

Statement of Robert Quint
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U.S. Department of the Interior
Before the
Senate Energy and Natural Resources Committee
Subcommittee on Water and Power
S. 2034
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Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation. I am pleased to provide the views of the Department of the Interior on S. 2034, *The Reclamation Title Transfer Act of 2014*. While we support the intent of this proposal, we have not had the opportunity to conduct a thorough analysis of the bill, so we would appreciate the opportunity to work with the Committee to address any technical issues that we may identify. Today, I will share the Bureau of Reclamation's ongoing efforts to facilitate the transfer of title to Reclamation projects and facilities and some examples of technical considerations we have identified already.

S. 2034 would authorize the Secretary of the Interior to establish a program to identify and analyze the potential for public benefits from the transfer of eligible facilities out of Federal ownership. It would also authorize the Secretary to transfer title, without a further Act of Congress, to certain Reclamation facilities out of Federal ownership to qualifying entities that the legislation identifies as having the capacity to "manage the conveyed property for the same purposes that the property has been managed under Reclamation law."

The Department believes that S. 2034 is consistent with efforts that the Bureau of Reclamation currently has underway and meets the goals for improving the effectiveness, timeliness and efficiency of managing water resources facilities in the West.

Mr. Chairman, we see title transfer as an important tool for improving the management of water in the West. In many cases, because of the evolution of water resource management and business in the West, there is no longer a compelling public, national or Federal interest in some of the projects or project facilities that Reclamation owns, but which are operated by the entities that enjoy the benefits and bear the costs of operating those facilities. For these types of projects, title transfer is a win-win. For the water user, taking title would afford greater flexibility in how they carry out project operations and would enable them to avoid certain costs associated with reporting and compliance with Federal requirements. From our perspective, title transfer would allow Reclamation to refocus our limited resources on other high priority activities and relieves us of some liability as the owners of the project.

Background

In 1995, the Bureau of Reclamation began an effort to facilitate the transfer of title to Reclamation projects and facilities in a consistent and comprehensive way. Reclamation developed a process known as the *Framework for the Transfer of Title* - whereby interested non-Federal entities could work with and through Reclamation to identify and address all of the issues that would enable a title transfer to move forward. Once completed, Reclamation and the

entity interested in taking title would work with the Congress to gain the necessary authorization for such a title transfer. As we gained experience, the process has evolved and improved. As we worked through various transfers, some were successful and some were not. Over that time period, we've learned important lessons and have modified the process to improve the efficiency and reduce the associated costs.

Since 1996, the Bureau of Reclamation has transferred title to twenty-seven (27) projects or parts of projects across the West - pursuant to various Acts of Congress. There are some additional transfers that are authorized and awaiting completion. In one case, a district receiving title is completing real estate surveys and preparing the quit claim deeds necessary to record the change of ownership with the county. There are two other authorized transfers where portions of the project were already transferred, but the entities receiving title decided to split the transfers up in order to accomplish other objectives prior to completing the transfer on a portion of the project that still remains in Federal ownership. Further, there is another transfer that is working through completing certain steps and activities which require compliance with various Federal laws including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) as called for by the authorizing legislation.

Since each project is unique, each of the authorizing laws enacted has different terms. Each requires that different actions be taken prior to transfer, such as the completion of the process under NEPA, or agreements with State and local agencies over recreation or cultural resources management.

While Reclamation has had success with title transfer of projects and facilities, we remain concerned that the process takes too long and can be too costly. The number of new proposed transfers is declining, and it may be due in part to time and cost of the process. We believe that there may be several opportunities for mutual benefit that could come from the transfer of projects or facilities that are not being realized, and we see the goals of S. 2034 as helping in that regard.

Comprehensive Review of Reclamation's Title Transfer Efforts: Every few years, Reclamation steps back and reviews our title transfer efforts with an eye toward making the process more effective. In 2003, a Team lead by the Department of the Interior's Office of Policy Analysis undertook a comprehensive review of Reclamation's title transfer effort. The review looked at the process as a whole as well as specific individual transfers that were successfully completed and other transfers that did not move forward. This effort included a survey of Reclamation employees involved in title transfer, a workshop and numerous interviews with water users that both pursued title transfer and those that opted not to pursue title transfer. It also included interviews with stakeholders from states, local governments, the environmental community and congressional staff members who were involved in various legislative efforts related to individual transfers at the time. This effort was followed up by the *Managing for Excellence* Initiative, which was proposed in 2008; and we implemented many changes to make the process more efficient. However, we are still not satisfied that we are maximizing the benefits of title transfer.

At this point, I would like to share a number of important lessons that we learned in these efforts that are still relevant – and I hope these lessons inform the discussion surrounding this legislation.

Each Project is Unique: One of the early lessons that we learned, and that is reinforced with each new title transfer effort, is that each project and set of facilities is unique. Each project was authorized to address a particular set of circumstances, both hydrologic as well as economic. As such, a “cookie cutter” or “one size fits all approach” would not meet the needs of the water users, the customers, other stakeholders or Reclamation. That is not to say that there cannot be a set of criteria developed, but those would need to be flexible. We believe that S. 2034 acknowledges these circumstances.

