

**H.R. 6583, “BIG SAND WASH PROJECT
TITLE TRANSFER ACT”; AND H.R. 6652, TO
DIRECT THE SECRETARY OF THE
INTERIOR TO CONVEY CERTAIN FACILI-
TIES, EASEMENTS, AND RIGHTS-OF-WAY
TO THE KENNEWICK IRRIGATION
DISTRICT, AND FOR OTHER PURPOSES**

LEGISLATIVE HEARING

BEFORE THE
SUBCOMMITTEE ON WATER, POWER AND OCEANS
OF THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

Wednesday, September 5, 2018

Serial No. 115–52

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.govinfo.gov>
or
Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

31–400 PDF

WASHINGTON : 2018

COMMITTEE ON NATURAL RESOURCES

ROB BISHOP, UT, *Chairman*

RAÚL M. GRIJALVA, AZ, *Ranking Democratic Member*

Don Young, AK <i>Chairman Emeritus</i>	Grace F. Napolitano, CA
Louie Gohmert, TX <i>Vice Chairman</i>	Madeleine Z. Bordallo, GU
Doug Lamborn, CO	Jim Costa, CA
Robert J. Wittman, VA	Gregorio Kilili Camacho Sablan, CNMI
Tom McClintock, CA	Niki Tsongas, MA
Stevan Pearce, NM	Jared Huffman, CA <i>Vice Ranking Member</i>
Glenn Thompson, PA	Alan S. Lowenthal, CA
Paul A. Gosar, AZ	Donald S. Beyer, Jr., VA
Raúl R. Labrador, ID	Ruben Gallego, AZ
Scott R. Tipton, CO	Colleen Hanabusa, HI
Doug LaMalfa, CA	Nanette Diaz Barragán, CA
Jeff Denham, CA	Darren Soto, FL
Paul Cook, CA	A. Donald McEachin, VA
Bruce Westerman, AR	Anthony G. Brown, MD
Garret Graves, LA	Wm. Lacy Clay, MO
Jody B. Hice, GA	Jimmy Gomez, CA
Aumua Amata Coleman Radewagen, AS	Nydia M. Velázquez, NY
Daniel Webster, FL	
Jack Bergman, MI	
Liz Cheney, WY	
Mike Johnson, LA	
Jenniffer González-Colón, PR	
Greg Gianforte, MT	
John R. Curtis, UT	

Cody Stewart, *Chief of Staff*

Lisa Pittman, *Chief Counsel*

David Watkins, *Democratic Staff Director*

SUBCOMMITTEE ON WATER, POWER AND OCEANS

DOUG LAMBORN, CO, *Chairman*

JARED HUFFMAN, CA, *Ranking Democratic Member*

Robert J. Wittman, VA	Grace F. Napolitano, CA
Tom McClintock, CA	Jim Costa, CA
Paul A. Gosar, AZ	Donald S. Beyer, Jr., VA
Doug LaMalfa, CA	Nanette Diaz Barragán, CA
Jeff Denham, CA	Madeleine Z. Bordallo, GU
Garret Graves, LA	Gregorio Kilili Camacho Sablan, CNMI
Jody B. Hice, GA	Jimmy Gomez, CA
Daniel Webster, FL	Raúl M. Grijalva, AZ, <i>ex officio</i>
<i>Vice Chairman</i>	
Mike Johnson, LA	
Greg Gianforte, MT	
Rob Bishop, UT, <i>ex officio</i>	

CONTENTS

Hearing held on Wednesday, September 5, 2018	Page 1
Statement of Members:	
Huffman, Hon. Jared, a Representative in Congress from the State of California	3
Prepared statement of	4
Lamborn, Hon. Doug, a Representative in Congress from the State of Colorado	2
Prepared statement of	2
Statement of Witnesses:	
Ewell, Hon. Austin, Deputy Assistant Secretary for Water and Science, U.S. Department of the Interior, Washington, DC	6
Prepared statement of	8
Freeman, Chuck, District Manager, Kennewick Irrigation District, Kennewick, Washington	23
Prepared statement of	24
Shawcroft, Gene, General Manager, Central Utah Water Conservancy District, Orem, Utah	10
Prepared statement of	12
Winterton, Dex, General Manager, Moon Lake Water Users Association, Roosevelt, Utah	16
Prepared statement of	17

