

**Statement of Lowell Pimley, Deputy Commissioner of Operations  
Bureau of Reclamation  
U.S. Department of the Interior**

**Before the  
Committee on Energy and Natural Resources  
U.S. Senate**

**S. 306 and HR 678 The Bureau of Reclamation Small Conduit Hydropower Development  
and Rural Jobs Act  
April 23, 2013**

Chairman Wyden, members of the Committee, I am Lowell Pimley, Deputy Commissioner of Operations at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 306 and HR 678, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act. The Department supports the goals of S. 306 and HR 678, which aim to increase the generation of clean, renewable hydroelectric power in existing canals and conduits, and believes these bills will provide greater certainty and administrative streamlining of these types of projects. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities. My testimony today will summarize the areas where the Administration supports the objectives of S. 306 and HR 678, as well as detail the areas in the bills where we believe improvements could be made, recognizing that the House of Representatives amended HR 678 to address many of the Department's concerns.

Reclamation is the second largest producer of hydropower in the country. A 2010 Hydropower Memorandum of Understanding (2010 MOU)<sup>1</sup> signed by the Secretaries of Energy and the Interior, and the Assistant Secretary of the Army (Civil Works) provides a strategy to facilitate the development of sustainable hydropower on federal facilities. Before I share the Department's views on S. 306 and HR 678, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. In March 2011, Secretary Salazar and the U.S. Department of Energy Secretary Steven Chu announced nearly \$17 million in funding over three years for research and development projects to advance hydropower technology. The funding included ten projects that will receive a total of \$7.3 million to research, develop, and test low-head, small hydropower technologies that can be deployed at existing non-powered dams or constructed waterways. The funding will further the Obama Administration's goal of meeting 80 percent of our electricity needs from clean energy sources by 2035.

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<sup>1</sup> <http://www.usbr.gov/power/SignedHydropowerMOU.pdf>, 2010

In March 2011, the Department released the results of an internal study, the Hydropower Resource Assessment at Existing Reclamation Facilities, that estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. In March 2012, Reclamation completed the second phase of its investigation of hydropower development, Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits, as referenced in the 2010 MOU. While the first phase, completed in 2011, focused primarily on Reclamation dams, the second phase focused on constructed Reclamation waterways such as canals and conduits, and estimated the Department could generate over 365,000 megawatt hours of electricity annually by addressing hydropower capacity on 373 of its existing canals. In total, the two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing Reclamation sites.

Reclamation worked diligently with our stakeholders and the hydropower industry to improve our Lease of Power Privilege (LOPP) processes, and this collaboration culminated in the release of an updated and improved LOPP directive and standard in September 2012. These new procedures better define roles, timelines and responsibilities that will allow us to better support and encourage sustainable hydropower development at Reclamation facilities.

In summary, both S. 306 and HR 678 would do two things: 1) provide a blanket authorization for the installation of small hydropower units on all Reclamation-owned canals and conduits and 2) require that Reclamation offer preference to water user organizations for the development of canal/conduit hydropower under a LOPP. Additionally, S. 306 would exempt small canal/conduit hydropower projects below 5 MW from the requirements of the National Environmental Policy Act (NEPA), while HR 678 directs Reclamation to apply its categorical exclusion process under NEPA to small conduit hydropower development. Finally, S. 306 designates Reclamation's Power Resources Office (PRO) as the lead point of contact for requests to develop canal/conduit hydropower under a LOPP. Per the Department's recommendation, HR 678 was amended to direct Reclamation's PRO as the lead office for policy and procedure setting activities.

Section 2 of S. 306 and HR 678 would clarify that Reclamation is responsible for authorizing conduit hydropower development on Reclamation-owned facilities through LOPP contracts. As background, Reclamation is authorized by existing law to issue LOPP contracts that utilize Reclamation-owned facilities for private hydropower development under 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). Statutes that are specific to individual Reclamation projects may also apply. Similar to the LOPP process, the Federal Energy Regulatory Commission (FERC) may also issue licenses for hydropower development under the authority of the Federal Power Act, 16 U.S.C. § 791 *et seq.* To resolve potential confusion over whether a Reclamation LOPP contract or a FERC license should govern hydropower

development at Reclamation facilities, Reclamation and FERC entered into agreements in 1981 and 1992 to address hydropower development. In particular, a 1992 memorandum of understanding between Reclamation and FERC (1992 MOU)<sup>2</sup> established a process to resolve questions of jurisdiction over hydropower development at Reclamation facilities. Reclamation and FERC continue to work together to improve that process and make the process more efficient.

Section 2 of S. 306 and HR 678 would specifically authorize Reclamation to develop or enter into LOPP contracts for the development of new hydropower on conduits or canals on Reclamation-owned projects. This language would streamline the issuance of LOPP contracts by simplifying the Reclamation-FERC jurisdictional consultation that was established in the 1992 MOU. This language also could provide Reclamation with an opportunity to discuss programmatically resolving jurisdiction over hydropower development on Reclamation conduits with FERC, thus creating the potential to eliminate case-by-case jurisdictional consultations for development on Reclamation conduits.

Section 2 of S. 306 and HR 678 would also require that Reclamation offer preference in the award of LOPPs to “irrigation districts or water users associations” with which Reclamation has an existing contract for operations and maintenance (O&M) of that project or project feature. While Reclamation already provided preference to existing irrigation districts and water user associations pursuant to Section 9(c) of the Reclamation Projects Act of 1939 we agree that these irrigation districts and water users currently operating and maintaining Reclamation transferred works should get additional favorability. In September 2012 we incorporated this concept into our revised LOPP directive and standard. Reclamation would be happy to work with the sponsors of the bills and the Committees to resolve any concerns regarding preference.