No Such Thing As a “Simple Project”: Many Reclamation projects may appear to be “simple” title transfers or “simple” projects for title transfer because complex or controversial issues are absent. However, in our experience even the “simple” title transfers had unique complexities that were unknown when we started the process that must be identified and addressed. Certain types of projects tend to have complicating issues, such as older projects, projects with facilities that cover a relatively large geographic area, and particularly projects where significant amounts of land or built up structures exist. Land records associated with older projects may be missing or the quality of the information in existing records may be poor. Projects covering a wide geographical area have a large volume of land records which must be located, assembled, and reviewed.

Develop Local Agreements Prior to the Legislative Process: While Reclamation’s title transfer process has evolved, we believe that one central tenet of the process continues to hold true. Since each project is unique and has its own potentially complex circumstances, the analysis of the implications of that transfer should be completed and an agreement should be reached on the terms and conditions before seeking authorization of the transfer of projects and facilities. Further, we have had the most success when that analysis has been completed collaboratively with the relevant customers and stakeholders and those agreements were developed at the local level. This has led to innovative solutions that allowed the proposal to move forward.

Early on in the title transfer effort, some districts opted not to go through Reclamation’s locally negotiated process. Instead, they immediately approached their congressional representatives in hopes of getting legislation passed and the facilities transferred quickly. In most cases, this proved to be a slower route than those that went through Reclamation’s cooperative process. In many of these cases, there were issues or controversies related to the facilities that were not addressed at the local level between customers and stakeholders of the facilities. Instead, they were being negotiated through the legislative process. In some situations, where legislation was authorized prior to the analysis being completed, circumstances or problems were identified that required a second or third legislative proposal and Congressional action to address, thereby delaying the ultimate transfer even further.

In many recent cases – particularly those that have been successful – we have seen water districts and interested non-Federal entities work with Reclamation to complete all the necessary analysis and public involvement, and then reach an agreement prior to pursuing the legislative authorization from Congress. This has made the legislative process less controversial and has made implementation, once the transfer was authorized, less costly and more efficient. Two excellent examples are the American Falls Reservoir District #2 in Idaho, which was transferred in 2008, and the Yakima Tieton Irrigation District in Washington State, which was transferred in

2009. In both these cases, Reclamation worked closely with the districts, the states involved and other stakeholders to identify issues and concerns and to reach agreements to address them. By working with stakeholders to address issues and build consensus in advance of legislation, the Administration was able to enthusiastically support both bills in testimony before this Committee.

Legislative Process: Another source of delay and cost is the process and time needed to get the legislation authorizing the transfer completed. In some of the cases where we followed the established process – that is, the terms and conditions of the title transfer had been negotiated at the field level and there was consensus among all of the stakeholders – the legislative process still took a long time. In many cases the length of time was longer than the process of negotiating the title transfer agreement and completing compliance with the Federal and state laws, such as NEPA. In some cases, this process has taken 4 - 6 years or more and resulted in significant costs to the water users for advocating for their title transfer legislation. This delay and the costs associated with advocating for legislation has acted as a disincentive for the pursuit of title transfer.

Administrative and Transaction Costs: Because the Bureau of Reclamation does not currently have a title transfer program, costs to complete the process – including investigating financial, operational and economic issues and complying with NEPA and other Federal and State laws – cannot be budgeted or provided by Reclamation but must be paid for with funds being provided by the water users. In some cases, the legislation authorizing title transfer has authorized a reimbursement or offset to the valuation, but by and large, the entity interested in taking title must bear those initial costs without any promise that the process will result in title transfer. As such, many water users who would otherwise be interested in title transfer and whose projects would be a good candidate do not choose to pursue title transfer, thereby losing a mutually beneficial opportunity to transfer facilities out of Federal ownership.

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Section 3(a): The Reclamation Title Transfer Act of 2014 proposes to address many of the issues identified above by authorizing the establishment of a program that would enable Reclamation to proactively identify and analyze the potential public benefits from the transfer out of federal ownership. Assuming funds are appropriated, this program would help avoid the uncertainties and conflicts that arise when determining how the transaction and administrative costs will be paid and avoid the water users having to up front all the costs associated with the early activities necessary to determine whether title transfer is an appropriate option. This is an important provision that we believe would improve Reclamation's flexibility for addressing the costs associated with title transfer and would provide an incentive for water users to seriously consider title transfer. . We do believe that water users who would benefit from title transfers should still assume the appropriate costs related to such transfers, but we view this section as consistent with that position in that it would provide additional flexibility for how and when such costs should be addressed.

Section 3(b): This section authorizes the Secretary to convey all right title and interest in any eligible facilities without a further Act of Congress that meet certain eligibility criteria that are identified in Section 5. This provision would enable the Department to save significant amounts

of time, as well as Federal and non-Federal resources, while ensuring that the Federal and public interests are protected.

We believe that the combination of these provisions of S. 2034 would provide incentives for Reclamation and water users to pursue title transfer and more importantly, would remove some of the barriers that currently act as road blocks for moving forward.

We laud and share the goals identified in S. 2034. Transferring title can result in increased efficiencies and other benefits that would be of significant importance to both the project beneficiaries as well as Reclamation. We see this proposal as a step in the right direction. Because of the limited time we've had to review this proposal, I don't have an exhaustive list of recommendations for you. In the near future we hope to identify and offer alternatives for any technical problems in the language of the bill that would otherwise delay implementation. We look forward to working with the Committee in this effort.

That concludes my statement. I would be happy to answer any questions.