Statement of Robert Quint, Chief of Staff
Bureau of Reclamation
U.S. Department of Interior
Before the
Committee on Natural Resources
Subcommittee on Water and Power
U.S. House of Representatives

HR 461 - South Utah Valley Electric Conveyance Act
June 23, 2011

Chairman McClintock and members of the Subcommittee, I am Bob Quint, Chief of Staff at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) regarding HR 461, legislation authorizing the transfer of the Federal portion of the Strawberry Valley Project Electric Distribution System to the South Utah Valley Electric Service District (District). Reclamation supports the title transfer contemplated by this bill and recommends revisions be made to the bill, which I describe below.

The Strawberry Valley Project (Project) is one of Reclamation's earliest projects, and all Federal obligations associated with the Project are fully repaid. Reclamation developed hydropower generation from the beginning because electricity was required to build the Project. Early in the Project's history, Reclamation transferred the operation and maintenance of most of the Project, including the Power System, to the Strawberry Water Users Association (Association).

The Strawberry Valley Project Power System has three parts: the powerplants are the Generation System, the high-voltage lines running from the powerplants to the substations are the Transmission System, and the low-voltage lines running from the substations to the customers are the Distribution System.

In 1986, the Association spun off the District – creating an independent service district with the capability to operate and maintain the Transmission and Distribution Systems. At the same time, the Association proposed selling the Distribution System to the District. Reclamation approved the proposed sale on the condition that the Association not transfer any Federal facilities. At the time, Reclamation required that the sale be limited to those portions of the Distribution System owned by the Association – those parts that were not completed as part of the original Strawberry Valley Project; constructed with Strawberry Valley Project revenues; and constructed on Federal lands or interests in lands. The District paid approximately $2.7 million for the non-Federal portions of the Distribution System. Reclamation approved the sale.

In 1986, Reclamation, the Association, and the District believed that most of the Distribution System was non-Federal. Later, it was determined that this was not accurate.

The 1940 Repayment Contract between the United States and the Association states

clearly that all additions to the Power System are Federal facilities; little or none of the Distribution System was owned by the Association. The District is chagrined at having paid the Association for facilities it did not receive. The purpose of this Act is to convey to the District what all parties believed the District acquired in 1986.

The Act would likely have little effect on operation of the Strawberry Valley Project. The District would receive fee interest in those Federal lands on which the Distribution System is the only Federal feature. On Federal lands sharing both Distribution System and other Strawberry Valley Project facilities, the legislation grants the District an easement for access to perform maintenance on the Distribution System fixtures. This provision preserves the interest of the United States and the public in the other Strawberry Valley Project facilities. As for the rest of the Project, the organizations would remain responsible for operating and maintaining the Generation System and the Transmission System on behalf of the United States.

Because the Strawberry Valley Project is a paid-out Reclamation project, there is no outstanding repayment obligation associated with it. For this reason, the Act does not require any payment from the District in exchange for title to the Distribution facilities. In addition, the Act eliminates Reclamation's obligations to oversee the maintenance of the Distribution System and to administer the associated lands. The result may be a slight reduction in Reclamation expenditures.

The change in ownership under the bill will be relatively invisible to the public. Because the District has been operating and maintaining the Distribution System for several years, the public will witness a change in ownership but should not experience any change in operation. The Act will eliminate uncertainty about ownership and obligations associated with the Distribution System – which will likely lead to more efficient and effective operation of the Distribution System.

The Department recognizes that there are benefits to be achieved by the proposed title transfer and has worked closely and cooperatively with the interested parties. Before the Department can support HR 461, we recommend two revisions: First, Section 3(a), directing that "the Secretary…shall convey and assign" the facilities to be transferred, should be changed to "the Secretary…is authorized to convey and assign", thereby allowing for completion of the necessary public input and scoping pursuant to the National Environmental Policy Act (NEPA). And second, language should be added to state that the District shall hold the United States harmless for any claim arising from the 1986 sale of the Distribution System and from actions under this legislation.

In recent days, we have had discussions with the District about accelerating the NEPA process and making modifications to the legislation to address the concerns described in this testimony. As such, I am confident that we can work with the District, Senator Hatch, Representative Chaffetz, and the Subcommittee to reach our goal of supporting this legislation and transferring title to these facilities in a timely manner.

This concludes my written statement. I am pleased to answer any questions.

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HR 795 – Small-Scale Hydropower Enhancement Act of 2011
June 23, 2011

Chairman McClintock and members of the Subcommittee, I am Bob Quint, Chief of Staff at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 795, the Small-Scale Hydropower Enhancement Act of 2011. This legislation would amend the Federal Power Act (FPA, 16 USC 792 et seq) to exempt small projects under 1.5 megawatts (MW) from licensing requirements, and direct the Department to prepare a new report evaluating potential projects of less than one megawatt. The Department has concerns with HR 795, as described below. Reclamation understands that the licensing exemption contemplated in Section 3 of HR 795 is meant to codify opportunities for development of small projects whose potential environmental impact is greatly reduced due to their placement in any existing tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance. The proposed legislation goes further than current laws or regulations in that it removes the licensing requirements for non-Federal conduit projects with capacities less than 1.5 MW.