**LEGISLATIVE HEARING ON H.R. 6583, TO
AUTHORIZE THE SECRETARY OF THE
INTERIOR TO CONVEY CERTAIN LANDS AND
FACILITIES OF THE BIG SAND WASH
PROJECT, UTAH, “BIG SAND WASH PROJECT
TITLE TRANSFER ACT”; AND H.R. 6652, TO
DIRECT THE SECRETARY OF THE INTERIOR
TO CONVEY CERTAIN FACILITIES, EASE-
MENTS, AND RIGHTS-OF-WAY TO THE
KENNEWICK IRRIGATION DISTRICT, AND
FOR OTHER PURPOSES**

Wednesday, September 5, 2018

U.S. House of Representatives

Subcommittee on Water, Power and Oceans

Committee on Natural Resources

Washington, DC

The Subcommittee met, pursuant to notice, at 2:05 p.m., in room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Bishop; Huffman, and Barragán.

Mr. LAMBORN. The Subcommittee on Water, Power and Oceans will come to order. The Water, Power and Oceans Subcommittee meets today to hear testimony on H.R. 6583, sponsored by Committee Chairman Rob Bishop of Utah; and H.R. 6652, sponsored by Representative Newhouse of Washington.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman, the Ranking Minority Member, and the Vice Chair. Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

Without objection, so ordered.

The Committee will consider each bill individually, hearing all testimony on that bill. If a witness is addressing multiple bills, the complete testimony will be heard at one time. After all the testimony is heard on the first bill, Members will have 5 minutes to ask questions on that bill only. We will then hear from our witnesses on the next bill, and repeat the process.

We will begin with opening statements, starting with myself for 5 minutes.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. The Subcommittee meets today to consider two Bureau of Reclamation title transfer bills that give local control of critical water facilities and infrastructure to the local entities that already operate and maintain those facilities.

Title transfers are often a win-win for the taxpayer and the local communities that are served by these facilities. Transferring simple projects, or parts of them, allows water districts and other local beneficiaries to leverage non-Federal financing through ownership equity, while simultaneously decreasing Federal liability.

Facilitating these types of title transfers remains a priority for this Subcommittee. As some of you are aware, I have authored a bill, H.R. 3281, which establishes a streamlined process for administratively conducting title transfers for uncomplicated, single-purpose water facilities. The Administration has also transmitted a similar proposal which aims to do the same.

Both bills we are considering here today, one sponsored by Chairman Bishop and one by Congressman Newhouse, transfer facilities to the respective local water managers. In both cases, as is a general requirement for title transfers, the recipients are fully willing to repay the balance of the Federal repayment obligation to receive title to these facilities. Additionally, both transfers will ultimately include agreements to ensure that current water deliveries are held constant throughout and after the transfer.

The Federal Government provided the initial capital contribution to build the vast majority of early Reclamation projects. However, the water and power customers who benefited from the facilities entered into long-term contracts with the Federal Government to repay their part of the initial taxpayer investment.

Under the Reclamation law, Reclamation may transfer day-to-day operational and maintenance responsibilities to project beneficiaries. However, the title or ownership of any facility must remain in Federal ownership until Congress enacts legislation specifically authorizing such a transfer. And that is why we are here today.

The two bills in front of us support local infrastructure and give local communities the ability to seek private financing through equity to improve vital water infrastructure. Additionally, these transfers can reduce paperwork and staff time at both the Federal and local levels, and reduce the Federal backlog of repairs to these facilities, which can improve the environment and public safety.

I want to thank the witnesses for their willingness to be here with us today, and I look forward to hearing from our witnesses today on the local benefits of these title transfers.

[The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMBORN, CHAIRMAN, SUBCOMMITTEE ON WATER, POWER AND OCEANS

The Subcommittee meets today to consider two Bureau of Reclamation title transfer bills that give local control of critical water facilities and infrastructure to the local entities that already operate and maintain those facilities.

