Statement of Robert Quint, Senior Advisor
Bureau of Reclamation
U.S. Department of the Interior

Before the
Natural Resources Committee
Subcommittee on Water and Power
United States House of Representatives

H.R. 255 - Clarifications to the Provo River Project Transfer Act
May 23, 2013

Chairman McClintock and Members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to present the views of the Department of the Interior (Department) regarding H.R. 255, an amendment to the Provo River Project Transfer Act (Act) authorizing the Secretary of the Interior (Secretary) to convey the recently-enclosed Provo Reservoir Canal to the Provo River Water Users Association (Association). The Department supports H.R. 255.

The Provo Reservoir Canal (canal or PRC) is a principal feature of Reclamation's Provo River Project. It extends 22 miles from the mouth of Provo Canyon to Salt Lake County. Once it meandered through pastures and fields. By the late 1990s, suburban development had surrounded it. During this time, the Association concluded that owning the canal and associated project features would facilitate its ability to obtain financing for its eventual enclosure of the canal. Enclosing the canal into pipe offered significant potential new benefits in terms of water conservation, water quality, in stream flows, public safety and recreation.

In 2004, Congress agreed that transfer of the Provo River Project was in the public interest. The Provo River Project Transfer Act (Public Law 108-382) was enacted, authorizing the transfer by Reclamation to the Association of the Provo Reservoir Canal and the site of the Association's office. It further authorized the transfer of the Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy. The Department supports transferring ownership of certain Reclamation project facilities to non-Federal entities in cases where transfers create benefits for those who take title as well as for other stakeholders and the public and where repayment of the federal investment has occurred or is provided for. For this reason, the Department supported passage of the Act in 2004.

In the years since enactment of the Act, Reclamation has conveyed the Salt Lake Aqueduct to the Metropolitan Water District of Salt Lake and Sandy. One of the requirements of the Act was that all of the water user parties – including the Association, the Central Utah Water Conservancy District, the Metropolitan District of Salt Lake and Sandy and the Jordan Valley Water Conservancy District – needed to develop a comprehensive agreement to govern the "operation, ownership, financing, and improvement of the PRC" (Section 3.a.1B of the Act). Consequently, following its enactment, the parties began meeting regularly to discuss and negotiate the Master Agreement. From late 2004 through mid-2009, all of the parties acted on the belief that, after they reached agreement as required in the Act, Reclamation would transfer title and, after transfer, the Association would begin the piping of the PRC. However, in May of 2009, the

Association determined that the approach being considered for title transfer, funding, and enclosure placed the Association's tax-exempt status in jeopardy and threatened the entire project.

In response, the parties developed an alternative strategy for the canal portion of the transfer, whereby the Association, the parties and Reclamation would proceed with piping the canal under Reclamation's operation, maintenance, and replacement authority beginning in 2009. Today, the piping of the canal is largely complete. On the surface of the ground (over the buried pipe), crews are putting the final touches on a recreation trail. Below the surface, a 10.5-foot-diameter pipe conveys Provo River Project water.

Unfortunately, the parties, including Reclamation, moved forward with the title-transfer-after-piping option without realizing that this sequence was out of compliance with the original statutory authority to transfer the Provo Reservoir Canal to the Association "as in existence on the date of enactment". In retrospect, we all should have more carefully considered the potential effects of this change in the title transfer/construction sequence on title transfer as provided for in the Act. This brings us to the need for the technical amendment provided by H.R. 255. This technical amendment alters the definition of the Provo Reservoir Canal to authorize the transfer of the pipeline as well as to eliminate any confusion about the facilities to be transferred. The amendment authorizes transfer of the newly constructed pipeline by removing the term "canal" in the definition and replacing it with "water conveyance facility historically known as the Provo Reservoir Canal", and by eliminating the phrase "as in existence on the date of enactment of this Act." The bill also directs the transfer of "all associated bridges, fixtures, structures, facilities, lands, interests in land, and rights-of-way held", which Reclamation also supports since appurtenant facilities are currently used by the Association.

The majority of the $150 million cost of piping the canal was born by the Association, the Central Utah Water Conservancy District, the Jordan Valley Water Conservancy District, and the Provo Reservoir Water Users Company. Federal funding applied to the project was $39 million provided by the Department's Central Utah Project Completion Act Office. This amount, provided under the water conservation provisions of the Central Utah Project Completion Act, ensured that 8,000 acre-feet of conserved water would be made available to the Secretary to provide in-stream flows on the lower Provo River. These flows benefit fish and wildlife including the endangered June sucker, a species native only to Utah Lake and its tributary streams. Reclamation provided no funding to the piping project.

