

**Statement of Austin Ewell
Deputy Assistant Secretary for Water and Science**

**U.S. Department of the Interior
Before the
Energy and Natural Resources Committee
Subcommittee on Water and Power
U.S. Senate
on**

Reclamation Title Transfer Practices

January 17, 2018

Chairman Flake, Ranking Member King, and members of the Subcommittee, I am Austin Ewell, the Deputy Assistant Secretary for Water and Science at the Department of the Interior. I am pleased to provide the views of the Department of the Interior (Department) on title transfer practices at the Bureau of Reclamation (Reclamation). The subject of today's hearing is one with which the Department is very familiar.

The Department strongly supports Congress' efforts to better facilitate the title transfer of Reclamation facilities to non-Federal entities. We appreciate the opportunity to engage in this discussion to share our knowledge and experiences with title transfers and learn from the stakeholders sitting alongside me today. As you may know, Reclamation provided testimony at a House title transfer hearing in June 2017, and we are tracking the issue closely during this Congress. This statement draws upon many of the themes expressed at that hearing.

Background

Under Reclamation law, title to Reclamation projects, lands, and facilities must remain with the United States until such time as a title transfer is authorized by Congress. For many years, Reclamation and interested stakeholders have been working together, along with other federal and state agencies and interested stakeholders, to negotiate the terms and conditions of specific title transfers. Unfortunately, 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 stakeholders 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

¹ https://www.usbr.gov/title/framework_title_transfer_2004_revision.pdf

process has allowed interested non-federal entities to work with and through Reclamation to identify and address 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 can be improved upon as it still takes too long and discourages some good candidates from coming forward.

Our strong support for title transfer legislation was referenced 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 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.

Important Considerations for Title Transfer Legislation

Reclamation and the Department would welcome the opportunity to work with the Committee to draft Title Transfer legislation, and as stated at the House hearing referenced previously, there are a few key considerations which we believe should be considered in any potential legislation.

First, the legislation should authorize the Secretary, through the Bureau of Reclamation, to administratively transfer title to projects and facilities based upon the establishment of specific eligibility criteria. Those criteria should focus on ensuring that the terms and conditions of title transfer agreements protect the project purposes for which the facilities were authorized; protects the contractors and the other stakeholders of the facilities who enjoy benefits from these facilities, protects the public and tribal entities as well as the environmental resources that may be impacted by the Project facilities and protect the Federal financial investment. We look forward to working with the Committee on establishing and defining these criteria.

Second, the process to develop title transfer agreements under a title transfer program should be open, public, and transparent.

Third, as there currently is no categorical exclusion that applies to title transfers under the National Environmental Policy Act (NEPA), 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 any potential legislation.

Fourth, the existence of hydropower on a Reclamation project provides additional complexities that need to be addressed by legislation, including issues related to Federal Energy Regulatory Commission (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, but we are open to working through these matters with the Committee and our stakeholders.

Fifth, Reclamation recommends statutory language to ensure Reclamation law continues to control project water regardless of the title transfer and 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.

Conclusion

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 a legislative pronouncement containing the concepts summarized in this statement will encourage more entities to pursue title transfer while making the process itself smoother and more trouble free.

In conclusion, we are encouraged by the Committee's interest in title transfer of Reclamation facilities, and look forward to working with the Congress to 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.