

**Statement of Robert Quint, Senior Advisor
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Before the

**Water and Power Subcommittee
Committee on Natural Resources
U.S. House of Representatives**

**HR 1963 the Bureau of Reclamation Conduit Hydropower Development Equity
and Jobs Act**

May 23, 2013

Chairman McClintock, members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 1963, the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act. The Department, with some technical amendments summarized in this statement, supports HR 1963, which amends the Water Conservation and Utilization Act (16 U.S.C. §§ 590y et seq.) to authorize the development of non-federal hydropower and issuance of leases of power privileges at projects constructed pursuant to the authority of the Water Conservation and Utilization Act (WCUA). In general, the Department supports the increase in the generation of clean, renewable hydroelectric power in existing canals and conduits. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities. My testimony today will summarize the Department's efforts to encourage the development of sustainable hydropower, provide an overview of the history of WCUA, and detail the areas in the bill where we believe improvements could be made.

Department's Hydropower Efforts

Before I share the Department's views on HR 1963, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. In March 2011, the Department of the Interior and Department of Energy announced nearly \$17 million in funding over three years for research and development projects to advance hydropower technology. The funding included ten projects for a total of \$7.3 million to research, develop, and test low-head, small hydropower technologies that can be deployed at existing non-powered dams or constructed waterways. The funding will further the Administration's goal of meeting 80 percent of our electricity needs from clean energy sources by 2035.

In March 2010 the Department entered into a Hydropower Memorandum of Understanding (MOU)¹ with the Department of Energy, and the Army Corps of Engineers to study and promote opportunities to develop additional hydropower. In March 2011, the Department released the results of an internal study, the Hydropower Resource Assessment at Existing Reclamation Facilities, that estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. While this first phase, completed in 2011, focused primarily on Reclamation dams, the second phase focused on constructed Reclamation waterways such as canals and conduits. In March 2012, Reclamation completed the second phase of its investigation of hydropower development, Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits, as referenced in the 2010 MOU. The two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing Reclamation sites.

Reclamation worked diligently with our stakeholders and the hydropower industry to improve our lease of power privilege (LOPP) processes, and this collaboration culminated in the release of an updated and improved LOPP directive and standard in September 2012. These new procedures better define roles, timelines and responsibilities that will allow us to better support and encourage sustainable hydropower development at Reclamation facilities.

Overview of History of WCUA

The WCUA was enacted on August 11, 1939 (amended October 14, 1940) to provide assistance to people hard hit by drought in the Dust Bowl and other similar arid and semiarid areas of the United States through the construction and development of irrigation projects. WCUA leveraged the considerable labor available by the Work Project Administration and other federal agencies during the New Deal, which absent congressional authorization, were precluded from using appropriations for many of the requisite needs of irrigation projects. For example, the Work Project Administration and other federal agencies did not have the authority to purchase water rights, rights-of-way, heavy machinery, and the services required to design and construct engineering features, prepare legal documents, and administer projects. WCUA resolved this issue by authorizing the Bureau of Reclamation to use appropriations to purchase rights-of-way, equipment and supplies, and for the payment of competent supervisory, technical, legal and administrative assistance, while the Work Project Administration and other federal agencies funded the costs of mechanics and laborers. Under WCUA, the Bureau of Reclamation retained the responsibility for the construction and administration of these projects. The Bureau of

¹ <http://www.usbr.gov/power/SignedHydropowerMOU.pdf>, 2010

Reclamation has been authorized to construct 11 projects and three separate units under the WCUA².

Reclamation is authorized to issue LOPP contracts on projects that were authorized under Reclamation law pursuant to Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c). However, WCUA projects were not authorized pursuant to Reclamation law and the provisions of WCUA are only subject to Reclamation law where explicitly identified in the WCUA. The LOPP authority granted in Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c) does not apply to WCUA projects since it is not identified in the WCUA, and therefore WCUA projects are not authorized to develop non-federal hydropower absent congressional action. The Mancos Project in southwestern Colorado is such a case where Congress authorized the non-federal development of hydropower on a feature of a WCUA project through project specific legislation (P.L. 103-434).

