

**Statement of Robert Quint, Senior Advisor
Bureau of Reclamation
U.S. Department of Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate**

**S. 284 - Fort Sumner Project Title Conveyance Act
April 16, 2013**

Chairman Schatz and members of the Subcommittee, I am Robert Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) regarding S. 284, which would authorize the Secretary of the Interior to convey title to all of the works of the Fort Sumner Project (including the diversion dam, easements, ditches, laterals, canals, drains, and other rights) to the Fort Sumner Irrigation District (FSID). The Department supports S. 284.

In 2011, S. 1225 was introduced in the 112th Congress, which would have authorized the United States to convey title to all of the works of the Fort Sumner Project to the FSID. At the time of the hearing on June 23, 2011 before this Committee on that bill, it was the view of the Administration that a number of issues had yet to be resolved between the United States and FSID, including a net financial loss to the Treasury of approximately \$250,000, the need for an open and transparent process for the public to provide input prior to conveyance of title, and the need for Reclamation and FSID to work through a collaborative process to ensure that operational, fiscal, environmental, and other issues are identified and addressed. However, since that time, Reclamation and FSID have worked together and a number of those issues are addressed in S. 284. Specifically, in 2012, the “Memorandum of Agreement between the United States and the Fort Sumner Irrigation District Concerning Principles and Elements of Proposed Transfer of Title to Fort Sumner Irrigation District” (MOA) was executed, which addresses the issues we had with the previous legislation as described below.

Background

There are two Reclamation projects on the Pecos River located in southeastern New Mexico: the Carlsbad and Fort Sumner Projects. The Fort Sumner Project was developed by private interests at the turn of the last century. In the 1950s, this project was reconstructed and rehabilitated by Reclamation. In 1948, in order to make this happen, Reclamation and the FSID executed a contract to provide for the repayment of construction costs to rehabilitate the project. As part of the process, Reclamation law required that Reclamation take title to the Project. Currently, the FSID has an annual repayment obligation of about \$54,500 with an outstanding balance of approximately \$597,697.00

The FSID holds a senior water right for not more than 100 cubic feet per second from the natural flow of the Pecos River. Reclamation must bypass the FSID’s water through Sumner Reservoir prior to storing water for the Carlsbad Project. Over the past ten years,

Reclamation has consulted with the U.S. Fish and Wildlife Service (Service) to ensure that Federal actions are not jeopardizing the existence of the Pecos bluntnose shiner or adversely modifying its critical habitat located below FSID's diversion dam. In these consultations, Reclamation has committed to the Service to maintain the shiner population level by minimizing river drying. A significant cause of drying on the Pecos is due to the FSID diverting its senior water right. The only way Reclamation has been able to keep the Pecos River flowing is by purchasing water from willing sellers and by paying the FSID not to divert water through a forbearance agreement.

In August 2009, Reclamation and FSID entered into a mutually beneficial agreement whereby FSID would forbear the diversion of up to 2,500 acre-feet of water annually for ten years when they would otherwise be in priority. Instead, this water goes into Sumner Lake reservoir where it is stored and delivered for Reclamation to prevent intermittency of flows on the Pecos River in compliance with the 2006 biological opinion. Reclamation pays FSID \$60,000 annually plus \$20 per acre-foot for the water. In addition to the forbearance of this water, FSID agreed to pursue ESA Section 10 consultation with the Service and Reclamation agreed to assist them in this process. Also in this agreement, FSID indicated its desire to take title to the facilities and Reclamation agreed to work with them on that process. The forbearance agreement further provides that the annual payments of \$60,000 from Reclamation to FSID will cease upon both the passage of title transfer legislation and the conveyance of title. To date, this has been a mutually beneficial agreement. The forbearance water has afforded Reclamation with an additional tool to meet the biological opinion to ensure that the Pecos River does not run dry in a cost effective manner.

As drafted, S. 284 protects the financial interests of the taxpayers of the United States. Under the terms of the Forbearance Agreement that is currently in place, Reclamation pays FSID \$60,000 annually plus \$20 per acre-foot for water. Under the terms of S. 284, after title transfer, the \$60,000 annual payments from the United States to FSID would cease. At the same time, FSID's repayment obligation of \$597,697 to the United States would also cease. These two revenue streams – one to FSID and one to the United States would offset. Further, the United States would continue to receive, in perpetuity rather than just for the ten years, the below-market-cost of \$20 per acre-foot for up to 2,500 acre feet of water annually that they need in order to meet the 2006 biological opinion – thereby saving the taxpayers in costs associated with this important water acquisition effort.

Memorandum of Agreement

On June 22, 2012, the United States and FSID executed MOA, numbered 11-WC-40-406. This agreement was the culmination of a collaborative process between Reclamation and the FSID which articulated the principles elements for any legislation to authorize conveyance of title to the works of the Fort Sumner Project, as well as the steps required to complete the title transfer process, the responsible parties for each activity and spelled out the prerequisites to the actual conveyance of title to FSID.

The MOA takes an important step in resolving our concern regarding compliance with

Federal and state laws – more specifically – with the terms of agreement to be developed between FSID and the U.S. Fish and Wildlife Service required under Section 10 of the Endangered Species Act. While it would be our preference to complete all of the activities required under the National Environmental Policy Act, the National Historic Preservation Act and the Endangered Species Act prior to acting upon legislation to transfer title, as a compromise, S. 284 requires that all the activities associated with these laws, including whatever mitigation may be necessary be completed prior to the transfer of title to these facilities. As part of that, before the conveyance of title, Reclamation must concur with the ESA Section 10 agreement thus ensuring that the United States’ interests are not compromised.

Because S. 284 requires National Environmental Policy Act compliance and completion of ESA Section 7 and Section 10 consultations as prerequisites to conveyance of title, Reclamation and FSID will have the opportunity to complete a public process to determine whether other interested citizens of New Mexico have concerns and any issues that arise during that public process can be collaboratively be addressed in the title transfer agreement that must be prepared to articulate the terms and conditions of the title transfer as defined in Section 2(7) of the Act..

S. 284 also authorizes Reclamation to cost-share with FSID for both environmental compliance as well as the cost of conveyance of title.

Lastly, Reclamation believes that S. 284 would assure the continuation of the partnership Reclamation has developed with FSID in meeting the 2006 Biological Opinion requirements. With the challenges of persistent drought in the Pecos River basin and the need for Reclamation to consult, in partnership with FSID and the Carlsbad Irrigation District, with the Service in obtaining a new biological opinion by 2016, this title transfer legislation will enable us to meet this critical objective.

As a result of the efforts, hard work and compromises by both Reclamation and FSID, we believe that we have reached an agreement that protects the interests of FSID, the citizens of the States of New Mexico and the interests of the United States.

That concludes my written statement. I am pleased to answer questions at the appropriate time.