Title transfers are often a win-win for the taxpayer and the local communities that are served by these facilities. Transferring simple projects—or parts of them—allows water districts and other local beneficiaries to leverage non-Federal financing

through ownership equity while simultaneously decreasing Federal liability. Facilitating these types of title transfers remains a priority for this Subcommittee. As some of you are aware, I have authored a bill, H.R. 3281, which establishes a streamlined process for administratively conducting title transfers for uncomplicated, single-purpose water facilities. The Administration has also transmitted a similar proposal which aims to do the same.

Both bills we are considering here today, one sponsored by Chairman Bishop and one by Congressman Newhouse, transfer facilities to the respective local water managers. In both cases, as is a general requirement for title transfers, the recipients are fully willing to repay the balance of the Federal repayment obligation to receive title to these facilities. Additionally, both transfers will ultimately include agreements to ensure that current water deliveries are held constant throughout and after the transfer.

The Federal Government provided the initial capital contribution to build the vast majority of early Reclamation projects, however, the water and power customers who benefited from the facilities entered into long-term contracts with the Federal Government to repay their part of the initial taxpayer investment.

Under the Reclamation law, Reclamation may transfer day-to-day operational and maintenance responsibilities to project beneficiaries, however, the title or ownership of any facility must remain in Federal ownership until Congress enacts legislation specifically authorizing such a transfer. That is why we are here today.

The two bills in front of us today support local infrastructure and give local communities the ability to seek private financing, through equity, to improve vital water infrastructure. Additionally, these transfers can reduce paperwork and staff time at both the Federal and local levels and reduce the Federal backlog of repairs to these facilities, which can improve both the environment and public safety.

I want to thank the witnesses for their willingness to be here with us today and look forward to hearing from our witnesses today on the local benefits of these title transfers.

Mr. LAMBORN. I now recognize the Ranking Member, Mr. Huffman of California, for 5 minutes for his statement.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Mr. Chairman. Welcome to our witnesses. I am glad to be here, examining these two title transfer bills. These bills before us would authorize the Federal Government to relinquish ownership of certain Federal water facilities to local water districts in Utah and Washington State.

The first bill, H.R. 6583, involving the Uintah—if I am pronouncing that right—Basin Replacement Project is one that supplies water for irrigation and municipal and industrial purposes around Duchesne County, Utah. I look forward to learning more about this bill, and am grateful that we have witnesses from the Central Utah Water Conservancy District and Moon Lake Water Users with us here today.

Next is H.R. 6652, authorizing the transfer of certain canals and laterals associated with the Kennewick Irrigation District in Benton County, Washington. Glad that we are hearing from that irrigation district. I should note also that the Yakima Nation has been an interested stakeholder. They've been in contact with my office, and I'm pleased to learn, apparently, that they have also been in contact with the irrigation district and some of their concerns have been incorporated in proposed amendments. So, I want to commend folks for continuing to work with critical stakeholders. I look forward to hearing more about that legislation, as well.

Speaking of working collaboratively on title transfers, I have to note that we have a little unfinished business before this

Subcommittee. The Chairman and I agree on the concept of title transfers in many cases, and yet we have been dealing with this issue on a project-by-project, piecemeal basis, rather than looking at a broader policy framework. And I am hoping we can maybe follow the lead that the Senate has started to demonstrate, by trying to establish some broad policy factors that can guide these decisions, going forward.

The Chairman knows that I have long supported the idea of making it easier to carry out title transfers, as long as these transfers preserve environmental protections, abide by our tribal trust obligations, and ensure fair taxpayer compensation. In some cases, it is very important to recognize taxpayers have invested tens of millions of dollars in the construction of water infrastructure, and it is only fair that they, the taxpayers, be properly compensated for their investment before Federal assets are relinquished.

Also critical, I believe that title transfers should do no harm to tribes, to our Nation's environment, or to other water users. The Bureau of Reclamation projects and the decisions about how to operate them can have an enormous impact on the health of our Nation's native fish and wildlife, including tribal fisheries. So, those are factors that need to be part of a, hopefully, bipartisan framework on this issue, going forward.

