Subcommittee on Water, Power and Oceans
Doug Lamborn, Chairman
Hearing Memorandum

February 9, 2018

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff, Subcommittee on Water, Power and Oceans (x5-8331)

Subject: **Oversight Hearing on** *"The State of the Nation's Water and Power Infrastructure"*
February 14, 2018, at 2:00 PM; 1324 Longworth House Office Building

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Policy Overview:

- This hearing will examine policy reforms to foster a water and power 'renaissance,' improve America's aging infrastructure and meet growing demands.

- The hearing will focus on the current, burdensome federal regulatory permitting framework that has stifled the development of new water and power infrastructure throughout the West and impeded the modernization of existing facilities.

- This hearing will include potential solutions on permitting and process reforms in order to promote the development of increased water supplies and power production.

Invited Witnesses *(listed in alphabetical order)***:**

Mr. Daren Bakst
Research Fellow
The Heritage Foundation's Institute for Economic Freedom
Washington, DC

Mr. Charles Freeman
District Manager, Kennewick Irrigation District
Kennewick, Washington

Mr. Jonathan Nelson
Policy Director, Community Water Center
Visalia, California

Mr. Jim Watson
General Manager, Sites Project Authority
Willows, California

Background

Genesis of Western Water and Power

Source: U.S. Bureau of Reclamation

The U.S. Bureau of Reclamation (Reclamation) is the largest water wholesaler in the nation, providing water to 31 million people and helping irrigate 10 million acres of farmland that produce 60% of the nation's vegetables and 25% of its fruits and nuts.[1] Many of Reclamation's projects are multi-purpose in nature, and its reservoirs and dams further generate enough emissions-free electricity to serve at least 3.5 million homes annually.[2] This is accomplished through the operation of 53 hydroelectric power plants that have annually produced, on average, 40 billion kilowatt-hours over the last 10 years.[3]

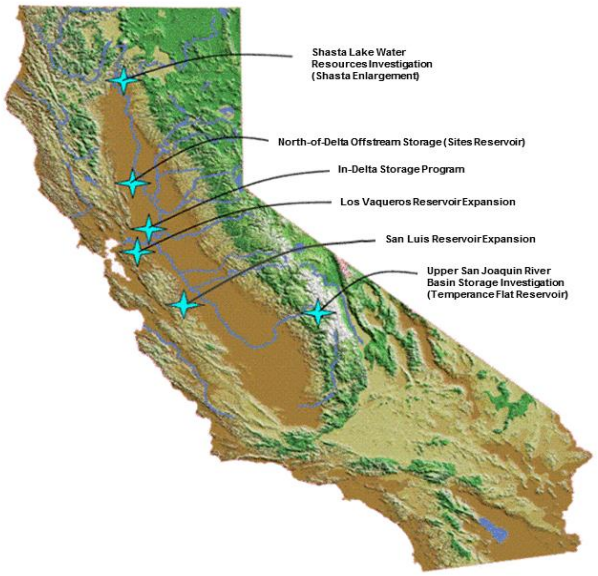
Water stored behind many of these Reclamation facilities provides year-round flows and cold-water fishery habitat. The vast majority of these projects are financed under the "beneficiary pays" principle, which requires users to re-pay the initial federal investment in these facilities through long-term contracts. The Columbia Basin Project in Washington state, the Central Valley Project in California and the Central Arizona Project are just some of the Reclamation's projects that have transformed western regional economies. However, these projects contribute to the approximately 90 percent of Reclamation projects that were built more than 50 years ago.[4]

Impediments to Aging and New Water and Power Infrastructure

Although it is indisputable that surface storage continues to serve a key role in making the West what it is today, the region's water supply is at a crossroads due to a number of factors. Population growth is one such factor. In California alone, the current water system was designed to serve 22 million people, yet the State currently has 39 million residents and is expected to double

[1] http://www.usbr.gov/main/about/fact.html.
[2] Id. note 1
[3] http://www.usbr.gov/main/about/fact.html .
[4] https://www.usbr.gov/newsroom/presskit/factsheet/detail.cfm?recordid=2.

in population by 2050.[5] Calls for new storage in California are at a high level, where record-setting drought coupled with the Endangered Species Act of 1973 (ESA, Public Law 93-205) and other regulations in recent years have diverted water from farms and cities to the ocean.[6] Similar losses are occurring in other basins. Water supplies and hydropower is being curtailed to aid migrating salmon (Pacific Northwest) or lost (Glen Canyon Dam in Arizona) to provide habitat restoration flows for the humpback chub. In addition, some have called for new water storage in light of climate change, which may lead to rain events and rapid snowmelt.[7]



