

Written Statement of G. Keith Denos, General Manager

Provo River Water Users Association

House Natural Resources Committee

Subcommittee on Water and Power

United States Senate

Hearing on H.R. 255 - Clarifications to the Provo River Project Transfer Act

May 23, 2013

Chairman McClintock, Ranking Member Napolitano and Members of the Subcommittee, I appreciate the opportunity to testify in support of H.R. 255, an amendment to the Provo River Project Transfer Act of 2004 (Transfer Act) authorizing the Secretary of the Interior to convey the recently enclosed Provo Reservoir Canal to the Provo River Water Users Association (Association). We are grateful for your consideration and the leadership of Congressman Chaffetz in expeditiously helping resolve outstanding issues that are preventing title transfer.

The Association is the local sponsor of the Deer Creek Division of the Bureau of Reclamation's Provo River Project. The Association is a Utah nonprofit corporation organized in 1935 for the purpose of providing a supplemental water supply from the Provo River Project to its shareholders, comprised of metropolitan water districts, cities, a conservation district, and mutual water companies and irrigation companies.

A principal feature of the Provo River Project is the Provo Reservoir Canal (canal), which extends 21 miles from the mouth of Provo Canyon to Salt Lake County. For many years, the canal meandered through pastures and orchards. By the late 1990s, suburban development had surrounded it. Enclosing the canal into a pipeline offered significant potential new benefits in terms of public safety, water conservation, water quality, in stream flows and recreation.

In anticipation of the enclosure of the canal (Project), the Association concluded that owning the canal and associated project features would be beneficial for many reasons, including the facilitation of financing for the Project. For this and other reasons consistent with Reclamation's policy regarding title transfer, the transfer of title in the canal to the Association was authorized by Congress with the passage of the Transfer Act in 2004 [Public Law 108-382].

While ownership of the enclosed canal in fact proved crucial to obtaining partial state financing for the Project, a number of factors combined to delay title transfer until after completion of the Project. The Project has proceeded as envisioned, with Reclamation's support, but without Reclamation funding. We recently celebrated the completion of construction of the Project on April 5th with a ribbon cutting ceremony conducted by Senator Orrin Hatch.

As you can imagine, the Association was extremely surprised and unhappy to learn of Reclamation's position that the Transfer Act of 2004 did not authorize title transfer of the now enclosed canal. – This interpretation of the Act was communicated to the Association after substantial completion of the Project. The Transfer Act calls for transfer of the Provo Reservoir Canal, which is defined in the Act as the canal and associated land and facilities "acquired, constructed, or improved by the United States as part of the Provo River Project, Deer Creek Division . . . as in existence on the date of enactment of this Act" [October 30, 2004]. The Regional Solicitor for the United States Department of Interior has advised Reclamation that completion of the Project prior to title transfer negates Congress' authority and directive to transfer the canal to the Association, as set forth in the Transfer Act, because the newly enclosed pipeline itself was not "in existence" in 2004.

While the Association strongly disagrees with the Solicitor's analysis, we do not consider it profitable to continue debating Congress' intent with respect to title transfer. We are confident that Congress, with the continued support and assistance of the Bureau of Reclamation Commissioner and the Department of the Interior, will move very quickly with passage of H.R. 255 to amend the Transfer Act to resolve the dispute.

We look forward to working with Reclamation and our other partners to complete the transfer of title to the canal and all associated facilities as was contemplated in the Transfer Act.

We are grateful for the leadership and assistance of Congressman Jason Chaffetz and the Utah Congressional Delegation as well as the House Natural Resources Committee in expediting consideration of H.R. 255.