

**Statement of Robert Quint, Senior Advisor
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U.S. Department of the Interior**

**Before the
Energy and Natural Resources Committee
Subcommittee on Water and Power
United States Senate**

**S. 510 - Scofield Land Transfer Act
April 16, 2013**

Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the Department of the Interior's views on S. 510, legislation to authorize the Secretary of the Interior to convey certain interests in Federal lands acquired for the Scofield Project in Carbon County, Utah. The intent of the legislation is to resolve certain issues associated with decades-long encroachment on Federal lands in the Scofield Reservoir basin while maintaining the safety of the public downstream. If the revisions described below are made, the Department would not oppose an amended S. 510.

The Scofield Project is located on the Price River about 85 miles southeast of Salt Lake City, Utah. It provides irrigation and municipal and industrial water to Carbon County, Utah. The reservoir is a popular fishing destination. Under contract with Reclamation, the State of Utah operates a state park at the site.

At Scofield Reservoir, the vertical distance between the normal water surface elevation of the reservoir and the flood surcharge elevation (the level to which the water level may rise in a flood event) is approximately 19 feet. Given the sloping sides of the reservoir basin, this flood surcharge capacity translates into a wide band of land around the perimeter of the reservoir above the normal water surface elevation and below the flood surcharge elevation. The United States owns in fee most of the lands within this band. In a flood event, water would inundate these lands. It is Reclamation's practice to keep these lands free of structures and chattel that, in a flood event, might be floated into the spillway.

In the 1950s, an individual purported to subdivide and sell some of these flood surcharge lands – in spite of United States' ownership. The purported "owners" (referred to in the Scofield Land Transfer Act as "claimants") began locating mobile homes and building cabins on these lands. There are over sixty encroaching cabins and trailers today. These encroachments pose a dam safety issue because a flood event may float debris or structures into the spillway, creating a logjam that would reduce the spillway's capacity and threaten the dam. The sudden collapse of such a logjam would create a wall of water, scouring the canyon below the dam and flooding the downstream communities of Helper, Price, and Wellington. Reclamation recently completed an assessment on the risk imposed by this scenario entitled, Scofield Dam – Report of Findings Risk Analysis Considerations for Reservoir Surcharge (January 2013). This assessment revealed that should a logjam of structures and chattel in the spillway suddenly give way, it would release a

flood downstream of up to 8,000 cubic feet per second, which is 40 to 50 times the normal expected flow in the Price River below Scofield Dam.

In 2000, Reclamation initiated a quiet title action on lands within the band on the east side of Scofield Reservoir and was joined in that action by 15 claimants. A 2009 decision by the Tenth Circuit Court of Appeals affirmed ownership by the United States. Reclamation has removed the encroachments on the lands that were the subject of the quiet title action. Because of similar underlying facts, quiet title actions associated with the remaining encroachments would likely affirm United States' ownership.

The bill proposes to resolve these encroachments on Federal lands by authorizing the Secretary of the Interior to transfer a fee interest or life estate to those who claim ownership of United States' lands within the Scofield Reservoir basin in exchange for fair market value. Claimants have a period of five years during which they may seek a fee interest or life estate. If a claimant does not elect to acquire a fee interest or life estate, Reclamation will remove the encroachment under existing law and policy, including the removal of encroaching structures.

Although the bill addresses in part key objectives for Reclamation, the ideal scenario for Reclamation is for no structures or dwellings to fall within a facility's flood surcharge elevation. Having said that, the bill does address concerns such as improved protection of public safety and resolving certain issues of encroachment on United States' lands. In addition, the bill imposes conditions on transferred lands. First, it limits the number and types of structures to those in place on the date of enactment. Second, it requires that structures be anchored to foundations to prevent displacement during a flood event and thereby reduce the potential for clogging the spillway, compromising the dam, and causing harm downstream. Third, it requires Reclamation to retain the ability to store flood flows on the transferred lands without liability to the United States.

