of the system are owned by the United States and which are now owned by SESD. There remains no dispute that the United States retains title to those portions of the distribution system constructed prior to 1940 with Strawberry Valley Project revenues or that are located on lands titled to the United States. However, from a practical standpoint, there has been increased uncertainty regarding where project revenues were spent for either construction of or improvements to the electric distribution system. Much of the electric distribution system was constructed on easements over private lands owned by Association members.

This creates significant operational challenges as SESD complies with the Operation and Maintenance Agreement.

Furthermore, Reclamation and SESD just concluded a new agreement whereby SESD agrees to operate and maintain the federal portions of the SESD distribution system. The agreement requires SESD to assume a number of special responsibilities regarding maintenance or improvements to the federally owned portions of the system. The agreement recognizes that it is not presently possible to determine with certainty which portions of the system are owned by the United States and contemplates a further need to inventory the distribution system to ascertain ownership. Reclamation estimates it will take years to accurately determine which portions were constructed prior to 1940, with project revenues or are located on federally owned lands. This places a significant cost burden on SESD and Reclamation.

In order to resolve these complications, SESD has been working with the Bureau of Reclamation and it was suggested that transferring title is the right approach.

Although we are not seeking to transfer a water project, we believe that this transfer is consistent aspects of the *Framework for the Transfer of Title Bureau of Reclamation Projects* of August 7, 1995. That policy document outlines six criteria for the title transfer of uncomplicated, single purpose reclamation projects or features and although it was drafted primarily to apply to water projects.

They are as follows:

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected.
- 2) There must be compliance with all applicable State and Federal laws.
- 3) Interstate compacts and agreements must be protected.
- 4) The Secretary's Native American trust responsibilities must be met.
- 5) Treaty obligations and international agreements must be fulfilled.
- 6) The public aspects of the project must be protected.

By transferring the federally-owned portion of the SESD electric distribution system, H.R. 461 will not only simplify SESD's ability to operate and maintain this system, but it will provide mutual benefits to Reclamation by transferring once and for all legal responsibility for the system to SESD.

Again I want to thank you for the opportunity to testify today and will be happy to respond to any questions.