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Section 2(b) of HR 1963 would specifically authorize Reclamation to develop or enter into LOPP contracts for the development of new hydropower on projects and facilities authorized by WCUA, consistent with the Reclamation Project Act of 1939 and other Federal reclamation laws. In accordance with Federal reclamation law³, typically LOPP charges paid by Lessees are deposited in the Reclamation Fund as a credit to the affected project. However, WCUA projects were not funded by the Reclamation Fund, but rather the General Fund of the Treasury. To this point, the WCUA states that all receipts from WCUA project operations – including power - are to be covered into the Treasury, rather than the Reclamation Fund, to the credit of miscellaneous receipts. Therefore, if the intention of HR 1963 is for WCUA LOPP charges to credit the affected WCUA project, additional clarification is necessary in HR 1963 detailing where the

² WCUA Projects: Mancos Project, Colorado; Buford-Trenton Project (North Dakota); Buffalo Rapids Project, Montana; Scofield Project, Utah; Intake Project, Montana; Mirage Flats Project, Nebraska; Missoula Valley Project, Montana; Mann Creek Project, Idaho (not eventually constructed under WCUA); Newton Project, Utah; Rapid Valley Project, South Dakota; Balmorhea Project, Texas. The Eden Project, Wyoming, was originally considered under the WCUA but was constructed under separate authority. In addition, three units were constructed pursuant to WCUA authority. Each unit is part of a Reclamation project that was not altogether authorized by the WCUA. The three units include: Dodson Pumping Unit, Milk River Project, Montana; Post Falls Unit, Rathdrum Prairie Project, Idaho; and the Woodside Unit, Bitterroot Valley Project, Montana.

³ Section 5 of the Town Sites and Power Development Act of 1906, 43 U.S.C. § 522

charges will be covered and how they will be applied to the affected project. The Department looks forward to the opportunity to work with the sponsors to address this issue.

Section 2(c) of HR 1963 would also require that Reclamation offer preference in the award of LOPPs to irrigation districts or water users associations with which Reclamation is either operating a WCUA project or feature pursuant to a formal title transfer contract, or receives water from a WCUA project or feature. This provision is similar to the existing preference irrigation districts and water user associations have for non-WCUA projects and features pursuant to Section 9(c) of the Reclamation Projects Act of 1939 and Reclamation's updated directive and standard referenced above.

In regard to another provision, the Department is concerned that Section 2 would create uncertainty as to the ownership of existing WCUA projects or future improvements, by removing language in the WCUA designating that, "[a]ll right, title, and interest in the facilities provided for such municipal or miscellaneous water supplies or surplus power and the revenues derived therefrom shall be and remain in the United States." While the Department appreciates that this provision most likely aims to ensure that non-federal developers of hydropower on WCUA projects or features can receive revenues from the sale of power, we are concerned about losing the ability to recoup the federal investment made in these facilities if the legislation were to be interpreted such that the Department no longer has "right, title, and interest" to WCUA facilities. The Department looks forward to the opportunity to work with the sponsors to address this issue.

As mentioned above, Section 2(c) requires the Secretary of Interior to "offer" preference in the award of LOPPs to irrigation districts or water users associations with which Reclamation is either operating a WCUA project or feature pursuant to a formal operations and maintenance contract (defined in Section 2 of the bill), or receives water from a WCUA project or feature. The Department recommends striking the term "offer" throughout Section 2(c) and replacing it with "solicit proposals" to better reflect the nature of the process involving soliciting and negotiating LOPP contracts.

Section 2(d) of HR 1963 directs Reclamation to "apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands." The Department recognizes the intent of HR 1963 to encourage the use of the categorical exclusion procedures that are allowed for in its LOPP directives and standards and documented in the Departmental Manual. If enacted, Reclamation would interpret this language as endorsing its current directive and standard to potentially apply categorical exclusions, provided that no extraordinary circumstances exist, pursuant to 40 C.F.R. §1508.4. Under this section, Reclamation does not guarantee that categorical exclusions will apply on

every small hydropower project. Reclamation believes it should preserve its discretion to determine whether a closer review under NEPA is appropriate.

The Department believes that environmental protections should continue to apply in the context of new construction undertaken on federal lands, and will continue to apply NEPA through the use of categorical exclusions or environmental analysis. We understand the value and importance of expedient environmental review and believe development of hydropower within Reclamation's existing conduits and canals can be efficiently analyzed utilizing these existing review processes.

Finally, as part of the President's all-of-the-above energy strategy, the Department is committed to assisting tribes in expanding on Indian lands renewable, low cost, reliable and secure energy supplies. The Department is still analyzing HR 1963 to ascertain any potential impacts on future energy development on Indian reservations, and looks forward to working with the Committee to ensure that HR 1963 does not unintentionally hinder the award of LOPPs to Indian tribes on WCUA projects with a tribal component.

In conclusion, as stated at previous hydropower hearings before this subcommittee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, or recreation. As the nation's second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource.

Thank you for the opportunity to discuss HR 1963. This concludes my written statement, and I am pleased to answer questions at the appropriate time.