And the operation of these projects can determine how river flows are regulated, whether migrating fish can move downstream, whether rivers stay at temperatures sufficient to sustain native fish and wildlife. The projects have to be operated in a balanced manner that protects the environment, no matter who owns them, going forward.

As we consider potential reforms, I think we can certainly make it easier to carry out the non-controversial transfers that only serve a narrow set of stakeholders, but I do not support transfers that allow one stakeholder to take sole ownership of large, multipurpose water projects that are vital to many stakeholders. Those are just inherently more complicated, in my view.

I look forward to seeing if we can't find some more common ground on this issue.

I welcome the witnesses, and with that I yield back, Mr. Chairman.

[The prepared statement of Mr. Huffman follows:]

PREPARED STATEMENT OF THE HON. JARED HUFFMAN, RANKING MEMBER,
SUBCOMMITTEE ON WATER, POWER AND OCEANS

Thank you, Mr. Chairman.

I'm glad to be here today to examine two title transfer bills. The bills before us would authorize the Federal Government to relinquish ownership of certain Federal water facilities to local water districts in Utah and Washington State.

First on the agenda we have H.R. 6583, which would authorize the transfer of certain features and lands associated with the Uinta Basin Replacement Project, which supplies water for irrigation and municipal and industrial purposes around Duchesne County, Utah. I look forward to hearing more about this bill and I want to thank our witnesses from the Central Utah Water Conservancy District and Moon Lake Water Users Association for joining us today.

Next on the agenda we have H.R. 6652, which would authorize the transfer of certain canals and laterals serving the Kennewick Irrigation District, located in Benton County, Washington. While I'm glad we'll be hearing from the Kennewick Irrigation District today, I should note that the Yakama Nation also has an interest in this legislation and has been in contact with my office.

I understand that the Yakama Nation's proposed a series of amendments to H.R. 6652 that aim to preserve tribal rights and interests. I also understand that the Kennewick Irrigation District's rightfully agreed to the proposed amendments. I'm glad to hear that Kennewick has checked in with other stakeholders and is working in a collaborative manner on this bill. I look forward to hearing more about this legislation as well.

Speaking of working collaboratively on title transfers, I must note that an area of unfinished business for us, Mr. Chairman, is finding agreement on the broader title transfer issue. Republicans and Democrats in the Senate have come together and reached a compromise on broad title transfer legislation. I hope we can make the same progress in this chamber.

As you know, Mr. Chairman, I've long supported the idea of making it easier to carry out title transfers, so long as those transfers preserve environmental protections, abide by our tribal trust obligations, and ensure fair taxpayer compensation.

Taxpayers have invested tens of billions in the construction of our Nation's water projects. It's only fair that taxpayers be properly compensated for their investment before Federal assets are relinquished.

It's also critical that title transfers do no harm to tribes or our Nation's environment. The Bureau of Reclamation's water projects and the decisions made about how to operate them have an enormous impact on the health of our Nation's native fish and wildlife, including tribal fisheries.

The operation of many water projects determine how river flows are regulated, whether migrating fish can move downstream, and whether rivers stay at temperatures sufficient to support the existence of fish and wildlife. These kinds of water projects must be operated in a balanced manner that protects the environment.

As we consider potential reforms, I think we can certainly make it easier to carry out non-controversial transfers that only serve a narrow set of stakeholders. That being said, I do not support title transfers that allow one stakeholder to take sole ownership of large, multipurpose water projects that serve numerous stakeholders.

Large multipurpose water projects, of which there are many across the West, often need to be operated in a manner that balances sometimes conflicting stakeholder interests. Transferring ownership to just one stakeholder would likely result in significant harm to many other interests impacted by the operation of water projects, including tribes, fishing groups, power users, and environmental and recreational interests, to name a few.

I also believe that title transfers must not undermine bedrock environmental laws like ESA or NEPA. I'm glad to see that both of today's bills require compliance with ESA and NEPA. That being said, both bills also approve a title transfer before the NEPA process is actually carried out.

As we consider both bills, I do want to give some thought to whether NEPA should be carried out before a final decision is made about a title transfer. NEPA, after all, is intended to inform decision making. Given that fact, we may want to leave some limited discretion with the Interior Department to allow a final decision to be made, within certain parameters, after the NEPA process is complete.