As a condition of title transfer, the Act requires the Association to remit to the United States its repayment obligation associated with the canal—the amount it continues to owe Reclamation for reimbursement of the original costs of construction. This obligation does not change under the technical amendment proposed by H.R. 255.

Reclamation sees the issue being addressed by H.R. 255 as purely technical and constructive. Concurrent to consideration of H.R. 255, Reclamation, the Association and the other parties continue to complete all the other steps necessary to transfer title and believe that with passage of this bill, we will be able to move forward expeditiously to finalize this title transfer. We support the title transfer and the excellent work that has gone on with the enclosure of the canal.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

Statement of Robert Quint, Senior Advisor
Bureau of Reclamation
Department of the Interior

Before the
Committee on Natural Resources
House Subcommittee on Water and Power
HR 745 – To Reauthorize the Water Desalination Act of 1996

May 23, 2013

Chairman McClintock, members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 745, legislation to reauthorize the Water Desalination Act of 1996, Public Law 104-298 (Desalination Act). The Department supports this bill.

The original Desalination Act divided the authorization for program activities into two areas. Desalination research and studies were authorized in section three of the Desalination Act, and demonstration and development were authorized in section four of the Desalination Act. Appropriations for these two programs were included in section eight of the Desalination Act. Sections three and four are active parts of the program as implemented today.

As introduced, HR 745 amends section eight of the Desalination Act to extend the appropriation authority for research as well as development and demonstration projects through the year 2018.

The bill is consistent with the existing Desalination and Water Purification Research (DWPR) Program implemented by Reclamation. The Desalination Act and its subsequent extensions[1] have given Reclamation the authority to support studies and projects across the country to advance the state of the art in desalination technology and lower the cost of desalinated water. The Act has also funded -- through Congressional direction –construction of the Brackish Groundwater National Desalination Research Facility (BGNDRF) in 2008 ($17M) and continues to fund annual facility operating costs of $1M. The majority of the facility's research bays are currently used for collaborative work with industry and universities. These efforts are coordinated under the DWPR Program under our Research and Development Office in Denver, Colorado. The program supports work on innovations under cooperative agreements that require a minimum 50 percent non-federal cost share. Non-federal funding underlies the majority share of the Program's projects, with an exception for institutions of higher learning where up to $1 million may be provided without cost share

Approximately $56 million have been appropriated from FY 1998 through FY 2012. In FY2011, Reclamation awarded $1.47M in new research agreements, with partners providing $1.30M of cost-sharing. FY2012 funding was provided for ongoing research projects and in addition funded one new project. Reclamation is currently reviewing FY2013 DWPR research proposals. It is anticipated that over $1.1M in new research agreements will be funded in FY2013. The program's accomplishments are numerous, and some of the recent highlights include:

[1] Extensions of PL 104-298 are found in PL 108-7, PL 109-13, PL 109-103, PL 110-5, and P.L. 112-74.

- With funding from Reclamation's DWPR Program, Eastern Municipal Water District in Perris, California, in cooperation with Corollo Engineering, carried out a landmark comparative study of how to dispose of the salt concentrate discharged from an inland desalting plant. The disposal of salt from inland desalters is currently a major part of a plant's capital and operating costs. This study was completed in September 2007.[2]

- Slant wells were tested for a seawater intake in Orange County (California). This novel approach to seawater intake under the seafloor avoids environmental issues such as impingement and entrapment and is planned for use in a new seawater desalination plant. This phase of the work on the plant was completed in April 2008.[3]

- The DWPR program funded the evaluation of approaches and technologies to treat membrane concentrate to provide solutions to growing challenges of concentrate management. This study evaluated needs, issues, promising technologies, economics, and practical considerations of concentrate treatment. Technologies were highlighted, including zero liquid discharge options, with potential to increase the implementation of desalination to diversify water supply portfolios. This project was completed in May of 2009.[4]

- DWPR funding contributed to the successful testing of a renewable energy coupled desalination system. The study evaluated an integrated wind-driven water desalination solution. The scope included defining the market for integrated windwater desalination systems, economic analysis and cost of water estimates, and control issues that address the intermittency of the wind resource. This project was completed in July of 2009.[5]

- The Long Beach Water Department developed and patented a two-pass nanofiltration process intended to reduce the energy requirement for desalting through Reclamation's DWPR Program. Long Beach collaborated with the Bureau of Reclamation and the Los Angeles Department of Water and Power in construction and operation of a 300,000-gallons-per-day seawater desalination prototype facility. This study was completed in March of 2013.[6]

The DWPR Program provides Reclamation the authority to support applied research that lowers the cost of desalinated water, and thereby enables communities to diversify their sources of water supply. The Department supports the continued extension of the authority via HR 745.

