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Testimony Before the U.S. House of Representatives
House Natural Resources Committee
Water, Wildlife and Fisheries Subcommittee

Hearing on

H.R. 8263

“To amend the Reclamation Project Act of 1939 to encourage non-Federal hydropower development with respect to Bureau of Reclamation projects.”

May 22, 2024

Dear Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee:

Thank you for the opportunity to present this testimony.

My name is Craig Horrell, and I’m here today representing the Deschutes Basin Board of Control (DBBC) and the Family Farm Alliance (Alliance).

The Deschutes Basin Board of Control (DBBC) is comprised of eight irrigation districts in Central Oregon – Arnold Irrigation District, Central Oregon Irrigation District (COID), Lone Pine Irrigation District, North Unit Irrigation District (NUID), Ochoco Irrigation District, Three Sisters Irrigation District (TSID), Tumalo Irrigation District, and Swalley Irrigation District. DBBC members are responsible for delivering water supply to over 7,600 farm and ranch families, schools, and local parks and recreation districts throughout the Deschutes Basin. Overall, DBBC member Districts irrigate over 150,000 acres of productive agricultural lands.

I’m also testifying today on behalf of the Family Farm Alliance, where I serve on the Advisory Committee, along with over fifty other district managers, association executives, attorneys and engineers from across the West. The Alliance over ten years ago helped drive the passage of legislation similar to a bill that is on today’s docket. That earlier bill – the “Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act” – was signed into law by then-President Obama in 2013.

I am testifying today on Rep. Boebert’s H.R. 8263, which amends the Reclamation Project Act of 1939 to encourage non-Federal hydropower development with respect to Bureau of Reclamation

(Reclamation) projects. 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.

Irrigation Modernization and Hydropower Development in the Deschutes Basin

The members of the DBBC are actively and aggressively pursuing modernization of their irrigation facilities. A central component of many of these modernization efforts revolves around installation of buried pipelines in place of open canals, which reduces water losses and will allow continued agricultural water deliveries even as the volume of required instream flows for the environment triples in the next five years. In addition to conserving water, these projects create considerable potential for the development of clean, renewable hydropower that will add to the significant existing hydro generation in the Basin.

At COID, we currently generate over 8 megawatts (MW) in carbon free energy with two existing conduit hydro facilities, and as we pipe additional portions of our system we expect to install an additional 6-9 MW. Likewise, other DBBC districts have existing and planned hydropower facilities, including:

- Tumalo Irrigation District, which has identified up to 1,500 MWh of annual production (in an average water year) potential on its system.
- TSID, which has built in-conduit hydro projects for a total of 1.2 MW. Two of these facilities are Qualified Conduit projects that were built using the process that HR 678 (P.L. 113-24) created. TSID has identified over 60 future on-farm projects using Net Meter and Micro Hydro turbines that will generate an additional 1 MW of renewable green power.
- NUID hosts two hydro facilities totaling 3.5 MW. It is currently installing another 1.4 MW that is being constructed to provide resilience for first responders after a Cascadia seismic event. Another project would add nearly 4 MW from floating solar combined with in-conduit hydrokinetic.

The existing and future hydropower generation on DBBC member facilities will provide multiple benefits, including additional carbon free electricity to meet clean energy goals, grid resiliency and power sources for emergency response plans. It will also generate revenue for our districts to help fund additional modernization and conservation projects.

Family Farm Alliance Background

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. Many of the Alliance's members operate existing irrigation canals, ditch systems and diversion dams that may provide opportunities to develop hydroelectric projects that have tremendous potential for producing significant amounts of renewable energy. Importantly, these projects can be accomplished with virtually no negative environmental impacts. There are many other benefits associated with developing projects of this type. Historic irrigation

structures can be retained while the system is updated with modern clean energy producing technologies. Increased revenues from the sale of this renewable energy can result in a new source of funding for operating, maintaining, and rehabilitating our aging water delivery infrastructure at lower costs to farmers, ranchers and other Reclamation beneficiaries. And, importantly, irrigation water delivery services can continue while utilizing flows for clean, emissions-free green energy production.