Section 2 of S. 306 would provide that NEPA “shall not apply to small conduit hydropower development, excluding siting of associated transmission on Federal lands[.]” The Department opposes a waiver of NEPA. Furthermore, this language is in contrast to the existing provision in Section 30 of the Federal Power Act (16 U.S.C. 823a) that allows FERC to approve an application to develop hydropower within conduits located on non-federal lands under certain conditions. Accordingly, as provided in FERC’s regulations at 18 CFR § 380.4(a)(14), FERC is not required to prepare an environmental assessment or environmental impact statement for certain conduit hydropower projects that meet the statutory and regulatory criteria and do not have the potential for significant environmental impacts.

The Department understands the intent of S. 306 to be that conduits and canals are existing, man-made structures where environmental impacts associated with construction have already occurred and/or been mitigated. However, the Department’s view is that low-impact

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<sup>2</sup> The 1992 MOU is available in the Federal Register at: 58 Fed. Reg. 3269 (Jan. 8, 1993).

hydropower, particularly in conduits and canals, can be efficiently developed by utilizing existing environmental review provisions that will not unduly delay project development and ensure environmental health and safety. Environmental analysis for many LOPP contracts has, for example, been addressed through environmental assessments rather than environmental impact statements. Reclamation's newly published LOPP procedures also allow for an existing categorical exclusion under NEPA to be applied to low-impact hydropower projects where low impact is defined by their impact to project operations as opposed to the size of the project. Reclamation believes that low-impact hydropower developed in conduits or canals may be appropriately analyzed under the same categorical exclusion procedures that are documented in the Departmental Manual at 516 DM 14.5(C)(3) and (D)(4).

HR 678, as amended by the House of Representatives, directs Reclamation to "apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands." The Department recognizes the intent of HR 678 to encourage the use of the categorical exclusion procedures that are allowed for in its LOPP directives and standards and documented in the Departmental Manual. If enacted, Reclamation would interpret this language as endorsing its current directive and standard to potentially apply categorical exclusions, provided that no extraordinary circumstances exist, pursuant to 40 C.F.R. §1508.4. Under Section 2 of HR 678, Reclamation does not guarantee that categorical exclusions will apply on every small hydropower project. Reclamation believes it should preserve its discretion to determine whether a closer review under NEPA is appropriate.

The Department believes that environmental protections should continue to apply in the context of new construction undertaken on federal lands, and will continue to apply NEPA through the use of categorical exclusions or environmental assessments. We understand the value and importance of expedient environmental review and believe development of hydropower within Reclamation's existing conduits and canals can be efficiently analyzed utilizing these existing review processes.

I would also like to address concerns raised by language in Section 2 of S. 306 specifying that "the Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower activities conducted under this subsection." The Department understands the bill sponsor's desire to simplify points of contact for entities seeking to develop hydropower. However, in practice, project-specific expertise concerning Reclamation facilities resides first at the field level where ownership responsibility for the specific infrastructure resides. It is preferable for developers to approach the appropriate Reclamation regional or area office with proposals to develop conduit hydropower, and contact the PRO as needed. There is a robust channel of communication between the PRO, other Denver Offices, and Reclamation regional and field offices that allows for successful implementation of a LOPP agreement. Reclamation organizes its workforce as appropriate to maximize the efficiency and expertise of personnel.

For these reasons, the Department is pleased to support the House amended language in HR 678 specifying that “the Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.”.

S. 306 and HR 678 would amend 9(c) of the Reclamation Project Act of 1939, which in addition to providing LOPP authority, authorizes the Secretary to enter into contracts for municipal water supply and miscellaneous purposes. Several of the definitions in S. 306 as drafted would affect the other authorities in the 1939 Act. In particular, the proposed definition of “transferred work” is too narrow to refer to all works affected by subsection 9(c) of the 1939 Act, since that subsection authorizes contracts involving works other than conduits. Either the definition would need to be broadened to include all affected works, or the term defined narrowed from “transferred work” to “transferred conduit.” Also, the existing 1939 Act has a definitions section. Any definitions that are of general application should be included in the existing definitions section, rather than in subsection 9(c). Definitions that apply solely to conduit hydropower need to do so explicitly, to avoid misapplication or confusion. The Department would be happy to work with the Committee on S. 306 to make these technical changes to the language of the proposed definitions and their placement within the existing 1939 Act. The Department appreciates and supports the language in HR 678 that narrows the terms defined as recommended above.

As referenced above, Reclamation has procedures in place through the LOPP process for the sites where Reclamation has the authority to develop hydropower. In September 2012 we released an updated LOPP Directive and Standard that improved our processes, especially for conduits and canals, and incorporated the concept of additional favorability for irrigation districts and water user associations with O&M responsibility on Reclamation projects.

Finally, HR 678 provides that “nothing in this subsection shall alter or affect any existing preliminary permit, license, or exemption issued by the Federal Energy Regulatory Commission under Part I of the Federal Power Act (16 U.S.C. 792, et seq.) or any project for which an application has been filed with the Federal Energy Regulatory Commission as of the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act.” This language allows for existing and pending FERC licenses to remain within FERC’s jurisdiction, rather than be redirected into Reclamation’s LOPP process.

In conclusion, as stated at previous hydropower hearings before this committee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, or recreation. As the nation’s second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource. With these recommended revisions, S. 306 and HR 678 will go a

long way towards meeting the Administration's goals of developing clean, reliable, cost-effective, and sustainable hydropower in the United States.

Thank you for the opportunity to discuss S. 306 and HR 678. This concludes my written statement, and I am pleased to answer questions at the appropriate time.