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Testimony Before the U.S. House of Representatives
House Natural Resources Committee
Water and Power Subcommittee

Hearing on

“Bureau of Reclamation Small Conduit Hydropower Development
and Rural Jobs Act of 2011”

H.R. 678

March 5, 2013

Dear Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee:

Thank you for the opportunity to present this testimony.

My name is Chris Treese, and I represent the Colorado River Water Conservation District (River District). The River District is the principal water policy body for the mainstem of the Colorado River and its principal tributaries in Colorado.

I am testifying today in support of Mr. Tipton's "Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2013" (H.R. 678). This bill provides authorization for small hydropower installation on Bureau of Reclamation (Reclamation) canals and conduits. It would also streamline burdensome and unnecessary federal regulations and rules encountered by many irrigation water districts and electric utilities that seek to develop hydropower on Reclamation infrastructure. There are several entities in western Colorado that have rejected pursuing hydropower based solely on the time, resources, and risks associated with the current permitting process.

Background

The Colorado River District is the principal water policy and planning agency for the 15 counties in northwest and west central Colorado. The River District is responsible for the conservation, use, protection, and development of Colorado's apportionment of the Colorado River. The River District provides legal, technical, and political representation regarding Colorado River issues for our constituents. The River District is comprised approximately 29,000 square miles, roughly 28% of the land area of Colorado.

There is considerable potential to pursue clean, renewable hydropower development within the River District. There are 13 Reclamation projects within my district. Some already have hydropower included in their authorizations. I believe, however, that all 13 would benefit from this legislation. I know of several districts that have considered hydropower investment, but never seriously, as they are discouraged by the regulatory uncertainty and costs currently represented by the existing permitting process.

Western water users operate existing irrigation canals and ditch systems that represent opportunities to develop in-canal, low-head hydroelectric projects with tremendous potential for producing significant amounts of renewable energy with virtually no negative environmental impacts. Necessary irrigation control and delivery structures can be retained while the conduit system is updated with modern, clean-energy producing technologies. Increased revenues from the sale of this renewable energy would result in reduced system operating, maintenance, and rehabilitation costs to farmers, ranchers and other Reclamation beneficiaries.

Importantly, subparagraph 6 of the bill provides clear and unambiguous assurance to the operators and beneficiaries of Reclamation projects that hydropower installation and operation are incidental to the organic water delivery purposes of the project. Historical water delivery services will continue unimpeded by hydropower generation.

Current Challenges

Some Western canal systems and other water delivery facilities are owned by Reclamation but operated and maintained by local entities like irrigation districts and water user organizations. Unfortunately, widespread uncertainty currently exists over canal-based hydropower at Reclamation facilities.

A few key examples demonstrate how this uncertainty is evidenced in the world western water managers operate in:

- Environmental reviews occasioned by the National Environmental Policy Act (NEPA) are universally time-consuming and expensive. Even “just an Environmental Assessment (EA)” requires considerable time and expense. The River District’s recent experience with an EA on a non-construction action has taken over a year and nearly \$2 million in cost (not including substantial “unbillable” district time and expense).
- Profit and operating margins on small hydro are very small. Districts must be able to make timely investment decisions without the prospect of environmental reviews of undetermined length and expense. Western water districts share the nation’s desire to make investments that can put people to work immediately. However, environmental reviews of small hydro on existing canals and conduits represent an unnecessary and often chilling uncertainty for an economically marginal investment.

Solutions Offered by H.R. 678

H.R. 678 seeks to address many of the challenges faced by Reclamation-facility water managers by:

- Adding “power” as an authorized activity on all of Reclamation’s conduits. This authorization makes clear that Reclamation would oversee conduit hydropower development at its facilities.
- Exempting small conduit hydropower generation projects from the NEPA review, with the notable exception of transmission siting. Only the installation and operation of in-canal and in-conduit hydro benefits from this legislation.
- Designating the Power Resources Office in Reclamation’s Denver headquarters as the lead office for small conduit development. This provision intends to set up a centralized location for uniformity purposes, yet does not prohibit area offices from implementing specific conduit development.

- Establishing hydropower as a secondary project purpose subservient to Congressionally-authorized project purposes. This should also reduce concerns regarding potential environmental impacts, because water delivery, as a primary purpose, will continue as it has historically.

We support H.R. 678 and believe it will reduce costs and foster more conduit hydropower at federal facilities and empower irrigation districts involved in the operation and maintenance of these Reclamation canals to develop and benefit from this clean energy source. We further believe it will clarify issues of federal authority on these projects that will improve and streamline the decision-making processes.

Recommendations

The River District has closely tracked the development of this and related legislation over the first couple of months of this Congress and the previous Congress. We thank Mr. Tipton, this subcommittee, and his co-sponsors for inviting our input and addressing our concerns. Like most legislation, however, it is not everything that everyone wants. It represents a giant first step towards facilitating the development of clean, renewable energy on Reclamation projects. With that philosophy in mind, we offer the following couple thoughts on the bill.

- H.R. 678 envisions Reclamation using its “Lease of Power Privilege” for conduit generation facilities, but requires Reclamation to offer the Lease of Power Privilege first to the entity/entities operating and maintaining the conduit (“right of first refusal”). Some water districts are concerned that recent federal policies encouraging the development of new hydropower facilities in existing irrigation canal systems have attracted outside developers. Sometimes, these outside interests do not share the same management priorities as irrigation districts. It can be very difficult to make arrangements like this work. We were pleased to see Water and Power Subcommittee staff work with those who had concerns with early drafts of H.R. 2842 in the last Congress to strengthen water user protections in two ways: 1) Specifically re-affirming hydropower development as secondary to water supply and delivery purposes; and 2) Ensuring that there will be no financial and operational impacts to existing water users. Furthermore, the bill protects agreements that the water users have on existing conduit generation projects and provides additional safeguards to ensure such projects do not undermine water deliveries. We believe, however, that Reclamation must commit to consultation with the districts affected at all times before, during, and after the lease, development, and operation of these conduit hydropower projects to ensure hydropower installation and production does not become “the tail wagging the dog.”

- The bill directs the Secretary of the Interior to determine a “reasonable time frame” for the irrigation districts or water users associations to accept or reject a Lease of Power Privilege offer. We recommend that “reasonable” be more specifically defined in terms of days or months. In some cases, feasibility studies will need to be completed to determine whether a proposed project is worth pursuing or not. Adequate time should be allowed for that process to occur before the local district is required to accept or reject a Lease of Power Privilege proposal.

The Colorado River District strongly supports H.R. 678, and we hope that these additional recommendations are considered in the constructive manner in which they are offered. We are confident Reclamation will work with us, as they have in the past on many other issues, to address our further recommendations, and that this legislation will serve as an appropriate vehicle for continued discussions.

Conclusion

Thank you again for this opportunity to testify in favor of H.R. 678. This legislation is very important to the many beneficiaries of the federal projects within the Colorado River District and throughout the arid West. I respectfully urge the Subcommittee's favorable consideration of H.R. 678.

I am happy to answer any questions you may have concerning my testimony.