In general, the Department's view is that environmental laws should continue to apply in the licensing exemption context, and note that our colleagues at the Federal Energy Regulatory Commission (FERC) may also have comments on Section 3. Section 3 of this Act will exempt certain projects on non-Federal conduits that are currently operating without a FERC license under the FPA from any licensing requirement, allowing them to continue to operate without analysis under the FPA or the requirements imposed by other environmental laws. The Administration is concerned about the impacts of this section and recommends revising this section to specify which laws this legislation is seeking to make inapplicable for the specified class of projects.

. Where hydropower does have environmental impacts, particularly on fish species and their habitats, we work with our partner bureaus and agencies to evaluate and mitigate these impacts. Further, hydropower can be flexible and reliable when compared to other forms of generation. Reclamation has nearly 500 dams and dikes and 10,000 miles of canals and owns 58 hydropower plants, 53 of which are operated and maintained by Reclamation. On an annual basis, these plants produce an average of 40 million megawatt-hours (MWh) of electricity.

With respect to the study requirement in Section 4 of HR 795, Reclamation in 2010 revised its study completed pursuant to Section 1834 of the Energy Policy Act of 2005 (1834 Study) to do much of what HR 795 requires. The revised 1834 Study[1] investigated the hydropower potential at the 530 Reclamation sites described in the original 2007 study[2], regardless of size. Of the 530 original sites, 351 were under one megawatt in capacity. In the revised 1834 Study, 133 of these had hydropower potential and 22 of these were determined to be feasible for further development investigation. This study was preliminary in nature. More analysis would need to be done by entities interested in expanding hydropower generation at Federal facilities. Reclamation will continue to review and assess projects that provide a high economic return for the nation, are energy efficient, and can be accomplished without harming or impairing fish and wildlife, the environment, or recreational opportunities. In December of this year, as referenced in the 2010 Hydropower Memorandum of Understanding (MOU)[3], Reclamation will complete a second phase that will investigate hydropower development on constructed Reclamation waterways such as canals, conduits, and drops.

Reclamation is on track to complete this additional report, which will be consistent with the Reclamation-specific deliverables envisioned in Section 4 of HR 795 by year's end. HR 795 would direct the Secretary to work with the other agencies involved in the original 1834 Study to also complete similar assessments of their sites listed in the 2007 report. The study already underway is similar to and would likely satisfy the requirement for a report under HR 795. Reclamation has procedures in place through the lease of power privilege (LOPP) process for the sites where Reclamation has the authority to develop hydropower. We are currently reviewing our LOPP policies and processes to look for ways to expedite and improve the process, especially for conduits and canals. We expect to have that review completed by November of this year.

We are happy to discuss these initiatives in greater detail with the Subcommittee. This concludes my written statement. I am pleased to answer any questions the Subcommittee may have.

[1] http://www.usbr.gov/power/AssessmentReport/USBRHMICapacityAdditionFinalReportOctober2010.pdf

[2] http://www.usbr.gov/power/data/1834/Sec1834_EPA.pdf, 2007

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

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HR 2060 – Central Oregon Jobs and Water Security Act
June 23, 2011

Chairman McClintock and members of the Subcommittee, I am Bob Quint, Chief of Staff at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 2060, the Central Oregon Jobs and Water Security Act. The provisions of HR 2060 address the Crooked River Wild and Scenic River designation along with water supply concerns relating to Reclamation's Crooked River Project. The Department supports the goals of correcting the Wild and Scenic River boundary near Bowman Dam and improving Reclamation project operations, where possible, to further enhance water use and availability. However, we believe that some of the provisions of HR 2060 will not be fully effective in realizing these goals. We are also concerned that some sections of this legislation shift costs from Reclamation project beneficiaries to Federal taxpayers and could hinder efficient water management.

HR 2060 includes four sections which address: 1. the Wild and Scenic River designation near Bowman Dam; 2. water supply for the City of Prineville; 3. first fill protection for currently contracted irrigation water in Prineville Reservoir; and 4. repayment contract provisions for the Ochoco Irrigation District (District). This statement focuses on the most significant provisions of each section of the legislation.

Wild and Scenic River Designation

An eight-mile segment of the Lower Crooked River near Prineville, Oregon was designated as a National Wild and Scenic River in 1988 with enactment of the Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100-557). The Lower Crooked River meanders through canyons of deeply eroded basalt and banks covered with riparian vegetation. A variety of wildlife including river otters, beaver, great blue herons and mule deer inhabit the corridor. A wide-range of recreation opportunities are available along the Lower Crooked River including native trout fishing, camping, hiking and boating.

