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Hearing on the Bureau of Reclamation's Title Transfer Process
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Chairman Flake, Ranking Member King, and Subcommittee Members:

Thank you for this opportunity to present testimony on behalf of Idaho water users relating to the Bureau of Reclamation's (Reclamation) Title Transfer process. My name is Paul Arrington. I am Executive Director and General Counsel for the Idaho Water Users Association (IWUA). We represent approximately 300 canal companies, irrigation districts, water districts, ground water districts, municipal and public water suppliers, hydroelectric companies, aquaculture interests, agri-businesses, professional firms, and individuals – all dedicated to the wise and efficient use of Idaho's water resources.

IWUA is closely associated with both the National Water Resources Association (NWRA) and the Family Farm Alliance. These organizations represent agricultural and municipal water providers, family farmers, ranchers and other water users throughout the western United States. Together, our groups work tirelessly to promote, aid and assist the development, control, conservation, preservation and utilization of Idaho's water resources – as well as the water resources of other western states. The Family Farm Alliance has provided the Subcommittee with additional written testimony on this matter. In addition, on June 8, 2017, both the Family Farm Alliance and NWRA submitted testimony relating to the then draft Reclamation Title Transfer Act in the House of Representatives (now H.R. 3281).

Idaho's Rich History of Title Transfer

Idaho has a rich history of Title Transfer involving Reclamation projects. In fact, one of the first Title Transfers of a Reclamation project involved the Burley Irrigation District in Southern Idaho in 1998.

Since that time, other successful Idaho Title Transfers include Nampa & Meridian Irrigation District in 2001, Fremont Madison Irrigation District in 2004, and American Falls Reservoir District #2 in 2008. Each of these Title Transfers were successful due, in large part, to the demonstrated ability by these entities to operate, maintain and manage their facilities in a highly professional and competent manner.

In addition, Pioneer Irrigation District, in Southwest Idaho, is currently working through the Title Transfer process and the Lewiston Orchards Irrigation District in Lewiston, Idaho will begin the

Title Transfer process in the coming years. Finally, the Minidoka Irrigation District is currently waiting on Reclamation to draft a Memorandum of Understanding outlining the issues to be addressed in a title transfer.

Idaho is not alone in its experience with title transfer. From Arizona to Washington State, water users and the federal government have benefited from title transfer. Many of these transferred projects have been operating successfully in a post title transfer environment for decades. I have attended several meetings with the NRWA and Family Farm Alliance and water users in Colorado, Washington State, and Utah that have also expressed interest in future title transfers.

Title Transfer is a Beneficial Process that Can be Improved

Over the past 115 years, Reclamation has planned, designed and constructed numerous irrigation projects in the West. These projects have become vital to the farms, ranches and rural communities that have sprung up because of these Reclamation investments. Many of these projects either have been paid for by the project beneficiaries or are close to being paid out. Yet, the process of transferring the title to these facilities is not automatic (as with a house or a car), and in fact can be so expensive, time consuming or complex that many irrigation districts don't even consider Title Transfer as a realistic option.

Title Transfer can and does benefit the nation's water user community. Reclamation characterizes the Title Transfer process as a "commitment to a Federal Government that works better and costs less."[1] "The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project and will provide the non-Federal entity with greater autonomy and flexibility to manage the facilities to meet their current needs."[2]

IWUA agrees with Reclamation. Title Transfer is a great program. Title Transfer allows for local control of Idaho's water resources. It reduces federal costs and liability associated with owning aging infrastructure. It allows operational decisions to be made in a timelier and more cost-effective manner. Financing for maintenance and rehabilitation is more accessible. Title Transfer will allow water users to quickly and efficiently address issues as they arise – something that is rarely possible under Federal ownership. For example, East Greenacres Irrigation District is a Reclamation project located in Post Falls, Idaho. Post Falls, like many areas in Idaho, is experiencing a significant population growth. At times, East Greenacres' pipelines cross through ground slated for development. Through negotiations with the developers, the pipelines are moved – however, the federal pipeline easements remain. In one such instance, an agreement to move a pipeline, and the ultimate moving of that pipeline, occurred nearly 10 years ago. Yet, the lots remain undeveloped because the federal easement remains on the property. In other words, even though the pipelines have been moved and no pipelines exist in the historical easement, a cloud remains on the title of those lots due to the existence of an easement that is no longer being used. Although requests to remove that federal easement have been in place for nearly a decade,

[1] *Framework for the Transfer of Title Bureau of Reclamation Projects* (updated Sept. 2004) (https://www.usbr.gov/title/framework_title_transfer_2004_revision.pdf).
[2] *Id.*

it remains on the property. Had it owned these facilities, East Greenacres could easily and quickly vacate the easement, allowing the development to move forward.

