

Statement of Jerry Brown, General Manager
Contra Costa Water District
Before the Senate Water and Power Subcommittee
Legislative Hearing on Title Transfer of Bureau of Reclamation project facilities
January 17, 2018

Chairman Flake, Senator King and members of the Subcommittee—my name is Jerry Brown, and I am the General Manager of Contra Costa Water District (CCWD), an urban water agency located in the eastern part of the San Francisco Bay Area region in Northern California. CCWD is the oldest and largest M&I contractor within the Central Valley Project, providing high quality water to approximately 500,000 residents and many large industrial customers. CCWD operates and maintains the Contra Costa Canal System, a unit of the Central Valley Project (CVP), under Agreement with the U.S. Department of Interior, Bureau of Reclamation (Reclamation). The Contra Costa Canal System began construction in 1937 and is an earthen canal, which was constructed and is owned by Reclamation. Although the canal has been maintained, it still poses a safety and flood risk. Unfortunately, we have averaged one drowning per year since the canal was built.

CCWD has repaid Reclamation for costs of construction as set forth in the Long-term Renewal Contract between the United States and CCWD providing for Project Water Service and for Facilities Repayment (Contract No. I75r-3401 A-LTR1 May 10, 2005) (CVP Contract). Article 28.3 of the CVP Contract allows for transfer of title to the Contra Costa Canal System upon repayment of all outstanding capitalized costs of the facilities and upon authorization of Congress. CCWD initiated Title Transfer in the mid 1990's but deferred the effort after completing Reclamation's Title Transfer process and pending resolution of local stakeholder issues involving recreation. Reclamation's process for evaluating suitability for title transfer is lengthy and thorough. Building on what was learned in that effort, CCWD has recently reinitiated efforts to pursue Title Transfer through legislation.

Why Title Transfer Makes Sense for CCWD

CCWD is interested in Title Transfer because we plan to spend a half billion-dollars to replace the canal with a buried pipe. The Contra Costa Canal System conveys nearly all CCWD's water, and we prefer to own the facilities before making that level of investment. Title Transfer will result in lower costs and reduced administrative burden, provide greater flexibility in management of the asset, and will eliminate flood and other safety concerns.

Lower costs and reduced administrative burden are benefits that will also accrue to Reclamation. Currently, work on the Canal System requires varying levels of coordination and documentation with Reclamation for planning, design, project implementation, maintenance, and operation.

CCWD ownership of the Canal System would eliminate much of this duplicative consultation. We find ourselves doing much of the same work Reclamation conducts in its oversight and review responsibilities. Third parties including local cities, Contra Costa County, local and regional agencies, including recreation partners, and utilities working within the Canal System rights-of-way all of whom would also benefit from removing the additional layer of federal review and approval bureaucracy that increases costs and causes schedule delays.

CCWD has been responsible for O&M of the Canal System for almost 50 years and its staff is intimately familiar with the system. We have built the relationships with neighboring agencies, environmental groups and landowners required for effective system operation to meet local needs. Reclamation does not have the system familiarity or local inter-agency relationships. Elimination of Reclamation's coordination and oversight function would not result in any adverse impacts.

As a single purpose facility delivering M&I water, the Contra Costa Canal System is an ideal unit for Title Transfer. Not only does it meet all the criteria set forth by Reclamation in its Framework for the Transfer of Title, but CCWD has a long history of successful operations and maintenance of the Canal System, positive working relationships with federal, State and local regulatory agencies, and strong financial ratings. Title Transfer to CCWD will relieve the United States of any risk of canal failure.

Reforming and Streamlining the Title Transfer Process

Before deferring our previous Title Transfer efforts, CCWD and Reclamation had worked for over two years on the transfer agreement. This included nine public negotiation sessions, environmental review and various special issue considerations including power, contamination at one site, and incomplete land records. During those two years, significant progress was made and the parties were close to being complete with permitting and resolution of the special issues.

Based on our experience, the following recommendations will streamline the Title Transfer process:

- 1) Reclamation must assign an experienced Program Manager with authority to negotiate the Transfer Agreement with access to dedicated staff resources covering multiple disciplines including engineering, real property, environmental planning, cultural resources, public information, and legal.

- 2) Environmental review, including National Environmental Policy Act (NEPA), Endangered Species Act (ESA) and National Historical Preservation Act (NHPA), should leverage all the recent documents prepared for the facilities to be transferred, and permits governing ongoing operations and management of the Canal System. Over the years since the previous Title Transfer effort, CCWD and Reclamation have developed a large library of completed NEPA reviews and other consultations with United States Fish and

Wildlife Service (USFWS) and State Historic Preservation Officer (SHPO) that provide an efficient starting point. Newly required analyses should focus on specific environmental impacts related specifically to a transfer of ownership. An Environmental Assessment/Finding of No Significant Impact was prepared for the previous Title Transfer effort, and by the time the transfer process was deferred, USFWS and SHPO had signed off that additional permits were not required. The significant amount of already completed recent reviews should be fully recognized, and only the new impacts specific to the transfer of title of the assets from Reclamation to CCWD should require additional review.

- 3) Reclamation should be encouraged and authorized to proceed with quitclaiming federal property interests where title documentation is incomplete. A significant amount of time was spent during the previous effort trying to locate missing records with limited success. To re-survey or otherwise develop legal descriptions for all the properties without adequate documentation would be costly, and provide little value. The existing right-of-way has been successfully managed and maintained for over 80 years using the existing land right records and quitclaim of all federal property interests to CCWD is believed to provide a complete transfer of all rights without title conflict. Other title transfer legislation has also followed the quitclaim deed approach.
- 4) Title Transfer Agreements should be allowed to proceed with contingencies for areas of uncertainty. For example, in our earlier transfer work, an identified hazardous waste site was included in the agreement, but actual transfer was contingent on Reclamation completing the cleanup.
- 5) Congress should ensure Reclamation has the resources necessary to process Title Transfers in a timely way, without impacting ongoing work.
- 6) Definitive responsibilities and timelines should be established with accountability to Congress to ensure appropriate priority is given Title Transfer tasks. If authority to approve Title Transfers is delegated to the Secretary, an annual report should be provided to Congress indicating the status of current Title Transfers.

Thank you for this opportunity to testify on this topic of importance to CCWD, and your consideration of measures to streamline the Title Transfer process.