Nevertheless, I remain open to working across the aisle in a collaborative manner. I think we can carry out many title transfers while protecting environmental, tribal, and taxpayer interests. I hope we can keep working together on this issue, Mr. Chairman. There's certainly room to improve the existing title transfer process while keeping important protections in place, and I hope you'll join me in that effort.

Thank you, I yield back.

Mr. LAMBORN. All right. I will now introduce our panel of witnesses.

Our first witness is Mr. Austin Ewell, Deputy Assistant Secretary for Water and Science for the Department of the Interior, from Washington, DC; our second witness is Mr. Gene Shawcroft, General Manager of the Central Utah Water Conservancy District, from Orem, Utah; our third witness is Mr. Dex Winterton, General Manager of the Moon Lake Water Users Association, from Roosevelt, Utah; and our final witness is Mr. Chuck Freeman, District Manager for the Kennewick Irrigation District, from Kennewick, Washington.

Thank you all for taking the time to be here. Each witness' written testimony will appear in full in the hearing record, so I ask that you keep your oral statements to 5 minutes, as outlined in our invitation letter to you, and also under Committee Rule 4(a).

I also want to explain how our timing lights work. When you are recognized, press the talk button to activate your microphone. Once you begin your testimony the Clerk will start the timer and a green light will appear. After 4 minutes, a yellow light will appear, and at that time you should begin to conclude your statement. At 5 minutes, the red light will come on. You may complete your sentence, but I ask that you stop at that point.

We will now hear testimony on H.R. 6583, starting with the bill's sponsor and Committee Chairman, Mr. Rob Bishop of Utah.

The CHAIRMAN. I'll wait.

Mr. LAMBORN. OK. We will now hear from our panel of witnesses. And, again, if your testimony is broader than just the first bill, we will still hear your entire statement, but we would ask that you remain for questions on the other measures later in the hearing. And those who have testified only on the first bill will be able to leave after we take up consideration on the second bill.

Mr. Ewell, you are now recognized for 5 minutes.

STATEMENT OF THE HON. AUSTIN EWELL, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. EWELL. Thank you very much. Good afternoon. And also, thank you to staff for your efforts on this.

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. Thank you for the opportunity to provide the Department's views on two title transfer bills.

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 title, but for other stakeholders and the public, as well.

A streamlined title transfer process for uncomplicated transfers would create incentives for non-Federal entities to closely engage with the Bureau of Reclamation to complete the application process and allow for appropriate transfers to take place without legislation. This approach is reflected in the Administration's title transfer legislation proposal transmitted to Congress this past February.

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

H.R. 6652, the Kennewick Irrigation District Transfer Act directs the Department to offer to transfer and convey to the Kennewick Irrigation District all right, title, and interest of the United States in and to the Kennewick Irrigation District Canal within 2 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 of 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.

The Department recognizes that the District is a long-time Yakima project contractor, and that, regardless of canal ownership, the District would continue to pay their share of the Yakima project operations and maintenance through their water service contract.

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

H.R. 6583, the Big Sand Wash Project Title Transfer Act, would transfer title to the Big Sand Wash Reservoir and the other features of the Uintah Basin Replacement Project from the United States to the Central Utah Water Conservancy District. The project was authorized in Section 203 of the Central Utah Project Completion Act to implement specific projects in the Uintah 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 recreational opportunities. The project was implemented under a partnership agreement, whereby the Department provided \$64 million of upfront 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 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.

I am pleased to say that, over the past several years, the Department's representatives, along with Central Utah and Moon Lake, have met with Chairman Bishop's office, working constructively to resolve these issues. This bill would provide the means to resolve the outstanding dispute by transferring title to project facilities, but maintaining project deliveries under contract. We look forward to continuing our work with the Committee and local stakeholders to meet the goals of this legislation.

My written testimony provides the recommended modifications to both of these transfer bills. We believe that, if structured properly, transferring title of each of these facilities will resolve outstanding issues and create opportunities by allowing the projects to be fully

operated by those who best understand the needs of their communities.