A great deal of energy is needed to treat, transport and convey water throughout the Western U.S., not only to support economic growth and well-being but also to sustain basic life. These inseparable links of “water for energy” and “energy for water” comprise the energy-water nexus. Many Family Farm Alliance members across the West are provided with water and power generated by Reclamation-built projects, sometimes where ownership of those facilities is mixed. For example, the Columbia Basin Project (CBP) has seven powerplants on Reclamation facilities owned by the three CBP irrigation districts. Five of these hydroelectric plants are operated by Columbia Basin Hydropower – which provides administration, operations, and maintenance for the hydroelectric facilities owned by the three CBP irrigation districts. The other two are plants operated by contract by a local utility. The seven hydroelectric plants annually generate an average of 560,000,000 kwh and provide the three CBP irrigation districts with an annual revenue stream of \$8 million used to improve project facilities.

These types of opportunities for hydro development exist across the West. In fact, according to a report by Oakridge National Laboratory, “[t]he agricultural sector accounts for nearly half the potential for new conduit hydropower development, 662 megawatts.” The report goes on to show that 9 of the 10 top states for conduit hydropower development potential are Reclamation states.¹

Current Challenges with Hydro Development on Reclamation Facilities

As noted above, some Western canal systems and other water delivery facilities are owned by Reclamation but are operated and maintained by local entities like irrigation districts and water user organizations. The Alliance was involved with securing the earlier changes to streamline installation of small conduit hydro in P.L. 113-24, which has proven to be a valuable way for districts to produce clean, renewable energy and generate revenue that can be used to improve and modernize their facilities.

While we appreciate this step to further clarify which federal agency has authority to approve hydropower development on Reclamation owned facilities, achieving H.R. 8263’s objective of encouraging non-Federal hydropower development also depends on an efficient project approval by Reclamation and other agencies. Unfortunately, Reclamation’s process for Lease of Power Privilege (LOPP) agreements, compliance with environmental and historic preservation laws, and other federal requirements have resulted in a lengthy, complicated, and expensive approval process that sometimes serves as a disincentive for valuable projects. Depending on the specific

¹ <https://www.ornl.gov/project/assessing-us-conduit-hydropower-potential>

circumstances, the time, cost and uncertainty of the existing requirements can negate the economics of a project altogether.

A transparent and effective Reclamation LOPP process is central to facilitating greater hydro development. Ultimately, directing more projects to Reclamation rather than FERC for authorization is only helpful if the LOPP program is functioning well. Alliance members have identified a number of concerns with the process that need to be improved to streamline required approvals. First and foremost, the timelines embedded in the LOPP often seem to be treated as targets rather than maximums, resulting in a lengthy - and at points, uncertain - process. This is often manifested in project sponsors initiating LOPP with limited insight into the technical aspects needed for approval, long stretches with no or limited feedback on applications or proposals, and delayed responses requesting additional or different information. We certainly understand that Reclamation currently has a heavy workload. It would behoove Reclamation and its customers to work together to establish a more transparent and predictable process, which would allow project sponsors to more readily produce the details required to make decisions.

The overall cost of securing a LOPP is another concern. For some large projects, we have heard that completing a LOPP could cost up to \$10 million. Smaller projects also face uncertainty about the cost they will face for reviews and engaging Reclamation staff, with the knowledge that even modest expenses can jeopardize the economics of marginal projects.

We also believe that the LOPP would be greatly improved by developing an alternative track for approval of small projects that: 1) are being installed as part of a broader improvement or rehabilitation project; or 2) do not require modifications to facilities. Developing a “plug and play” process that allows these types of simple projects to be quickly reviewed and approved (especially when they are being requested by the transferred works operating entity) would encourage more energy development and relieve pressure on Reclamation staff reviewing LOPP requests.

Environmental and historical preservation reviews occasioned by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) are universally time-consuming and expensive and can create challenges for hydropower development. Even “just an Environmental Assessment (EA)” requires considerable time and expense, and more often than not the facilities being modified are over 50 years old and require review and mitigation despite the operational improvements being achieved. Right now, COID is in year three of the NEPA process for a set of canal piping and hydro projects and has at least one year left to complete. The additional time has added \$1,000,000 in costs to the process, for a total of \$2,100,000 to complete.

