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Assistant Secretary for Water and Science
U.S. Department of the Interior
Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
U.S. Senate
H.R. 1967 – Pumped Storage Hydropower Development

Wednesday, June 13, 2018

Chairman Flake, Ranking Member Cortez Masto and members of the Subcommittee, I am Dr. Tim Petty, Assistant Secretary for Water and Science at the U.S. Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on H.R. 1967, the Bureau of Reclamation Pumped Storage Hydropower Development Act. For the reasons I will discuss below, the Department supports this bill.

H.R. 1967 aims to streamline the development and permitting of non-federal pumped-storage hydroelectric projects on Reclamation reservoirs. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities.

Pumped-storage can be a premiere, utility-scale energy storage solution, able to provide both firm power and ancillary services – to support the transmission of capacity and energy in a safe, reliable manner. With that said, pumped-storage deployment requires both significant, up-front capital investment and specific topographical features. Therefore, we see this bill as providing opportunities to streamline the permitting process which may encourage the development of these projects.

Reclamation is the second largest producer of hydroelectric power in the United States, operating 53 hydroelectric power facilities, comprising 14,730 megawatts of capacity. Each year, Reclamation generates approximately 40 million megawatt-hours of electricity (the equivalent demand of approximately 3.5 million U.S. homes) and producing over one billion dollars in Federal revenue.

In 2010, the Department of the Interior, Department of Energy, and Department of the Army (through the US Army Corps of Engineers) entered a Memorandum of Understanding (MoU) for Hydropower. The MoU advances reliable, low-cost, and environmentally sustainable hydropower through a collaborative, interagency framework, prioritizing like-goals and aligning ongoing and future renewable energy development efforts. Interior's MoU participation is administered through Reclamation, given our mission and authorities in hydropower generation.

In 2011 and 2012, Reclamation coordinated with MoU partners to publish two resource assessment reports identifying technical hydropower potential at non-powered Reclamation dams and conduits. At this time, seven assessment sites, comprising over 21 megawatts have been

developed by non-federal entities - with an additional nineteen assessment sites, comprising approximately 74 megawatts in some stage of development.

Reclamation has also coordinated with MoU partners to assess pumped-storage potential at existing Reclamation reservoirs and associated projects. Specifically, the assessment reports (one completed in 2013 and the other in 2014) evaluated the technical, environmental, and economic merits of over 200 unique pumped-storage configurations at 60 Reclamation reservoirs that passed topography and storage screening criteria. Reclamation is using these assessment results to inform further study should sufficient customer interest exists.

Reclamation would be happy to discuss with the Committee these, and other MoU products. All MoU documents are available on the Reclamation hydropower program webpage: <https://www.usbr.gov/power/>.

In terms of non-federal development – both Reclamation and the Federal Energy Regulatory Commission (FERC) are authorized to permit the use of Reclamation dams and reservoirs to non-federal entities for the purposes of hydropower development – Reclamation via a Lease of Power Privilege (LOPP) contract or FERC via a License.¹ Per the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2013 (Public Law 113-24), permitting authority on Reclamation conduits is reserved, exclusively to Reclamation via a LOPP.

Reclamation is committed to facilitating the development of non-federal hydropower on our existing assets – through either Reclamation’s or FERC’s permitting processes. Acting on this commitment, Reclamation has worked diligently with our customer and stakeholder groups to define our LOPP permitting process, detailed in Reclamation Manual Directive and Standard (D&S) *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04-08). Reclamation has conducted ongoing outreach to communicate and update LOPP permitting process requirements and revised LOPP materials to ensure consistent LOPP program administration. Current LOPP process requirements implement Public Law 113-24 authorities related to non-federal development on Reclamation conduits.

It is important to note that any non-federal hydroelectric project developed on a Reclamation asset must not impair the efficiency of any Reclamation generated power or water deliveries, jeopardize public safety, or negatively affect any other Reclamation project purpose. For these reasons, project oversight is necessary - either through the LOPP contract or FERC License conditioning requirements. In addition, Reclamation would review any pumped storage application under this authority to ensure the proposed LOPP does not conflict with the statutory obligations of the Power Marketing Administrations (PMAs). Consistent with Reclamation’s existing directives and standards, Reclamation would contact the respective PMA when a non-federal developer approaches Reclamation to develop a non-federal hydroelectric project, and

¹ See: Section 5 of the Townsites and Power Development Act of 1906, 43 U.S.C. § 522 and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c); and the Federal Power Act, 16 U.S.C. § 791 *et seq.*

will work with the respective PMA on any necessary right of first refusal or other agreement that preserves the PMA's statutory responsibilities.