With the modifications in my testimony, the Department would be pleased to support both bills.

I would be happy to respond to any questions.

Thank you.

[The prepared statement of Mr. Ewell follows:]

PREPARED STATEMENT OF AUSTIN EWELL, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR ON H.R. 6652 AND H.R. 6583

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 2 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 50 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 Uintah 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 upfront 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 reallocation 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.

Mr. LAMBORN. Thank you.

Mr. Shawcroft, you are now recognized for 5 minutes.

**STATEMENT OF GENE SHAWCROFT, GENERAL MANAGER,
CENTRAL UTAH WATER CONSERVANCY DISTRICT, OREM,
UTAH**

Mr. SHAWCROFT. Thank you. Good afternoon. Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee, I serve as the General Manager for the Central Utah Water Conservancy District, which is the state agency responsible for the construction, repayment and maintenance of the Central Utah Project.

I wish to express gratitude to Chairman Bishop for his leadership on this legislation.

I am pleased to support H.R. 6583 which transfers title to the Big Sand Wash Reservoir and related features of the Uintah Basin Replacement Project to the District and, ultimately, the local water users. With funding support from the Department of the Interior, we built the replacement project to provide additional water for agriculture and M&I use in Duchesne County, Utah. The project helped to solve problems of access and needed repair of small, high-mountain lakes located on High Uintas Wilderness Areas upon which the farmers rely.

The features of the replacement project were constructed by the District to enlarge Big Sand Wash Reservoir, which is owned by the Moon Lake Water Users Association, so we could move their water rights out of the wilderness area and provide a firmer supplemental supply of water in the county.

The enlarged reservoir also provides new municipal water to Roosevelt City and other entities through the Duchesne County Water Conservancy District. The total cost of the project was \$90 million, which funding was provided through a 65 percent Federal/35 percent District cost-share arrangement.

The replacement project includes the enlarged Big Sand Wash Dam and Reservoir, which provides an additional 2,500 acre-feet of irrigation and 3,000 acre-feet of M&I water, Federal water, that is delivered to the Duchesne County Water Conservancy District for use by its M&I and agricultural customers.

The enlargement-inundated lands were acquired by the District at a cost of \$5.4 million with both Federal and local funds. The land acquisition process was very lengthy, and although construction of the project was completed in 2007, the final arrangements for the land transfer were not in place until 2016.

The solution of a title transfer of the Big Sand Wash is to resolve a dispute over language contained in a warranty deed of easement on appurtenant lands that was given to the United States by the Moon Lake Water Users Association. This deed included the following language: "In the event of termination of the operating agreement, all easements granted herein shall automatically terminate." Although the warranty deed with its original sentence was approved by the Solicitor's Office, the Department of the Interior's current position is that this language is illegal and unenforceable, and can no longer be honored.

The District initially suggested a solution to resolve the issue, and that was to transfer the land that was purchased by the District with Federal funding to the Association with a permanent easement in the name of the United States. The District prepared the transfer documents, however, the Association insisted that the easement provided violated the original agreement.

The Department of the Interior's Solicitor's Office insists that the original language in the deed would result in a defeasible interest in land of the United States, which is illegal and unenforceable, and could leave the United States without the ability to store supplemental Federal water after a \$90 million investment.

Over the past 3 years, under the direction of Chairman Bishop, all of the parties, including the Utah office of the Bureau of

Reclamation and the Central Utah Project Completion Act officials, have been working on a legislative solution. The bill, as drafted today, is the result of these negotiations. The District joined the Association and Duchesne County Water Conservancy District and signed a Memorandum of Agreement, which is part of the record, which is reflective of the text associated with H.R. 6583.

This bill is very straightforward. It authorizes the District to pre-pay all of the Federal partners' investment, and that will enable the District to obtain title to these lands for the purpose of transferring the properties at Big Sand Wash Reservoir to Moon Lake Water Users Association.

Other features of the project include delivery pipelines to Duchesne County municipal and industrial customers, and all of these are specified in agreements that will be necessary in the bill.

We appreciate your support, and are very supportive of H.R. 6583. Thank you.

