

Testimony of Larry Todd

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Mr. Chairman and Members of the Subcommittee, I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. It is a pleasure to appear before you today to discuss how the Bureau of Reclamation is securing its water and power infrastructure.

Reclamation's Security Program was originally formed in response to the 1995 bombing of the Alfred P. Murrah building in Oklahoma City. Reclamation initiated the program to protect the public, its employees, and the assets required to support Reclamation's mission. Reclamation facilities provide resources that serve the American society and economy. The crippling of these facilities could cause significant destruction with tremendous consequences related to the delivery of water, generation of power, the provision of flood control, and environmental benefits. The seriousness of these responsibilities is clear to Reclamation as we continue to maintain the security posture necessary to deal with potential criminal threats to Federal dams, powerplants, and water supplies.

Reclamation Security Costs Prior to September 11th

Historically, Reclamation employed law enforcement personnel at Hoover Dam and guards at other facilities. These costs were treated as reimbursable project Operation and Maintenance (O&M) expenses. After the 1995 Oklahoma bombing, Reclamation began a Site Security Program and for 3 years (1997 through 1999) funded the start-up program at \$5 million each year. These funds were considered non-reimbursable. In 2000 and 2001, after the Site Security Program had been sufficiently established and certain initial physical security measures had been implemented, funding for the program continued at approximately \$2 million per year. These non-reimbursable funds provided a very basic physical security program. Costs for law enforcement personnel and guards continued to be treated as reimbursable project Operation and Maintenance (O&M) expenses.

Reclamation Response to September 11th

Following the terrorist attacks of September 11, 2001, addressing vulnerabilities to terrorism and other criminal activity became a higher priority. Although Reclamation had a security program at that time, guards and patrols were immediately increased at Reclamation's five National Critical Infrastructure facilities (Hoover, Shasta, Grand Coulee, Glen Canyon and Folsom Dams and Powerplants) as well as at other crucial facilities. The events of September 11th caused Reclamation to review the policies and activities of the security program due to the need for dramatically increased security measures. This review and analysis was not unique to Reclamation, of course. All across government and throughout society, life has changed and we are investing in security measures in order to protect life and property.

In an October 12, 2001 memorandum, then-Commissioner John Keys took additional steps to expand Reclamation's security program, including designation of a Reclamation Security Coordinator to lead a comprehensive plan to reevaluate the entire program, and establishment of an executive Steering Committee to provide support to the Security Coordinator. Additionally, the Commissioner outlined a number of initiatives to enhance Reclamation's security posture and ordered an independent review of the security program and facility security by experts from the Sandia National Laboratories and the Interagency Forum for Infrastructure Protection. The result of this review was the "Top-Down Security Program Review" which has served as a road map for implementing long-term policies and strategies that provide a dramatically heightened level of security at Reclamation facilities.

Increased Guard and Patrol Costs Initially Non-reimbursable

The emergency appropriations provided by the Congress (P.L. 107-117) as an immediate response to the September 11th attacks did not address the question of whether that funding should be considered reimbursable by project beneficiaries. The initial view from Reclamation, first outlined in the October 12, 2001 memorandum, was that these emergency measures aimed at the physical fortification of facilities should not be considered normal O&M expenditures. At the time, Reclamation did not know the extent of emergency and security measures that would be required and believed that initial costs to acquire the knowledge and establish protection should be treated as non-reimbursable. Reclamation also issued an interim policy that these costs should be considered non-reimbursable until further notice.

Part of the rationale for the initial determination to make guard and patrol cost increases non-reimbursable was that it would have been a significant hardship for the project beneficiaries to bear the entire burden of the urgent, dramatic, and unplanned cost escalation. Therefore, while pre-September 11th levels of security expenditures continued to be reimbursable, post-September 11th security cost increases were treated as non-reimbursable through FY 2005.

Reclamation Discretion Concerning Determination of O&M Costs

The Reclamation Project Act of 1939 establishes the Secretary of the Interior's authority to exercise judgment in establishing rates that will cover an appropriate share of annual O&M costs. In its May 2000 audit of O&M cost allocations, the General Accounting Office recognized this authority by stating "... the Bureau has broad discretion in defining which of the activities it undertakes constitute O&M that can be charged to customers." Costs that are considered to be project O&M are allocated to authorized purposes in accordance with original project cost allocations and existing contracts. This process establishes the portion of O&M funding that is reimbursable by project beneficiaries, and the portion borne by the United States. Reclamation has a long-standing practice of treating annual costs to care for the facility as project O&M reimbursable costs.

