

**Statement of Kiel Weaver,
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U.S. Department of the Interior
Before the
Energy and Natural Resources Committee
Subcommittee on Water and Power
U.S. Senate
Wednesday, June 26, 2019**

Chairman McSally, Ranking Member Cortez Masto, and Members of the Subcommittee, I am Kiel Weaver, Principal Deputy Assistant Secretary for Water and Science with the U.S. Department of the Interior (“Department”). Thank you for the opportunity to provide the views of the Department on several water related pieces of legislation. I will address each of these individually.

S. 325, the Garrison Diversion Unit Project Oakes Test Area Conveyance Act of 2019

This bill, introduced by Senators John Hoeven (R-ND) and Kevin Cramer (R-ND), authorizes the transfer of title of the Oakes Test Area (OTA), located in Southern North Dakota, to the Dickey-Sargent Irrigation District (DSID) in accordance with a Title Transfer Agreement reached in accordance with Memorandum of Agreement (MOA) No. 19AG620033 negotiated by the Bureau of Reclamation (Reclamation) and DSID.

The OTA was to be a part of a 59,330-acre division of the Garrison Diversion Unit (GDU) and was developed to research the impacts of irrigation of the GDU project. The OTA facilities were designed and constructed to be part of a much larger project which for a variety of reasons, was never realized and as such, the OTA was not intended to be a standalone irrigation unit.

The Department supports title transfer of the Oakes Test Area, which would allow Dickey-Sargent Irrigation District to efficiently manage the water resources and infrastructure, secure capital to develop a long-term water supply, provide flexibility to modify and improve operations, and invest in major rehabilitation or improvement projects.

The recently enacted John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9), gave Reclamation broad title transfer authority, which we are moving quickly to implement. Pursuant to P.L. 116-9, Reclamation

released a temporary Directive and Standard (CMP-TRMR -120) last month, which outlines necessary steps for transfer of title. Reclamation is now at work on applying this process with DSID to ascertain whether the OTA transfer can be accomplished under this authority and the associated Reclamation processes.

As the eligibility criteria of the title transfer program are formalized and implemented, Reclamation will continue to work closely with the DSID toward title transfer – either through the broad authority provided by P.L. 116-9, or if needed, under a standalone authority that may be provided by S. 325. We look forward to working with the Committee, the North Dakota Delegation and DSID to ensure that all the needs and interests are addressed so we can move forward with this title transfer in an efficient and expeditious manner.

S. 860, the Jackson Gulch Rehabilitation Project Modification Act

The Jackson Gulch Rehabilitation Project Modification Act, introduced by Senator Cory Gardner (R-CO), amends Section 9105 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) to allow the Mancos Water Conservancy District (District) the ability to credit their share of engineering work and improvements directly associated with the Jackson Gulch Rehabilitation Project in Colorado as part of the local cost share. The bill also adjusts the District's Project cost repayment period from 15 to not more than 40 years and reduces the authorization for Federal appropriations to cost share this project from \$8,250,000 to not more than \$5,350,000.

Jackson Gulch Reservoir provides water to the town of Mancos, the Mancos Water Conservancy District, and the Mancos Rural Water Company. Since 1963, the District has performed operation and maintenance of the project, which includes the inlet and outlet canal systems and Jackson Gulch Dam and reservoir. The canal systems convey water to and from Jackson Gulch Reservoir, an off-stream storage facility.

Pursuant to Section 9105 of P.L. 111-11, Reclamation is authorized to receive appropriations to pay a specified Federal share of the total cost of carrying out the Jackson Gulch Rehabilitation Project (Project) of up to, but not to exceed \$8,250,000. Under current law, the District is to reimburse the United States the amount equal to 35 percent of the total cost of the Project, or \$2,900,000, whichever is less; under S. 860, this amount can change subject to the amount credited for work the District performed to date. Reclamation and the District

entered into a repayment contract in July 2010 to carry out these and other provisions of the Act.

In August 2010, the District received \$1,750,000 in Federal funds through Reclamation; since 2010, Reclamation has received only \$850,000 in additional appropriations for the Project in the Reclamation Fiscal Year 2019 Spend Plan. The District has continued to expend funds on the rehabilitation. Subject to the availability of appropriations, Reclamation supports this proposal which provides additional flexibility to the District to rehabilitate the canal system.

S. 990, the Platte River Recovery Implementation Program Extension Act

The Department's participation, collaboration with the States of Colorado, Wyoming, and Nebraska, in the Platte River Recover Implementation Program (Program) was authorized under Sec. 515 of the Consolidated Natural Resources Act of 2008 (P.L. 110-229.) S.990, sponsored by Senator John Barrasso (R-WY), would reauthorize the Department's continued participation, allowing for an extension of the Program for thirteen years from January 1, 2020 through December 31, 2032.

