

Statement of Grayford F. Payne
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Bureau of Reclamation
U.S. Department of the Interior
before the
United States Senate
Committee on Energy and Natural Resources
Subcommittee on Water and Power
HR 2842 - The Bureau of Reclamation Small Conduit Hydropower Development
and Rural Jobs Act of 2011
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Madam Chair and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 2842, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011. The Department supports the goals of HR 2842, which aims to increase the generation of clean, renewable hydroelectric power in existing canals and conduits. 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 HR 2842, as well as detail the areas in the bill where we believe improvements could be made.

Before I share the Department's views on HR 2842, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. Last year, 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.

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 of this year, 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

Hydropower Memorandum of Understanding (MOU)¹ between the Department of the Interior, the Department of Energy, and the Army Corps of Engineers. 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. The two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing reclamation sites.

In summary, HR 2842 would do four things: 1) provide a blanket authorization for the installation of small hydropower units on all Reclamation-owned canals and conduits; 2) require that Reclamation offer preference to water user organizations for the development of canal/conduit hydropower under a Lease of Power Privilege (LOPP); 3) exempt small canal/conduit hydropower projects below 1.5 MW from the requirements of the National Environmental Policy Act (NEPA) and; 4) designate Reclamation's Power Resources Office as the lead point of contact for policy and procedure setting activities related to canal/conduit hydropower under an LOPP.

Section 2 of HR 2842 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, 1992, and 2010 to address hydropower development. In particular, a 1992 memorandum of understanding between Reclamation and FERC (1992 MOU)² 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 HR 2842 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

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

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

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 HR 2842 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 of that project or project feature. Reclamation already provides preference to existing irrigation districts and water user associations pursuant to Section 9(c) of the Reclamation Projects Act of 1939. Reclamation would be happy to work with the sponsor of the bill and the Committee to resolve any concerns regarding preference.

Section 2 of HR 2842 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 HR 2842 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 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 categorical exclusions or environmental assessments rather than environmental impact statements. 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.

Reclamation’s existing Lease of Power Privilege procedures allow for an existing categorical exclusion under NEPA to be applied to low-impact hydropower projects. Reclamation believes that low-impact hydropower developed in conduits or canals may be appropriately analyzed under those same procedures, which are documented in the Departmental Manual at 516 DM 14.5(C)(3) and (D)(4). The Department understands the value and importance of expedient environmental review and believes 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 language in Section 2 of the House passed bill specifying that “the Power Resources Office (PRO) of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.” The Department supports this language given that project-specific expertise concerning Reclamation facilities resides first at the field level where ownership responsibility for the specific infrastructure resides. It is preferable for policies and procedures to be set within the PRO with developers continuing to approach the appropriate Reclamation regional or area office with proposals to develop conduit hydropower. 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 Lease of Power Privilege agreement.

Finally, HR 2842 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 HR 2842 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. Lastly, the 1939 Act definitions section already includes a definition of “Secretary”. The Department would be happy to work with the Committee on these technical changes to the language of the proposed definitions and their placement within the existing 1939 Act.

As referenced above, Reclamation has procedures in place through the LOPP process for the sites where Reclamation has the authority to develop hydropower. We are currently reviewing our LOPP policies and processes to look for ways to expedite and improve the process, especially for conduits and canals.

In conclusion, as stated at previous hydropower hearings before this subcommittee, 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.

Thank you for the opportunity to discuss HR 2842. This concludes my written statement, and I am pleased to answer questions at the appropriate time.