The White House Council on Environmental Quality (CEQ) on May 1 issued its Final Rule implementing Phase 2 of significant revisions to NEPA regulations. The Final Rule implements significant changes that require agencies to identify an environmentally preferable alternative and undertake additional consideration of climate change and environmental justice in environmental analyses. Given the significant changes to the NEPA process in the Final Rule, it is likely that these changes will further complicate an already daunting NEPA environmental review process by

opening new pathways for litigation and requiring courts to interpret the changes before providing regulatory certainty.

Because the irrigation cycle only allows for many of these projects to be constructed during the off-season, even slight delays in the LOPP, environmental or historic preservation reviews can delay projects a whole year. It is important that federal agencies keep these constraints in mind on all infrastructure programs.

Lastly, we feel it is important to note that uncertainties in the power market can also be another challenge for efforts to expand hydropower generation from water facilities. Many water users that invested in conduit or small hydropower early on are beginning to reach the end of initial power sales contracts. For a variety of reasons, we are frequently seeing contract renewal negotiations that offer significantly lower power rates. In some cases, the rates are below what would be required to cover operation and maintenance of the facilities. This experience can create challenges with continued operation of the existing small hydropower generation, and also complicate efforts to justify further investment in certain types of hydro facilities.

Initial Overview and Reaction to H.R. 8263

We first saw the final text of H.R. 8263 earlier this month, when it was initially introduced. Overall, we support the intent of this bill, which seeks to expand the concept of legislation the Family Farm Alliance helped advance in the 113th Congress. That bill – H.R. 678 - overwhelmingly passed the House and Senate and was signed into law by President Obama in August 2013 as P.L. 113-24. That law, enacted via H.R. 678, provided authorization for small hydropower installation on Reclamation canals and conduits. It also streamlined burdensome and unnecessary federal regulations and rules encountered by many irrigation water districts and electric utilities that seek to develop hydropower on Reclamation infrastructure. Rep. Boebert's current bill intends to expand these provisions to diversion dams and other facilities.

We thank Rep. Boebert and this subcommittee for inviting our input and addressing our concerns. The bill represents another important step towards facilitating the development of clean, renewable energy on Reclamation projects. With that philosophy in mind, we offer the following observations on the bill.

H.R. 8263 seeks to address many of the challenges faced by Reclamation-facility water managers by authorizing development of hydropower using all Reclamation facilities. This authorization makes clear that Reclamation would oversee hydropower development at those facilities. The bill would also authorize Reclamation to apply its categorical exclusion (CE) process under NEPA to applicable hydropower development, with the notable exception of transmission siting. It would also designate the Power Resources Office in Reclamation's Denver headquarters as the lead office for hydropower development. This provision intends to set up a centralized location for uniformity purposes yet does not prohibit area offices from implementing specific hydropower development.

We support provisions in existing law that require Reclamation to offer the LOPP first to the entity/entities operating and maintaining the facility (“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.

H.R. 8263 extends two important protections in the underlying law to the expanded universe of Reclamation facilities authorized by the bill, including re-affirming hydropower development as secondary to water supply and delivery purposes and ensuring that there will be no financial and operational impacts to existing water users.

The Alliance is still receiving input from its members on H.R. 8263 and may have a few technical detail concerns that we would like to continue to discuss and resolve with Rep. Boebert and Subcommittee staff. We appreciate the bill retaining the existing safeguards for project operators and beneficiaries provided in the law. However, we will continue to seek feedback from our members, Reclamation, and other stakeholders to ensure we understand any additional consideration that potentially may need to be addressed under the expanded jurisdiction created by H.R. 8263. We appreciate the conversations to date and understanding that water operations must be protected as we expand hydro development. We look forward to working with the sponsor and subcommittee on this specific issue.

In addition, we would like to work with the Subcommittee to address concerns that the amendments to foundational Reclamation law could unintentionally impact certain existing hydropower projects and power users. Recent case law and unique aspects of various Reclamation projects require some small changes to the bill that we would like to work through with the bill sponsor and this Subcommittee.

We support the intent of H.R. 8263, and we hope that these additional recommendations are considered in the constructive manner in which they are offered. We are confident this Subcommittee 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. 8263. This legislation is very important to the many beneficiaries of the federal projects within the Deschutes Basin Board of Control and throughout the arid West. I respectfully urge the Subcommittee’s favorable consideration of H.R. 8263.

I stand ready to answer any questions you may have regarding my testimony.