During the first thirteen years of the Program (referred to as the "First Increment") eight of ten milestones have been achieved, with two remaining. One remaining milestone is the Program's Water Action Plan, which is to provide 50,000 acre-feet of water for shortage reduction to U.S. Fish and Wildlife Service target flows in the central Platte River. The other remaining milestone is the completion of the Nebraska New Depletions Plan, which is a responsibility of the state of Nebraska. The Program has allowed existing water and power related projects with a federal nexus within the Platte River basin, including Reclamation's projects on the North and South Platte Rivers, to continue to operate as they have historically while providing an avenue for new water development projects to be developed in compliance with the Endangered Species Act through more efficient, streamlined consultations. The Program has implemented five Water Action Plan projects which provide approximately 14,000 acre-feet of water on an annual basis and has acquired an interest in approximately 12,600 acres of habitat for threatened and endangered species. In addition, the Program has implemented an Integrated Monitoring and Research Plan and Adaptive Management Plan to monitor target species, Central Platte River habitat conditions, and the effects of Program management actions on the species.

The Program has been successful, providing an avenue for different parties and competing interests to find collaborative solutions to improving habitat conditions for the target species while allowing water use and development within the Platte River basin to continue. If the Program is not reauthorized, regulatory certainty for water and power users within the Platte River basin could be lost, which would jeopardize the continued operation of Reclamation projects in the basin and have detrimental effects on the delivery of water and power to Reclamation customers.

The Platte River Recovery Implementation Program is important to providing continued ESA compliance for the operation of Reclamation projects in the Platte River basin. The Department is supportive and urges reauthorization.

S. 1305, the St. Mary's Reinvestment Act

S. 1305, sponsored by Senator John Tester (D-MT) would authorize the Federal Government to provide 75 percent of the Milk River Project's overall operation, maintenance, and replacement (OM&R) costs. Section 2(a)(2) details the inclusions and definition of the "Milk River Project", including both reserved and transferred works within the Milk River Project. While both reserved works and transferred works are federally owned, the transferred works referred to in the legislation are single purpose works, which are operated and maintained by project beneficiaries pursuant to contracts with the Bureau of Reclamation.

The current non-federal cost-share requirements for reserved works under the Milk River project vary from approximately 40 percent for Nelson Dikes to 74 percent for the St. Mary Unit facilities. The current level of base OM&R for transferred works that would be affected by this authorization is \$1.7 million per year. Under current law that \$1.7 million per year is 100 percent funded by project beneficiaries. The authorization in S. 1305 would reduce the project beneficiaries' responsibility to 25 percent of project costs, and increase the Federal government's responsibility to 75 percent of the project costs, for both annual OM&R and for extraordinary OM&R.

Under Reclamation law, OM&R activities for single purpose facilities are normally 100 percent water user funded. This is the common principle of "beneficiaries pay" that has been part of Reclamation law for more than 100 years. The project repayment terms identified in the bill depart from the traditional project repayment practice.

The Department recognizes the importance of this Federal project in serving the people of Montana and shares concerns over the condition of these facilities and the adverse consequences that would come with a failure of the system. However, we have significant concerns with S. 1305 as currently written and therefore cannot support the bill as introduced but would be happy to work with the Committee to address issues related to the Milk River Project that may be of concern to the Committee.

S. 1882, The Kinsey/Sidney (Montana) Project Use Power Bill

The Department did not receive a final draft of this legislation in enough time to provide detailed testimony on the bill. Reclamation would need additional time to analyze the final text of this legislation before stating a position.

S. 1758, a bill to extend a repayment contract relating to the Purgatoire River Water Conservancy District and to authorize the District to develop an excess capacity contract to offset repayment costs, and for other purposes.

S. 1758, sponsored by Senator Cory Gardner (R-CO), would alter the authorization for the Trinidad Project, which would impact the terms of the repayment contract held by the Bureau of Reclamation with the Purgatoire River Water Conservancy District (District) for the Trinidad Lake project, a U.S. Army Corps of Engineers reservoir, as specified in Public Law 84-500 and House Document 325.

The bill would provide additional authority to Reclamation to extend the contract term with the District to no more than 100 years. It would also provide Reclamation the authority to execute excess capacity contracts with the District and also directly with other entities. Revenue derived from the excess capacity contracts would be allowed to be credited toward the District's repayment or Operation, Maintenance, and Replacement (OM&R) obligation. The bill would also clarify the authority to have the District repay the lower of the OM&R costs incurred by the Corps of Engineers or the calculated value of the actual OM&R costs by Reclamation for a single purpose irrigation facility.

The District signed a 70-year fixed rate irrigation repayment contract with Reclamation in 1967, with water first delivered to the District in 1985. Since that time, the contract has been extended from 70 years to the currently authorized maximum term of 75 years, ending in 2059. The contract terms include a variable repayment rate based on water supply, allowing for minimal payments in periods of drought. Some of the provisions of S. 1758 may interact with existing Army

Corps of Engineers authorities related to the Trinidad Lake project. However, the Department has not had sufficient time to coordinate with the Army Corps to determine what the result of those interactions would be.

The Department is continuing to review the legislation and currently has no position on the bill.

Conclusion

Again, thank you for the opportunity to testify. The Department looks forward to working closely with this Committee on these bills. I would be happy to answer any questions.