In total, 13 LOPP facilities currently operate on Reclamation assets, comprising 46 megawatts. Nine of the 13 facilities were brought online since 2009, with three of the 13 online facilities initiated following the passage of Public Law 113-24. Likewise, 52 FERC facilities currently operate on Reclamation assets, comprising 466 megawatts of capacity. Approximately 50 non-federal projects – through either the LOPP or FERC processes - are currently in some stage of active development on Reclamation assets.

Based on feedback we have received from our customers and operating partners, industry, and other stakeholders, Reclamation, with this Committee's support, has been successful in administering our leasing authorities.

Under current law, both Reclamation and FERC are authorized to permit the use of Reclamation assets to non-federal entities for the purposes of hydropower development. Reclamation and FERC have entered two MoUs (one in 1981 and one in 1992) to define jurisdictional boundaries and responsibilities. Per those MoUs, each Reclamation asset is subject to one - and only one - permitting process, meaning that non-federal entities seeking to utilize a Reclamation asset for the purposes of hydropower development would be required to obtain either a Reclamation LOPP or FERC License – but not both.

The problem the bill addresses relates to non-federal pumped storage projects utilizing multiple Reclamation reservoirs which may, under the current regulatory framework, require both a LOPP and FERC License in the circumstance that one reservoir is within Reclamation's jurisdiction and the other reservoir is within FERC's jurisdiction. Whereas both agencies are acting within their respective authorities, the result is a fragmented, cumbersome permitting process. The legislation as drafted would minimize the regulatory burden in these circumstances by requiring only a single LOPP approval.

The general premise of the MoU agreements is that, unless otherwise specified in law, Reclamation assets reserved exclusively for Federal power development under Federal Reclamation law require a LOPP, and all other Reclamation assets require a FERC License. An exception is for Reclamation conduits, which were reserved for LOPP development by Public Law 113-24.

Section 2 of the bill would specifically authorize Reclamation to enter into LOPP contracts that permit the development of non-federal pumped-storage hydropower utilizing multiple Reclamation reservoirs. Reclamation interprets this LOPP authorization to encompass all project works associated with the non-federal pumped-storage project sited on multiple Reclamation reservoirs. This language would streamline permitting requirements and development of affected projects.

We interpret Section 2 as containing the same protections for authorized, existing uses of Reclamation assets as exist in any LOPP context. The LOPP authorization, for example, does not affect existing contracts “for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project,” and LOPP contracts cannot, in the judgement of the Secretary, “impair the efficiency of the project for irrigation purposes.” In practice, these protections have meant that LOPP contracts generally do not modify the existing project operations that project users have come to rely on. To protect existing project users, Reclamation’s policy to implement LOPP contracts requires extensive consultation among existing project users and the non-federal LOPP applicant.

Reclamation is aware of one, active non-federal pumped-storage project that would benefit from the proposed legislation – sited on Banks Lake and Lake Roosevelt reservoirs, which are part of Reclamation’s Columbia Basin Project in Washington State. Given the current regulatory framework, non-federal project works sited on Banks Lake would proceed through a FERC License – and those works sited on Lake Roosevelt would proceed through a Reclamation LOPP. This legislation would streamline the permitting from two distinct processes to one.

The bill’s language would not affect non-federal pumped-storage projects utilizing one Reclamation reservoir and a second *non-Reclamation* reservoir (private or otherwise) outside Reclamation jurisdiction. Such projects would be required to obtain appropriate authorization to develop the Reclamation reservoir (either LOPP or FERC License, dependent upon the authorized reservoir purpose(s)), in addition to appropriate authorization from the non-Reclamation regulator (likely FERC) to develop the non-Reclamation reservoir. Reclamation would be happy to work with the Committee – and FERC - to discuss opportunities to streamline permitting and project development in this instance.

In conclusion, as stated at previous hearings on hydropower-related issues before this subcommittee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are both clean and energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, and recreation. As the nation’s second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource.

The Department is pleased to support this legislation.