Movement Toward Reimbursement of Post-September 11th Guard and Patrol Cost Increases

The security guard and patrol program has now moved from a period of dramatic escalation to a course of sustained effort and stability, and project beneficiaries have had several years to adjust their expectations, as well as their budgets and planning, to current guard and patrol levels. During this time, Reclamation has also had an opportunity to track and quantify these costs.

Reclamation's FY 2005 budget request was based on our conclusion that the \$20.9 million in post-September 11th guard and patrol costs increases should be considered project O&M expenses and allocated among all project purposes, some of which would be reimbursable. However, in its FY 2005 appropriations report language, the Congress stated that Reclamation should not initiate the collection of those costs, and that Reclamation should provide a report to the Congress concerning the reimbursement of security guard and patrol costs on Reclamation facilities.

Reclamation's FY 2006 budget request again proposed reimbursable guard and patrol costs. For FY 2006, Congress responded by providing for the reimbursement of \$10 million out of the \$20.9 million in post-September 11th guard and patrol costs, and again asked Reclamation to provide additional information on that subject. In FY 2007, Reclamation's budget request proposes to treat approximately \$18.9 of the \$20.9 million post-September 11th guard and patrol cost as project O&M subject to allocation and reimbursement from project beneficiaries. The \$2 million in security guard and patrol costs for which Reclamation does not propose to seek reimbursement represent expenses incurred for the security of project functions related to flood control, fish and wildlife, recreation, or other non-reimbursable project functions. While the Senate has not yet taken action on the FY 2007 Energy and Water Development Appropriations Act, the House version supports the Reclamation proposal regarding reimbursement of security guard and patrol costs based on project cost allocations.

We believe it is fair and reasonable for the costs of guards and patrols to be allocated to the beneficiaries of the projects being protected.

Reports to the Congress

At the request of Congress, Reclamation provided reports in May 2005 and March 2006 concerning the reimbursement of security guard and patrol costs on Reclamation facilities. The March 2006 report was modified to provide information requested by Representatives Richard W. Pombo and John T. Doolittle in their letter of December 13, 2005 to then-Commissioner Keys. We believe these reports thoroughly addressed Reclamation's plan to make most FY 2006 security guard and patrol costs reimbursable, and the reports have been shared widely with water users, power users, and other concerned parties.

Outreach

Reclamation has made a thorough effort to communicate with water and power user entities to explain the reimbursability of certain security guard and patrol costs. These efforts include numerous presentations to water and power stakeholder organizations during the fall of 2005 and early 2006. Briefings and discussions were held with representatives of the National Water Resources Association and Family Farm Alliance in December 2005, as well as with representatives of the Sacramento Municipal Utility District and the Central Valley Project Water Association in March 2006. Meetings were also held with the Colorado River Energy Distributors Association, including most recently in May 2006. Reclamation regional and area offices have also provided information as requested to water and power users on this subject.

Transparency

Transparency is one of the key elements in assuring Reclamation project water and power users that the reimbursable costs of project O&M are reasonable and not excessive. However, under Reclamation policy, much of the data on security-related activities falls into the category of "For Official Use Only" (FOUO) information and is only available on a need-to-know basis. At the same time, Reclamation understands water and power users' need for accountability with respect to O&M expenditures. Therefore, we have communicated to water and power user organizations our willingness to provide an appropriate level of detail concerning security-related expenditures consistent with our security and policies.

In order to have access to such information, water and power user organization representatives may need to consent to protect the FOUO information via non-disclosure agreements. If the appropriate clearances are obtained, they may also be permitted to review relevant classified information.

Accountability

Reclamation has utilized the security funds provided by the Congress for the activities identified by formal security evaluations. Audits on two occasions by the Office of the Inspector General have confirmed Reclamation's appropriate use of security-related funding.

The way our government functions and indeed the way our society functions was changed on September 11, 2001. Responding to legitimate public concern about the security of critical Federal infrastructure, we have devoted significant human and financial resources to improve our security posture at thousands of facilities.

Increased investment in comprehensive security measures to protect Reclamation's assets will continue to be a normal part of the way we operate in the future.

Moving forward, Reclamation will work with the Congress regarding security cost allocations, and how to maintain coherent, consistent policies affecting our customers. Reclamation is committed to working with stakeholders and this subcommittee on additional suggestions in this area.

Mr. Chairman, thank you for the opportunity to present testimony today. I am pleased to answer any questions.