Picture 1: Potential New or Expanded Water Storage Projects in California Source: California Department of Water Resources

With a few exceptions, the construction of new multi-purpose surface water storage has largely stalled in the region. Except for the Animas-La Plata project in southwestern Colorado, Reclamation has not built any large multi-purpose dams and reservoirs over the last generation, due in part to the "paralysis-by-analysis" nature of permitting these facilities, cost and other factors. Federal permitting of such facilities is a major impediment. Many of these permitting issues are the result of the ESA, National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.), and the Clean Water Act (CWA, Public Law 92-500). Due to budget constraints and other factors, non-federal ownership of major surface storage projects is becoming a trend. For example, Reclamation and the California Department of Water Resources (DWR) began studying the North-of-the-Delta Offstream Storage Investigation in 2002 for the proposed Sites Reservoir, a new 1.8 million-acre-foot offstream reservoir in northern California (See Picture 1).[8] At one time, 52 alternative locations for the reservoir were evaluated. This potential project - along with others in the State - continue to be subject to feasibility and environmental studies more than a decade after they were initiated. A witness who is involved with the development of the Sites Project will testify at this hearing.

On August 15, 2017, President Trump signed an Executive Order (Order) on "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for

[5] http://www.water.ca.gov/swp/delta.cfm.
[6] Testimony of Mr. Dan Keppen, before the House Water and Power Subcommittee, Legislative Hearing on H.R. 5412, 113th Congress, p. 2.
[7] *Id.* at 3.
[8] Site Project Executive Summary, p. 5. https://cwc.ca.gov/WISPDocs/Sites_A1%20ExecSum.pdf .

Infrastructure."[9] The Order establishes that it is the policy of the federal Government- among other things- to "conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner in order to give public and private investors' confidence necessary to make funding decisions for new infrastructure projects."[10] The federal regulatory process has become one of the most formidable obstacles in building both federal and non-federal new water storage, and some investors have questioned the viability of new storage projects if they are unable to get permitted in a timely period.[11]

Some have suggested streamlining the current multi-agency permitting process for new or expanded surface storage by creating a "one-stop-shop" permitting process through Reclamation to help facilitate the construction of non-federal facilities.[12] Others have recommended adopting the same streamlined water project development process for Reclamation that was given to the U.S. Army Corps of Engineers in the Water Resources Reform and Development Act of 2014 (Public Law 113-121) for new or expanded surface water storage projects, Title XVI projects, rural water supply, and other water development projects.[13] In addition, some have expressed a need to clarify jurisdictional uncertainty over the development of non-federal hydropower at certain Reclamation facilities.[14]

At a time when many of Reclamation's aging facilities depend on the uncertain federal appropriations process, the transfer of a Reclamation facility to a local irrigation district could allow that district to upgrade or repair the facility by leveraging private financing through ownership. However, some view the current title transfer process as too costly and time-consuming for some water users to pursue.[15] It is because of these and other benefits of title transfers that Reclamation included in its Fiscal Year 2018 budget language reaffirming the agency's commitment to facilitate title transfers when they are mutually beneficial to all parties.[16] A witness currently engaged in the title transfer process will testify at this hearing.

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[9] Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure, August, 15, 2017. https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/ .

[10] Id., at Sec. 2(f)

[11] Testimony of Mr. Dan Keppen, before the House Water and Power Subcommittee Legislative Hearing on, September 10, 2014, p. 3.

[12] Testimony of Mr. Patrick O'Toole before the House Water and Power Subcommittee Legislative Hearing on February, 05, 2014, p. 4

[13] Testimony of Mr. Dan Keppen, before the House Water and Power Subcommittee Legislative Hearing on, September 10, 2014, p. 3.

[14] Submitted testimony of Mr. Tim Culbertson, Secretary-Manager, Columbia Basin Hydropower, to the Subcommittee on Water, Power and Oceans, 115th Congress, Legislative Hearing on H.R. ___, the "Bureau of Reclamation Pumped Storage Hydropower Development Act," April 4, 2017 , p.2.

[15] Testimony of Mr. Jeremy Sorensen, before the House Water, Power and Oceans Subcommittee Oversight Hearing on "Empowering States and Western Water Users Through Regulatory and Administrative Reforms," April 13, 2016, p. 1

[16] Bureau of Reclamation Fiscal Year 2018 Budget in Brief, pg BH-36.