

**Statement of James Hess
Chief of Staff
Bureau of Reclamation
before the
House Natural Resources
Subcommittee on Water, Power, and Oceans
on
HR _____, the Reclamation Title Transfer Act
June 8, 2017**

Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee, I am James Hess, Chief of Staff of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on the discussion draft HR_____, the Reclamation Title Transfer Act. The subject of today's hearing is one with which I am very familiar. In addition to my duties as Chief of Staff, I currently serve as Reclamation's title transfer coordinator. From there, I have been involved in nearly all of Reclamation's title transfers, those that have been successful those that were not.

The Department strongly supports the Committee's work to better facilitate the title transfer of Reclamation facilities to non-Federal entities. We appreciate the opportunity to engage in this early stage of the legislative process to share our knowledge and experiences with title transfers. The Department supports the goals of the discussion draft. We are confident that with additional dialogue with the Committee, we can achieve our mutual goal of enacting title transfer legislation.

Background

The discussion draft aims to address the Reclamation law requirement that title to Reclamation projects, lands and facilities remain with the United States until such time as a title transfer is authorized by Congress. For many years, Reclamation and interested non-Federal entities have been working together, along with other federal and state agencies and interested stakeholders, to negotiate the terms and conditions of specific title transfers. Even for simple transfers, this can be a time consuming and costly process. In many cases, otherwise non-complicated candidates for title transfer have not proceeded because of the cost and time it takes to complete the required process and receive congressional approval.

Since 1996, Reclamation has transferred title to thirty (30) projects or parts of projects across the West pursuant to various acts of Congress. These title transfers generally have provided mutual benefits to both Reclamation and the non-federal entities involved. Over time, Reclamation recognized that there were many more entities that might be good candidates to take title, but had not pursued it for various reasons. In an effort to work with non-federal entities who are interested in pursuing title transfers, Reclamation developed a process to facilitate additional title transfers in a consistent and comprehensive way known as the *Framework for the Transfer of*

*Title*¹. This process has allowed interested non-federal entities to work with and through Reclamation to identify and address all of the issues that will enable title transfers to move forward. We have found that this process allows interested parties to address issues up front, before going to Congress to obtain a title transfer authorization. And while we have had some success, we see that the current process still takes too long and discourages some good candidates from coming forward.

Our strong support for the Committee's efforts to enact title transfer legislation is no more evident than in the President's Fiscal Year 2018 budget request, which identifies "Bureau of Reclamation Title Transfer" as a legislative proposal we support. Our support for this concept, as captured by the discussion draft, is grounded in our aim to enable local water managers to make their own decisions to improve water management at the local level, while allowing Reclamation to focus management efforts on projects with a greater federal nexus. The enactment of title transfer legislation would be the culmination of Reclamation's longstanding experience with interested stakeholders. Reclamation believes the goals of the discussion draft are consistent, and compliment the Administration's still developing efforts to enact title transfer legislation.

Views on HR_____, the Reclamation Title Transfer Act

Section 3 of the discussion draft authorizes the Secretary of the Interior to transfer Reclamation project facilities to qualifying State, local or tribal agencies once the Secretary of the Interior has reached a written agreement to convey interests in water to the qualifying entity; reached a written agreement to transfer the facilities, in consultation with existing power customers, with the qualifying entity; and provided written notice to Congress. Section 4 of the discussion draft requires the Secretary of the Interior to establish criteria for determining whether facilities are eligible for title transfer based on six minimum criteria.

Reclamation believes the discussion draft is a positive development in realizing our mutual goal of facilitating additional title transfers of Reclamation facilities. We look forward to working with the Committee to refine the discussion draft, and offer the following recommendations to ensure the discussion draft is an effective and efficient authority for the Secretary. We would like to see a process created that efficiently, fairly and comprehensively addresses the issues and concerns of the stakeholders and contractors who are interested in title transfer.

Reclamation suggests Section 4 of the discussion draft consider explicitly mentioning the following criteria to ensure smooth implementation. Specifically, the authority to reserve an easement over the conveyed property, assurances that the mineral interests under project facilities or lands are managed consistent with federal law and that their extraction would not interfere with the ongoing operations of the project, and that the eligible facility being considered for transfer is not hydrologically critical to the operations of other Federal or non-Federal water projects. We also suggest language to ensure that no interest in water shall be conveyed without a written agreement between the Secretary and the qualifying entity, in lieu of Sec. 3(1), which would require the Secretary to convey all interests in water to a qualifying entity through a

¹ <https://www.usbr.gov/title/>

written agreement before a title transfer occurred, irrespective of whether the qualifying entity was interested in such a conveyance of interests in water.

Further, we need to be certain that the transfer protects the financial interests of the United States in addition to the payment required under Section 4(6). Historically, Reclamation obtained title to lands for Reclamation project purposes either by acquiring said lands from states or private land holders, or through withdrawing federal lands from public use. Acquired lands were purchased and their value was rolled into the repayment contract that has either already been paid or will be paid in this title transfer. In circumstances where Reclamation obtained withdrawn lands, Reclamation received federal lands at no cost. Since these withdrawn lands retain value if converted out of public use, Reclamation recommends the discussion draft be revised to ensure taxpayers are compensated for transferring withdrawn lands to a non-federal entity.

Reclamation notes that, while the discussion draft does not directly reference power generation facilities in the definition of “eligible facility”, the reference to power users in Sections 3(2) and 5(a) suggest facilities with power generation would be eligible for conveyance under the discussion draft. While Reclamation does not object to transferring certain power generation facilities out of Reclamation ownership to eligible entities, the existence of hydropower on Reclamation facilities raises additional complexities that need to be addressed by legislation, including issues related to FERC licensing and federal power marketing by the Power Marketing Administrations. For example, the transfer of Reclamation owned and operated hydropower facilities to a non-federal entity would require the non-federal entity to obtain a FERC license to continue operation of the hydropower facilities. This would likely add additional costs and burdens to the non-federal entity in that they would be required to both apply for the FERC license, an extensive process, and then once the FERC license is issued, to adhere to any operational conditions associated with that license. Historically, because of this complexity, Reclamation has not transferred any facilities that have included power generation facilities. Reclamation, as well as other bureaus within the Department, look forward to working with the Committee on how to address this issue.

Section 5(b) requires the Secretary of the Interior to apply a categorical exclusion process under NEPA on facilities eligible for transfer under the discussion draft. As there currently is no categorical exclusion that applies to these title transfers, Reclamation believes that the development of a categorical exclusion – depending upon its structure and content and subject to approval by the Council on Environmental Quality – would be a logical and helpful tool. We would like to work with the Committee to clarify and define the conditions and requirements that ought to be included in the categorical exclusion that would be developed as a result of this provision.

Reclamation also recommends language to ensure that Reclamation law shall continue to be applicable to project water provided to the entity to which the property is transferred, especially in circumstances where only a portion of a project is being transferred. This is important to ensure the transfer does not have an adverse impact on other project beneficiaries.

Reclamation strongly supports expanding the number of projects and facilities that are transferred out of Federal ownership and we believe that the process for making this happen is key to our success. We have found that we are most successful when the process is collaborative, open and inclusive – so that all the stakeholders with an interest in the operations of the facilities have an opportunity to have their concerns and views heard. We believe the concept envisioned in this discussion draft, as long as it is inclusive and collaborative will improve the process, which will encourage more entities to pursue title transfer.

In conclusion, we welcome the opportunity the discussion draft provides Reclamation to work with this Committee to streamline and expedite the approval of the title transfers of Reclamation facilities, and achieve our mutual goal of ensuring title transfers are beneficial to all parties.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.