This concludes my written statement. I am pleased to answer questions at the appropriate time.

[2] DWPR Report No. 149.
[3] DWPR Reports No. 151, 152 and 153.
[4] DWPR Report No. 155.
[5] DWPR Report No. 146.
[6] DWPR Report No. 158.

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HR 1963 the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act

May 23, 2013

Chairman McClintock, members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 1963, the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act. The Department, with some technical amendments summarized in this statement, supports HR 1963, which amends the Water Conservation and Utilization Act (16 U.S.C. §§ 590y et seq.) to authorize the development of non-federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act (WCUA). In general, the Department supports the increase in the generation of clean, renewable hydroelectric power in existing canals and conduits. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities. My testimony today will summarize the Department's efforts to encourage the development of sustainable hydropower, provide an overview of the history of WCUA, and detail the areas in the bill where we believe improvements could be made.

Department's Hydropower Efforts

Before I share the Department's views on HR 1963, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. In March 2011, the Department of the Interior and Department of Energy announced nearly $17 million in funding over three years for research and development projects to advance hydropower technology. The funding included ten projects for a total of $7.3 million to research, develop, and test low-head, small hydropower technologies that can be deployed at existing non-powered dams or constructed waterways. The funding will further the Administration's goal of meeting 80 percent of our electricity needs from clean energy sources by 2035.

In March 2010 the Department entered into a Hydropower Memorandum of Understanding (MOU)[1] with the Department of Energy, and the Army Corps of Engineers to study and promote opportunities to develop additional hydropower. In March 2011, the Department released the results of an internal study, the Hydropower Resource Assessment at Existing Reclamation Facilities, that estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. While this first phase, completed in 2011, focused primarily on Reclamation dams, the second phase focused on constructed Reclamation waterways such as canals and conduits. In March 2012, Reclamation completed the second phase of its investigation of hydropower development, Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits, as referenced in the 2010 MOU. The two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing Reclamation sites.

Reclamation worked diligently with our stakeholders and the hydropower industry to improve our lease of power privilege (LOPP) processes, and this collaboration culminated in the release of an updated and improved LOPP directive and standard in September 2012. These new procedures better define roles, timelines and responsibilities that will allow us to better support and encourage sustainable hydropower development at Reclamation facilities.

Overview of History of WCUA

The WCUA was enacted on August 11, 1939 (amended October 14, 1940) to provide assistance to people hard hit by drought in the Dust Bowl and other similar arid and semiarid areas of the United States through the construction and development of irrigation projects. WCUA leveraged the considerable labor available by the Work Project Administration and other federal agencies during the New Deal, which absent congressional authorization, were precluded from using appropriations for many of the requisite needs of irrigation projects. For example, the Work Project Administration and other federal agencies did not have the authority to purchase water rights, rights-of-way, heavy machinery, and the services required to design and construct engineering features, prepare legal documents, and administer projects. WCUA resolved this issue by authorizing the Bureau of Reclamation to use appropriations to purchase rights-of-way, equipment and supplies, and for the payment of competent supervisory, technical, legal and administrative assistance, while the Work Project Administration and other federal agencies funded the costs of mechanics and laborers. Under WCUA, the Bureau of Reclamation retained

[1] http://www.usbr.gov/power/SignedHydropowerMOU.pdf, 2010

the responsibility for the construction and administration of these projects. The Bureau of Reclamation has constructed 11 projects under the WCUA[2].

Reclamation is authorized to issue LOPP contracts on projects that were authorized under Reclamation law pursuant to Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c). However, WCUA projects were not authorized pursuant to Reclamation law and the provisions of WCUA are only subject to Reclamation law where explicitly identified in the WCUA. The LOPP authority granted in Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c) does not apply to WCUA projects since it is not identified in the WCUA, and therefore WCUA projects are not authorized to develop non-federal hydropower absent congressional action. The Mancos Project in southwestern Colorado is such a case where Congress authorized the non-federal development of hydropower on a feature of a WCUA project through project specific legislation (P.L. 103-434).

