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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”

September 14, 2011

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

Thank you for the opportunity to present testimony today.

My name is Chris Treese, and I represent the Colorado River Water Conservation District (River District) and the Family Farm Alliance (Alliance), of which my district is a long-time member.

I am testifying today in support of the “Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011” (H.R. 2842). This bill seeks to streamline burdensome and unnecessary federal regulations and rules encountered by many irrigation/water districts and electric utilities that seek to develop hydropower on Bureau of Reclamation (Reclamation) owned water canals and pipelines. And perhaps more importantly, it streamlines the process for entities that have rejected hydropower because of the time, resources, and risks associated just with the current permitting process. Earlier this year, the Alliance formally supported H.R. 795 (Adrian Smith/Costa), which similarly provides regulatory reform for non-federal conduits hydropower generation.

Organizational 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 of all or parts of 15 Western Colorado counties - approximately 29,000 square miles - roughly 28% of the land area of Colorado.

The Family Farm Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers.

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

Many Western water users operate existing irrigation canals and ditch systems that may provide opportunities to develop in-canal, low-head hydroelectric projects that have 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 can result in lower water delivery system operating, maintenance, and rehabilitation costs to farmers. And importantly, irrigation water delivery services can continue while utilizing flows for clean, emissions-free “green” energy production.

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 the agency’s facilities.

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

- Some Western irrigation districts operate and maintain Reclamation canals where the debt has been fully paid by the operating district. Even if a local district determines that it will pay 100% of a proposed conduit hydropower project, it is not clear currently how revenues from these projects would be shared between the district and Reclamation, including the need and expense for a “lease” of power privilege issued by Reclamation.
- “Environmental reviews under NEPA are universally time-consuming and expensive. Even “just an Environmental Assessment” will require considerable time and expense. The River District’s current experience with an EA on a non-construction action has taken over a year and nearly \$1 million in outside expenses (not including substantial “unbillable” district time and expense.)
- The margins on small hydro are very small. Districts need to be able to make timely investment decisions without the prospect of environmental reviews of undetermined length and expense. Additionally, western water districts share the nation’s desire to make investments that can put people to work immediately. Environmental reviews of small hydro on existing conduits represent an unnecessary and often chilling uncertainty for an economically marginal investment.
- Finally, local water managers continue to have concerns about time delays and recent examples of receiving conflicting information from Reclamation on

development of hydropower on conduits. With that said, I want to stress that many of our members have found Reclamation employees genuinely interested in helping to get low-head hydropower systems off the ground and enthusiastic about developing this type of renewable energy.

Solutions Offered by H.R. 2842

H.R. 2842 seeks to address the challenges noted above 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 under the National Environmental Policy Act (NEPA), with the exception of transmission siting on federal land.
- 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, which should also reduce concerns about potential environmental impacts, because water delivery, as a primary purpose, will continue as it has historically.

We support H.R. 2842 and believe it will reduce costs to foster more conduit hydropower at federal facilities and empower irrigation districts involved in the operation and maintenance of these Reclamation canals to develop this generation. We further believe it will clarify issues of federal authority on these projects, which will improve and streamline the decision-making processes.

Recommendations

The River District and Alliance members have closely tracked the development of this bill over the past several months. We thank Mr. Tipton and others for inviting our input and addressing our concerns. We are pleased to see that it even reflects some of the testimony provided by our members on similar legislation earlier in this Congress. Like most legislation, however, it is not everything that everyone wants. It does represent a giant first step towards facilitating the development of clean, renewable energy on Reclamation projects. With that philosophy in mind, we recommend some further constructive thoughts on the bill.

- H.R. 2842 affirms 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”). This is encouraging, but we are concerned about how these provisions will mesh with ongoing administrative efforts by Reclamation to develop a policy that will set forth a process for making determinations on lease of power privilege. Reclamation has been considering changes to its Lease of Power Privilege process for some time, but it is time for the agency to publish specifics to understand how it intends to carry out this process. We understand that this process will determine how much to charge on Lease of Power Privilege as it relates specifically to different Reclamation facilities, including conduits. Some of these unanswered questions will need to be addressed in the legislative process, and our organization looks forward to working with you towards that end.
- Some of our members are also concerned that recent federal policies encouraging the development of new hydropower facilities in existing irrigation canal systems have attracted outside developers who sometimes do not share the same management objectives as irrigation districts. This can result in a situation where outside entities develop power facilities on water delivery systems that irrigation districts are responsible to operate and maintain. It can be very difficult to make arrangements like this work. Importantly, H.R. 2842 seeks to protect water users by specifically re-affirming hydropower development as secondary to water supply and delivery purposes and ensures that there will be no financial or 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. Of course, the Bureau of Reclamation’s adherence to these values will be critical to the actual execution of these provisions of H.R. 2842 on the ground. We believe Reclamation should consult with the districts affected at all times before, during, and after the lease, development, and operation of these conduit hydropower projects commence.
- On the opposite end of the spectrum from the point just raised, some of our members have concerns that the bill may negatively impact a lead private entity from working with an irrigation district on a small conduit hydropower project. The Family Farm Alliance believes that the first right-of-refusal provisions could give local districts considerable leverage to either develop these projects on its own or in partnership with a private entity that may have the capital and unique expertise. Again, without the details on yet to be determined Reclamation policies establishing how the lease of power privilege would be first offered to districts, we cannot determine whether or not such arrangements would be workable, let

alone viable, in developing these conduit hydro projects. We look forward to working collaboratively with Reclamation to institutionalize workable procedures.

- 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. Time should be allowed for that process to occur before the local district is required to reject or accept a Lease of Power Privilege offer. Again, without the details of yet-to-be-determined Reclamation policies establishing how the lease of power privilege would be first offered to districts, we cannot determine whether or not such arrangements would be workable, let alone viable, in developing these conduit hydro projects.

Again, the organizations I represent strongly support H.R. 2842, 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 for this opportunity to testify in favor of H.R. 2842. This legislation is very important to the family farmers and ranchers of our membership and to the beneficiaries of the federal projects within the Colorado River District. We greatly appreciate the cooperation of your Subcommittee staff, who solicited our input as this bill was being conceptualized and drafted. I respectfully urge the Subcommittee’s favorable consideration of H.R. 2842.

I would be happy to answer any questions you may have about this testimony.