When the Wild and Scenic River boundary was administratively finalized for this section of the Crooked River, the centerline of Bowman Dam was used as the upstream terminus of the designation. However, the placement of the beginning of the designation within this man-made feature is both counterintuitive and cumbersome to administer. Section 2(a) of H.R. 2060 addresses this by moving that upper limit of the designated river one-quarter mile downstream.

The Department of the Interior supports the proposed modification of the boundary as a reasonable solution consistent with the original intent of the Wild and Scenic designation. The Department is willing to work with the Sponsor and the Committee to determine the exact placement of the new boundary. Clearly the dam and related facilities were never intended to be included within the wild and scenic river designation.

City of Prineville Water Supply

Section 3 of HR 2060 proposes further amendments to the Act of August 6, 1956 (70 Stat. 1058), as amended, by increasing the statutorily-required minimum release flows from Bowman Dam to serve as mitigation for groundwater pumping by the City of Prineville. While the Department does not oppose the concept of providing releases to mitigate for municipal use of groundwater, we believe that the bill could more effectively address this objective by providing the Secretary with specific authority to contract with the City of Prineville to provide up to 5,100 acre-feet of water annually for miscellaneous and municipal purposes. This approach would avoid several concerns with Section 3 of HR 2060 as written.

One concern is the bill's provision that minimum releases for the City's benefit would be nonreimbursable, meaning that water from a Federal project would be provided at no cost. This would preferentially favor the City of Prineville relative to current and future contractors who are required to make payments to receive water under contracts with Reclamation, and be inconsistent with the "beneficiary pays" principle that underlies Reclamation law. A second concern is the statement that "The Secretary is authorized to contract exclusively with the City for additional amounts in the future at the request of the City." This language would similarly preferentially benefit the City of Prineville relative to the current or potential future contractors of the Crooked River Project. The effect of this language in section 3 is to shift costs that would otherwise be borne by the beneficiaries of the project water, in this case the City of Prineville, to American taxpayers.

While Bowman Dam is statutorily authorized to provide a minimum flow release of 10 cfs for fish and wildlife purposes, our current operational practice for irrigation delivery and flood control has provided an actual minimum release of 30 cfs for the past ten years or more. Therefore, the HR 2060 provision to statutorily increase minimum release flows from 10 cfs to 17 cfs is not likely to result in any actual increase in flows and would have questionable value as mitigation for the City of Prineville's purposes. As noted previously, we believe that the bill could more effectively and equitably address the City's needs by providing legislative authority for the Secretary to contract with the City for the provision of water for municipal purposes or related mitigation.

First Fill Protection

Section 4 of HR 2060 also proposes an entirely new addition to the 1956 Act. The proposed addition would provide existing contractors with a "first fill" priority basis, rather than the current situation where both contracted and uncontracted storage space in Prineville Reservoir fill simultaneously. While this provision is not likely to have any immediate effect, our experience has been that under a first fill/last fill priority system there is an increased possibility

for conflict when the first fill entity has 100% of their water and the last fill entity is shorted. Our hydrology information for the Crooked River suggests that in successive very dry years under the proposed approach, this type of conflict will become likely if the currently uncontracted space is either put under contract with a last fill priority or is re-allocated to some other use. The Department supports the concept of providing some of the now unallocated space in the reservoir for fish and wildlife purposes.

This section of the bill would also direct Reclamation to protect or set aside an amount of uncontracted water to enable Reclamation to enter into temporary water service contracts with the North Unit Irrigation District (NUID), upon their request, for up to 10,000 acre-feet of water annually. Because Reclamation has entered into temporary contracts in the past and may do so in the future as needed, and because other entities may be interested in receiving additional irrigation water, the Department believes that the objective underlying this provision can be effectively accomplished without legislation.

Ochoco Irrigation District Repayment

Section 5 of HR 2060 would provide for early repayment of project construction costs by landowners within the District and the District's participation in conserved water projects of the State of Oregon. The Department fully supports these objectives and has no concerns regarding corresponding language in the bill.

The Department also supports the McKay Creek Exchange Project which has been the subject of periodic discussions between the District and Reclamation and which would provide enhanced instream flows in McKay Creek in exchange for water from a portion of the District's current contracted water supply from Prineville Reservoir. However, we have concerns with those portions of Section 5 of HR 2060 that address contract amendments relating to lands within the vicinity of McKay Creek. As written, the proposed legislation does not clearly identify the fundamental exchange element of the project. The language in Section 5 is unclear as to whether the proposed water supply would come from the District's current contract supply or from uncontracted water in Prineville Reservoir, and the amount of water is not specified. As a result, the Department believes the McKay Creek Exchange Project would be implemented more effectively by proceeding with contracting processes that Reclamation has typically used for such situations, and which have been the subject of prior discussions with the District.

In conclusion, while the Department supports the major goals of HR 2060, we believe that the bill would benefit from changes as I've outlined today. In particular, we have concerns that some of this bill's provisions that would shift costs from Reclamation project beneficiaries onto American taxpayers.

This concludes my written statement. I am pleased to answer any questions the Subcommittee may have.