HR 1963

Section 2(b) of HR 1963 would specifically authorize Reclamation to develop or enter into LOPP contracts for the development of new hydropower on projects and facilities authorized by WCUA, consistent with the Reclamation Project Act of 1939 and other Federal reclamation laws. In accordance with Federal reclamation law[3], typically LOPP charges paid by Lessees are deposited in the Reclamation Fund as a credit to the affected project. However, WCUA projects were not funded by the Reclamation Fund, but rather the General Fund of the Treasury. To this point, the WCUA states that all receipts from WCUA project operations – including power - are to be covered into the Treasury, rather than the Reclamation Fund, to the credit of miscellaneous receipts. Therefore, if the intention of HR 1963 is for WCUA LOPP charges to credit the affected WCUA project, additional clarification is necessary in HR 1963 detailing where the

[2] WCUA Projects: Mancos Project, Colorado; Buford-Trenton Project (North Dakota); Buffalo Rapids Project, Montana; Scofield Project, Utah; Intake Project, Montana; Mirage Flats Project, Nebraska; Missoula Valley Project, Montana; Mann Creek Project, Idaho (not eventually constructed under WCUA); Newton Project, Utah; Rapid Valley Project, South Dakota; Balmorhea Project, Texas. The Eden Project, Wyoming, was originally considered under the WCUA but was constructed under separate authority. In addition, three units were constructed pursuant to WCUA authority. Each unit is part of a Reclamation project that was not altogether authorized by the WCUA. The three units include: Dodson Pumping Unit, Milk River Project, Montana; Post Falls Unit, Rathdrum Prairie Project, Idaho; and the Woodside Unit, Bitterroot Valley Project, Montana.

[3] Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522

charges will be covered and how they will be applied to the affected project. The Department looks forward to the opportunity to work with the sponsors to address this issue.

Section 2(c) of HR 1963 would also require that Reclamation offer preference in the award of LOPPs to irrigation districts or water users associations with which Reclamation is either operating a WCUA project or feature pursuant to a formal title transfer contract, or receives water from a WCUA project or feature. This provision is similar to the existing preference irrigation districts and water user associations have for non-WCUA projects and features pursuant to Section 9(c) of the Reclamation Projects Act of 1939 and Reclamation's updated directive and standard referenced above.

In regard to another provision, the Department is concerned that Section 2 would create uncertainty as to the ownership of existing WCUA projects or future improvements, by removing language in the WCUA designating that, "[a]ll right, title, and interest in the facilities provided for such municipal or miscellaneous water supplies or surplus power and the revenues derived therefrom shall be and remain in the United States." While the Department appreciates that this provision most likely aims to ensure that non-federal developers of hydropower on WCUA projects or features can receive revenues from the sale of power, we are concerned about losing the ability to recoup the federal investment made in these facilities if the legislation were to be interpreted such that the Department no longer has "right, title, and interest" to WCUA facilities. The Department looks forward to the opportunity to work with the sponsors to address this issue.

As mentioned above, Section 2(c) requires the Secretary of Interior to "offer" preference in the award of LOPPs to irrigation districts or water users associations with which Reclamation is either operating a WCUA project or feature pursuant to a formal operations and maintenance contract (defined in Section 2 of the bill), or receives water from a WCUA project or feature. The Department recommends striking the term "offer" throughout Section 2(c) and replacing it with "solicit proposals" to better reflect the nature of the process involving soliciting and negotiating LOPP contracts.

Section 2(d) of HR 1963 directs Reclamation to "apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands." The Department recognizes the intent of HR 1963 to encourage the use of the categorical exclusion procedures that are allowed for in its LOPP directives and standards and documented in the Departmental Manual. If enacted, Reclamation would interpret this language as endorsing its current directive and standard to potentially apply categorical exclusions, provided that no extraordinary circumstances exist, pursuant to 40 C.F.R. §1508.4. Under this section, Reclamation does not guarantee that categorical exclusions will apply on

every small hydropower project. Reclamation believes it should preserve its discretion to determine whether a closer review under NEPA is appropriate.

The Department believes that environmental protections should continue to apply in the context of new construction undertaken on federal lands, and will continue to apply NEPA through the use of categorical exclusions or environmental analysis. We understand the value and importance of expedient environmental review and believe development of hydropower within Reclamation's existing conduits and canals can be efficiently analyzed utilizing these existing review processes.

Finally, as part of the President's all-of-the-above energy strategy, the Department is committed to assisting tribes in expanding on Indian lands renewable, low cost, reliable and secure energy supplies. The Department is still analyzing HR 1963 to ascertain any potential impacts on future energy development on Indian reservations, and looks forward to working with the Committee to ensure that HR 1963 does not unintentionally hinder the award of LOPPs to Indian tribes on WCUA projects with a tribal component.

In conclusion, as stated at previous hydropower hearings before this subcommittee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, or recreation. As the nation's second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource.

Thank you for the opportunity to discuss HR 1963. This concludes my written statement, and I am pleased to answer questions at the appropriate time.