The benefits of Title Transfer are clear. However, the exorbitant time and expense required to accomplish a Title Transfer – due primarily to what we would consider to be excessive environmental review under NEPA – has been a deterrent for many water users. We support efforts to improve this process in a manner that will make Title Transfer more affordable and accessible.

Lessons Learned from the Title Transfer Process

Idaho's rich history involving Title Transfer gives our water users a unique perspective on the current workings of the Title Transfer process. It is a complicated process. In fact, Reclamation's checklist summarizing the information necessary to accomplish a title transfer is 8-pages long.[3]

There are opportunities for improvement in this process. Perhaps the greatest hurdles for those desiring to take advantage of the Title Transfer process are the time and expense required to accomplish a transfer. The process can take nearly a decade and ultimately requires an act of Congress to complete. This is no small feat!

The Burley Irrigation District Title Transfer took 8-years to accomplish.

The Fremont Madison Irrigation District Title Transfer took nearly 10-years and $300,000 to accomplish.

The Nampa & Meridian Irrigation District Title Transfer took nearly 10-years and over $200,000 to accomplish. Importantly, however, the District was able to keep its costs down because it completed much of the analysis in-house.

The Pioneer Irrigation District Title Transfer is a unique story. Pioneer previously began the Title Transfer process in 2006 – even paying its own engineers to complete the NEPA review. However, that process was halted due to some unrelated issues. The process began anew in 2015. The new process is benefited by the previously completed research and analysis, which has allowed for the process to be truncated. Still, it is expected that the process will take at least 4-years to accomplish and cost nearly $200,000 – not including legal fees, any additional engineering that may be required and any efforts necessary to seek and obtain Congressional approval for the transfer.

The Reclamation-determined requirements for environmental reviews are lengthy and expensive. For simple Title Transfers, where the projects will be transferred and ultimately continue operating in the same manner, the extensive NEPA process seems like an unnecessary expense.

[3] *Title Transfer Checklist* (https://www.usbr.gov/title/Title_Transfer_Checklist-2009.doc).

Project Power Considerations and Title Transfer

Other entities may be interested in Title Transfer, but the current processes and policies are creating impediments to that process. In particular, current Title Transfer practices result in the limiting, or even the loss, of project power. This power, provided at cost-based contracted rates to Reclamation projects, is necessary for the continued viability of the project. Any risk in losing or limiting that Project Power is too much for some entities to take and they, therefore, dismiss the idea of Title Transfer. These projects require project power, even after a potential Title Transfer, in order to remain economically viable for the operations dependent on the water supply.

Burley Irrigation District, for example, utilizes project power for its operations. However, because of the Title Transfer process, its project power is now limited to a 20-year term contract that may, or may not, be renewed by Reclamation.

The Minidoka Irrigation District, along with the Burley Irrigation District, paid part of the cost to build the original Minidoka Dam Power Plant and utilizes project power for its operations. However, even though it paid to develop the ability to generate power as part of the Minidoka Project, if it goes forward with title transfer, it risks losing its project power – resulting in increased cost to its water users during a cycle of declining crop prices.

East Greenacres Irrigation District

East Greenacres has long demonstrated its ability to operate, maintain and manage its facilities in a highly professional and competent manner. Although East Greenacres is under contract with Reclamation for another decade, it could not consider Title Transfer due, in large part, to its reliance on project power to deliver water to its irrigation customers. If East Greenacres were to lose its project power, the increase in power costs, alone, would be crippling to the operations of their irrigation customers.

A&B Irrigation District

Another Idaho entity whose reliance on project power may prevent title transfer is A&B Irrigation District. A&B delivers both surface water and groundwater to 82,000 acres of prime farmland in Jerome and Minidoka Counties, in Southern Idaho. This Reclamation project includes over 180 deep wells, a pumping plant on the Snake River, canals, turnouts and over 700 farming units. A&B entered into its contract with Reclamation in 1962. Full payout of that contract is scheduled for 2020 (with only approximately $35,000 of the original $12.6 million construction cost remaining). The Reclamation contract provides that power generated at the Palisades power plant would be "set aside in perpetuity" for the benefit of A&B to provide the power "required for the operation of the pumping plants of the District."

