

**Statement of Austin Ewell
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**Before the
Natural Resources Committee
Subcommittee on Water, Power, and Oceans
U.S. House of Representatives
on**

**H.R. 6652, Conveyance of Kennewick Irrigation District Transferred Works, and
H.R. 6583, the Big Sand Wash Project Title Transfer Act**

September 5, 2018

Chairman Lamborn, Ranking Member Huffman, and Members of the Subcommittee, I am Austin Ewell, Deputy Assistant Secretary for Water and Science at the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on two title transfer bills, H.R. 6652 and H.R. 6583.

As this Subcommittee knows, the Department has an active title transfer program and supports transferring certain Reclamation project facilities to non-Federal entities, particularly in cases where transfers could create opportunities, not just for those who receive a title, but for other stakeholders and the public as well. Specifically, a streamlined title transfer process for uncomplicated transfers creates incentives for non-Federal entities to closely engage with the Bureau of Reclamation (Reclamation) to complete the process and allow for appropriate transfers to take place without legislation. This approach is reflected in the Administration's Title Transfer legislative proposal, transmitted to Congress in February of this year.

Let me turn my attention to the two bills before the Subcommittee today.

H.R. 6652, the Kennewick Irrigation District Transfer Act

H.R. 6652 directs the Department to offer to transfer and convey to the Kennewick Irrigation District (District) all right, title, and interest of the United States in and to the Kennewick Irrigation District Canal (Canal) within two years of enactment of this Act. The Canal includes the entirety of the Canal Unit of the Yakima Project, including canals, lateral appurtenant works, and lands which begin at the District's head-gate and extends approximately 40 miles east to the Columbia River. The facilities under consideration to be transferred are currently owned by Reclamation, but responsibility for their operations and maintenance has been transferred to the District.

We believe that if structured properly, the transfer of these facilities will improve the efficiency and effectiveness of the Canal's operations by getting control of the lands and facilities into the hands of those who best understand the needs of the community. We believe that the District has

effectively managed these facilities for many years and would be a good and responsible candidate to take title pursuant to a title transfer agreement that protects the interests of the District, the local community, the Department, U.S. taxpayers and other stakeholders.

The Department recognizes that the District is a longtime Yakima Project contractor and that regardless of Canal ownership, the District would continue to pay their share of Yakima Project operations and maintenance through their water service contract.

Mr. Chairman, it is important to note that in most cases, Reclamation and the entity interested in taking title completes all of the necessary steps in the title transfer process, including the development of the terms and conditions of the transfer that protect the interests of the District, Reclamation and other stakeholders, before pursuing legislation. Earlier this year, Reclamation and the District entered into a memorandum of agreement which spells out all of the steps for both analyzing the transfer proposal and then developing the terms and conditions of the title transfer agreement. We believe that we are making good progress in that process and are committed to continuing to do so. However, as currently drafted, this legislation would authorize the transfer before those steps are completed.

Instead, we recommend that the conveyance be completed pursuant to a title transfer agreement developed between the Department and the District. This will enable Reclamation and the District to concurrently work through the upfront activities, such as holding public meetings to ensure that the community that could potentially be impacted is aware of the proposal and has the opportunity to raise questions and have potential concerns addressed before we get to the legislative process. We have had situations in previous transfers where stakeholder concerns were not addressed until after the legislation was enacted which required that additional legislation be introduced and considered because the terms and conditions were delineated exclusively in the legislation, and there was no flexibility to address unanticipated problems after the fact. So instead of expediting the transfer's completion, actual facility conveyance was significantly delayed due to the need for additional legislation. It is our goal in this case to avoid that.

Further, it is important that the legislation protects the financial interests of taxpayers. While the District has not completed its repayment obligation for its share of construction costs of the Canal, the District is capable and willing to complete the repayment obligation early to finalize the completion of the title transfer. We need to accurately account for revenues from other contracts, leases, and agreements that currently come to the United States but would transfer to the District under this Act. As yet, that process has not yet been completed. We recommend that the legislation acknowledge this requirement. In addition, we recommend that Section 6 of the bill be revised to authorize, rather than require, Reclamation to provide up to fifty percent of certain costs.

We would be pleased to work with the Committee, the sponsors and the District on legislative language to reflect these necessary modifications. In the meantime, we recommend that Reclamation and the District complete a valuation analysis to ensure that the financial interests

of the United States are protected and that the results be reflected in the title transfer agreement that is referenced in the legislation.

Mr. Chairman, Reclamation has been working closely and collaboratively with the District on this title transfer and we look forward to continuing that progress.

With these modifications, the Department would be pleased to support H.R. 6652.

H.R. 6583, the Big Sand Wash Project Title Transfer Act

H.R. 6583 would transfer title to the Big Sand Wash Reservoir and the other features of the Uintah Basin Replacement Project (Project) from the United States to the Central Utah Water Conservancy District (Central Utah). The Project was authorized in Section 203 of the Central Utah Project Completion Act to implement specific projects in the Uinta Basin of eastern Utah.