[The prepared statement of Mr. Shawcroft follows:]

PREPARED STATEMENT OF GENE SHAWCROFT, GENERAL MANAGER, CENTRAL UTAH
WATER CONSERVANCY DISTRICT IN SUPPORT OF H.R. 6583

Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee, I serve as General Manager of the Central Utah Water Conservancy District (District), which is the state agency responsible for the construction, repayment and maintenance of the Central Utah Project. I wish to express my gratitude to Chairman Rob Bishop for his leadership on this legislation. I am pleased to support H.R. 6583 which transfers title to the Big Sand Wash Reservoir and related features of the Uintah Basin Replacement Project (UBRP) to the District and ultimately the local water users. With funding support from the Interior Department, we built UBRP to provide additional water for agriculture and M&I use in Duchesne County, Utah. The project helped to solve problems of access and needed repair of small, high mountain lakes located in the High Uintas Wilderness Area upon which the farmers rely.

The features of UBRP were constructed by the District to enlarge Big Sand Wash Reservoir, which is owned by the Moon Lake Water Users Association, so we could move their water rights out of the wilderness area and provide a firmer supplemental supply of water in the County. The enlarged reservoir also provides new municipal water to Roosevelt City and other entities through the Duchesne County Water Conservancy District. The total cost of the project was \$90 million, with funding provided through a 65 percent Federal/35 percent District cost-share arrangement.

UBRP includes the enlargement of the Big Sand Wash Dam and Reservoir, which provides an additional 2,500 acre-feet for irrigation and 3,000 acre-feet for M&I of Federal water that is delivered to the Duchesne County Water Conservancy District for use by its M&I and agricultural customers. The enlargement-inundated lands were acquired by the District at a cost of \$5.4 million with both Federal and local funds. The land acquisition process was very lengthy, and although construction of the project was completed in 2007, the final arrangements for land transfer were not in place until 2016.

The solution of a title transfer of the Big Sand Wash Dam is to resolve a dispute over language contained in a warranty deed of easement on appurtenant lands that was given to the United States by the Moon Lake Water Users Association. This deed included the following language: "In the event of termination of the Operating Agreement, all easements granted herein shall automatically terminate." This created an expectation by Moon Lake Water Users Association that at some point the dam would once again become their property. Although the warranty deed with this original sentence was approved by the Solicitor's Office, the Department of the Interior's current position is that this language is illegal and unenforceable and can no longer be honored.

The District initially suggested one solution to resolve the issue and that was to transfer the land that was purchased by the District with Federal funding to Moon Lake Water Users Association with a permanent easement in the name of the United States. The District even prepared the transfer documents; however, Moon Lake Water Users Association insisted that the easement provision violated the

original agreement. The Department of the Interior's Solicitors Office insists that the original language in the deed would result in a defeasible interest in land of the United States, which is illegal and unenforceable, and could leave the United States without the ability to store supplemental Federal water after a \$90 million investment in the project.

Over the past 3 years, under direction from Chairman Rob Bishop's office, all of the parties including the Utah offices of the Bureau of Reclamation and CUPCA officials, have been working a legislative solution. The bill as drafted today is the result of these negotiations. The District joined Moon Lake Water Users Association and Duchesne County Water Conservancy District and signed a Memorandum of Agreement (attached for the record), which is reflected in legislative text of H.R. 6583. The bill is very straightforward. It authorizes the District to prepay all of our Federal partners' investment and that will enable the District to obtain title to these lands for the ultimate purpose of transferring the properties at Big Sand Wash Reservoir to Moon Lake Water Users Association. Other features of the project that include the delivery pipelines to Duchesne County for its municipal and irrigation customers will be transferred to those specific users through the agreements as specified in the bill. All of these customers will continue to pay the District for the water we sell them until we recoup our costs. The UBRP facilities are stand alone, meaning they only serve the water users involved. This makes it ideal for title transfer.

I believe H.R. 6583 represents the best solution to resolve this legal dilemma. It returns the Federal Government's money, allows those who maintain and operate these facilities to obtain title to them, and resolves a legal conflict between the District and the Department of the Interior. On behalf of the District, I want to again thank Chairman Bishop for his support throughout this process and the vitally important suggestions and contributions of the Interior Department officials in Utah who helped us develop this solution.