In the early 1980's, A&B began experiencing groundwater declines and lost capacities that have continued to this day. Wells have been re-drilled, moved and abandoned as A&B has worked to protect its water supplies. A&B has filed two administrative water calls – wherein A&B asked the Idaho Department of Water Resources to curtail junior priority groundwater uses in an effort to obtain the water it is entitled to receive under its water rights. In 2015, A&B installed a

second pumping plant on the Snake River, along with 19-miles of buried pipeline, to deliver surface water to nearly 3,000 acres of land previously covered by failing groundwater supplies. This project cost A&B's landowners $11.8 million and has been successfully funded and operated by the District over the past two years.

A&B is not alone in its struggles with a depleting aquifer. From 2002 through 2014, calls for priority administration were the norm on Idaho's Eastern Snake Plan Aquifer. In 2009, the Idaho Water Resource Board adopted a Comprehensive Aquifer Management Plan ("CAMP") that included a goal to change the aquifer budget by 600,000 acre-feet annually over a 20-year period. In 2016, the Idaho Department of Water Resources designated the Aquifer as a Groundwater Management Area – providing additional protections to an aquifer approaching "critical conditions."

Finally, in 2015, a monumental agreement was entered between surface water and groundwater users to take proactive steps to recover the aquifer. One of the primary tools for recovery is recharge, with the State of Idaho committing to recharge the aquifer at a rate of 250,000 acre-feet/year.

A&B desires to participate in recharge, including assisting with the State's program. In fact, areas accessible by A&B canals are prime recharge areas – modeling shows that recharge in these areas would benefit water users throughout the aquifer (including Reclamation's own storage facilities). However, A&B's project is not authorized to deliver water for recharge. It is an irrigation project. Since it is a Reclamation project it does not have the operational flexibility to deliver water for recharge in areas accessible by its canals and laterals – even though the recharge would benefit Reclamation by providing more water to Reclamation storage facilities.

Like the other Idaho irrigation entities discussed today, there is no question that A&B can operate, maintain and manage its facilities in a highly professional and competent manner. The District has operated the project since 1966. Title Transfer is viewed by A&B as an opportunity to improve flexibility in the operation of its system and to open up opportunities for water supply projects to assist the State of Idaho and protect and improve the Eastern Snake Plain Aquifer.

However, A&B cannot lose its project power. Without project power, A&B's assessments would nearly double – significantly impacting its irrigation customers' operations (forcing some farmers out of business). A&B cannot pursue Title Transfer if its project power would be taken away in the process. As a result, prime recharge areas accessible through A&B's system may not be utilized.

Title Transfer should not automatically result in the loss of project power. Opportunities should exist to maintain that benefit even after Title Transfer. To be sure, I recognize that this is a topic of contention with some in the public power community. However, as this Subcommittee knows, water and power users have many areas of mutual interest and I look forward to working with my colleagues in the public power sector to find common ground on this issue.

Conclusion & Suggestions for a Title Transfer Bill
In conclusion, while a valuable tool, Title Transfer processes can be improved. As this Subcommittee may contemplate possible legislation on Title Transfer, we would suggest the following considerations:

1. Not every Title Transfer should require full NEPA analysis. Some simple Title Transfers, particularly single use projects and those projects that will continue operating in the historical manner, should not be subject to the same rigorous NEPA analysis required for complex Title Transfers. Minimizing NEPA analysis requirements will eliminate much of the time and expense that has prevented more entities from taking advantage of the Title Transfer process.

2. Not every Title Transfer should require an act of Congress. Reclamation should have the authority to complete simple Title Transfers "in house" (such as single use projects and/or those that will continue operating in the historical manner). This would further allow for quicker processing of the Title Transfer.

3. Access to project power should not be eliminated because of Title Transfer. Farming and ranching operations throughout Idaho (and the west) rely on project power to maintain their economic viability. The loss of project power would significantly increase the cost of delivering water. Further, as explained in the A&B example provided above, water supply projects that would benefit both private and public water users (including Reclamation's own reservoirs) are not happening due to the risk of losing project power in a Title Transfer.

Thank you, Chairman Flake, Ranking Member King, and Members of the Subcommittee for providing this opportunity to share Idaho's experiences and suggested opportunities with the Title Transfer process. We appreciate the Subcommittee's interest in this important topic and your efforts on this matter. I would be happy to take any questions the Subcommittee may have.