The project provides 2,500 acre-feet of irrigation water and 3,000 acre-feet of municipal and industrial water; reduces wilderness impacts; increases instream flows; and improves recreation opportunities. The Project was implemented under a partnership arrangement whereby the Department provided \$64 million of up-front federal funding, Central Utah provided \$27 million of local funding, and the Utah Reclamation Mitigation and Conservation Commission also provided additional federal funding for environmental mitigation. Under the project agreements, Moon Lake Water Users Association (Moon Lake) agreed to allow its existing private facilities to be used for the project but provided no funding. Central Utah constructed the Project features and is responsible for repayment of the Federal investment and for operation, maintenance, and replacement of the Project.

The key feature of the Project is the Big Sand Wash Dam. The original dam was owned by Moon Lake who agreed to the reconstruction of the dam as part of the Project. Under the Project, Central Utah removed and replaced most of the existing dam. The New Big Sand Wash Dam creates an enlarged reservoir with twice the original capacity that is shared between Moon Lake and the Project. In order to enlarge the reservoir, the additional land that would be newly inundated was acquired by Central Utah, acting as a purchasing entity for the federal government as part of its construction obligation, at a cost of \$5.4 million, of which \$4.7 million were federal funds.

Before construction of the Project began, a Warranty Deed of Easement on appurtenant associated lands was recorded November 15, 2001, under which Moon Lake gave permanent and temporary construction and inundation easements to the United States for construction of the Big Sand Wash Dam, dikes, and appurtenant structures. This Deed included the following language: *“In the event of termination of the Operating Agreement, all easements granted herein shall automatically terminate.”* Although this provision of the Warranty Deed was approved at that time by the Department, our current position is that this language is not allowed by law for an additional easement to be acquired for the reservoir lands because the easement would be

defeasible; that is, the easement would no longer exist or at best become uncertain and subject to challenge should the Operating Agreement be terminated.

In addition to the Warranty Deed, other agreements, including the Operating Agreement, were also executed on November 15, 2001, for the implementation of the Project and the Big Sand Wash enlargement. The understanding in these agreements is that the land purchased by Central Utah for inundation would be transferred to Moon Lake subject to a permanent easement in the name of the United States. Moon Lake has advocated strongly that the exact language from the Warranty Deed, be included in land transfer documents.

From the Department's perspective, this presents potential legal complications because 40 U.S.C. § 3111 requires that any land or interest acquired by the United States must be sufficient for the purpose for which the property is being acquired. The purpose of this acquisition is to have a permanent easement within the expanded reservoir to store Project water. There is no other option for storage of that water. Consequently, a defeasible interest is not sufficient for the purpose of the acquisition. The language Moon Lake has advocated for could leave the United States without the ability to store Federal water after a substantial investment of \$64 million to develop the Project. In short, a defeasible easement interest makes the federal water supply from the Project uncertain and potentially subject to re-allocation by a future Moon Lake action or leadership. The communities and farms served by the Project cannot grow and develop if they are required to rely upon an uncertain Project water supply.

In addition, as noted above, Central Utah used Federal funds to acquire certain lands in its name for the purpose of water storage and conveyance in the enlarged Big Sand Wash facility. These lands are referred to as "Acquired Lands" in the proposed legislation. While Central Utah may not have had the authority to use Federal funds to acquire those lands in its name, the legislation also resolves this issue.

This bill would provide the means to resolve the outstanding dispute by transferring title to Project facilities but maintaining Project deliveries under contract.

However, it is important to note that in most cases, the Department and the entity interested in taking title must complete environmental compliance activities and negotiate the terms and conditions of the transfer before pursuing legislation. The Department has been working with Central Utah closely on this effort and will continue to do so. Although this proposed legislation, as currently drafted, would authorize title transfer before those steps are completed, it requires that all agreements needed to complete those steps be executed prior to title transfer

Thus, we recommend that the title transfer be completed pursuant to the agreements procedure described in the Administration's Title Transfer legislative proposal. This will enable the Department, Central Utah, and the other stakeholders to successfully complete all of the activities and agreements that are necessary as a prerequisite to title transfer. We have had situations in previous title transfers where additional legislation was required because the terms

and conditions of transfer were prescribed exclusively in the legislation leaving little to no flexibility to address unanticipated problems or issues in those matters.

We would be pleased to work with the Committee, Central Utah, and the other stakeholders on legislative language to reflect these necessary modifications.

Mr. Chairman, the Department has been working closely with Central Utah on this issue and we look forward to continuing that progress. We believe that if structured properly, title transfer of these facilities will resolve the outstanding issues and create opportunities by allowing the project to be fully operated by those who best understand the needs of the community.

With these modifications, the Department would be pleased to support H.R. 6583.

This completes my written statement.