While Reclamation supports, in general, some specific provisions in the bill, the legislation perpetuates occupancy within the flood surcharge elevation, which poses public and dam safety concerns. In addition, the bill's language raises a number of technical concerns:

Cost of Implementation – The proposed legislation does not provide any monies to fund Reclamation's work in surveying, appraising, and transferring fee interest or life estates to claimants. The legislation furthermore does not provide any monies to conduct environmental compliance, provide notice to claimants of existing trespasses or encroachments on Federal lands, or enforce deed restrictions. These costs should not be absorbed by the Federal Government.

Cost of Administration – After the legislation is fully implemented, Reclamation will likely face a patchwork of ownership (private fee interest, private life estates, Reclamation fee interest, and Reclamation flood easements) at the reservoir in the band between the normal water surface elevation and the flood surcharge elevation. On the transferred lands, Reclamation will be required to monitor construction and the retrofitting of structures to ensure that they are properly secured. In addition, Reclamation will be required to preserve public access to Reclamation fee lands that are not encumbered by life estates. The administration costs and enforcement

obligations pursuant to any conveyance restrictions are best left to the local government, subject to oversight by Reclamation.

Scofield Reservoir Fund – The proposed legislation calls for revenues from the sale of fee interests and the sale of life estates to be deposited into a “Scofield Reservoir Fund.” The fund would be used to finance “enhanced recreation opportunities at Scofield Reservoir.” The Department of the Interior has serious concerns about the establishment and use of the Scofield Reservoir Fund because of the costs associated with administering a small and narrowly focused fund. Also, the fund could better be used to defray administration and enforcement costs associated with these lands rather than being directed toward the beneficiaries of the conveyance.

Precedent – On one level, the proposed legislation amounts to rewarding encroachment with an opportunity to purchase or acquire private exclusive use of Federal lands. The Department of the Interior is concerned about the bill setting a precedent or expectation that there can be a path from encroachment to ownership; however, the Department also finds merit in amicably resolving encroachment issues on the Scofield Reservoir without embarking on protracted litigation.

Report to Congress – Reclamation believes the bill’s objectives can be accomplished consistent with Congressional intent and with support from the local community. Because of the proliferation of required reports to Congress, and the demand on finite budget resources, the Department in general does not support new and narrow reporting requirements.

In addition to those issues raised above, Reclamation has a number of technical concerns:

Land Disputes – Among claimants there are disputes about the boundaries of their claims. The resolution of these claims would likely erode the five years that the claimants have to decide whether to submit notice of a desire to acquire a fee interest or life estate. The legislation should direct claimants to accept the result of the Reclamation survey required under Section (3)(a)(1).

Hold Harmless Clause – The life estate option requires the claimant to hold the United States harmless for damages due to “design, construction, operation and replacement.” The list of causes from which damages may arise should also include “maintenance.” In addition, there is no requirement for claimants seeking fee interest in claimed land to hold the United States harmless. Reclamation recommends that a hold harmless requirement be added to the fee interest option.

Payments in Lieu of Taxes (PILT) – The proposed legislation should explicitly state that PILT payments will be discontinued for lands transferred in fee to claimants.

Mineral Rights – The proposed legislation should state that there will be no conveyance of subsurface or mineral rights.

Water Rights and Sewer System A number of the claimants have developed wells that are also part of their encroachment. To the extent these wells are supported by valid State of Utah water rights, the legislation should address the fate of these wells under conveyance in fee or life estate.

The sewer system serving encroachments is included in a Reclamation license agreement for the State Park. The license agreement is with the Scofield Special Service District for which Carbon County has oversight responsibility.

Sunset – The proposed legislation requires claimants to submit notification to the Secretary of their interest in a fee interest or life estate in the claimed portion of the Federal land within five years of the date of enactment of the proposed legislation, in order to stay enforcement proceedings on the Federal land. This could allow claimants to submit notice of their intent to receive a fee interest or life estate, without requiring the claimants to take any affirmative steps to effectuate the transfer. The proposed legislation should contain a sunset provision whereby notice and transfer must occur within a reasonable timetable.

In closing, Reclamation recognizes that, in spite of its serious concerns, the proposed legislation does offer an acceptable five-year solution to a problem Reclamation has wrestled with for many years. In light of this, the Department of the Interior will not oppose S. 510 if appropriate clarifying language and revisions are added.

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