ATTACHMENT FOR THE RECORD

**MEMORANDUM OF AGREEMENT
AMONG
CENTRAL UTAH WATER CONSERVANCY DISTRICT (CUWCD),
MOON LAKE WATER USERS ASSOCIATION (ASSOCIATION),
AND
DUCHESNE COUNTY WATER CONSERVANCY DISTRICT (DCWCD)
FOR RESOLVING MULTIPLE ADMINISTRATIVE AND
OPERATIONAL ISSUES
REGARDING
UINTA BASIN REPLACEMENT PROJECT (UBRP) FACILITIES**

This MEMORANDUM OF AGREEMENT (MOA) is made and entered into this 27th day of June, 2018 among the Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058; the Moon Lake Water Users Association, 263 East Lagoon Street, P.O. Box 235, Roosevelt, Utah 84066; and the Duchesne County Water Conservancy District, 275 West 800 South, Roosevelt, Utah 84066. Collectively the preceding shall be referred to as "the Parties."

The Parties have agreed to the following concepts, some to be included in proposed UBRP-specific Title Transfer Legislation (Legislation) and others not, to resolve multiple administrative and operational issues regarding UBRP facilities:

Concepts included in the Legislation:

Land

The land acquired for UBRP and held by CUWCD would remain in the name of CUWCD. The Legislation would authorize the three parcels of land acquired by the United States for Big Sand Wash Reservoir to be transferred to CUWCD. After enactment of the Legislation and under a separate agreement, most of the land acquired by CUWCD and the United States would be transferred from CUWCD to ASSOCIATION. The land underlying Utah State Highway 87 would be transferred from CUWCD to the Utah Department of Transportation. This land transfer would not include land acquired for mitigation of UBRP, which would remain in the name of and under the administration of the United States.

Repayment

The Legislation would restate the authority provided under Section 210 of the Central Utah Project Completion Act (CUPCA), found in Public Law 102–575, which allows CUWCD to prepay their municipal and industrial (M&I) repayment obligation. The Legislation would also allow CUWCD to prepay its irrigation repayment obligations on a block-notice-by-block-notice basis. The effect of this authorization would be to remove Reclamation Reform Act (RRA) requirements from CUWCD and those to whom it sells water as each block notice is prepaid.

Facilities

The outlet works at Moon Lake Dam, which were modified under UBRP, would remain as features of the Federal Moon Lake Project. All other features of UBRP would be transferred from the United States to CUWCD, including the Big Sand Wash Feeder Diversion, the Big Sand Wash Feeder Pipeline, and the Big Sand Wash-Roosevelt Pipeline. (See accompanying Figure 1.1, Uinta Basin Replacement Project Features, for location information.)

Agreements

Title transfer from CUWCD to ASSOCIATION would be contingent upon the execution of several agreements in accordance with the Legislation. The Parties agree that the UBRP Operating Agreement, Agreement No. 01–07–40–R7020 dated November 15, 2001, shall be preserved as the controlling document, recognizing that some modification will be necessary.

Title transfer and the execution of the agreements would be contingent upon the completion of National Environmental Protection Agency (NEPA) and cultural resource compliance.

The Parties recognize the necessity for a timely, collaborative approach in preparing and executing the referenced agreements. The Parties also acknowledge that agreement provisions need to be implemented in a mutually beneficial, cooperative manner.

Concepts not included in the Legislation:

Water Rights

Section 203(e) of CUPCA states: “WATER RIGHTS.—To make water rights available for any of the features constructed as authorized in this section, the [United States] Bureau [of Reclamation] shall convey to [CUWCD] in accordance with [Utah] State law the water rights evidenced by Water Right No. 43–3825 (Application No. A36642) and Water Right No. 43–3827 (Application No. A36644).”

In accordance with this Section of CUPCA, these water rights have been assigned to CUWCD. A deed, however, must be conveyed from the United States to CUWCD to complete the conveyance.

Water Transfer

Although not part of the Legislation, but associated with the title transfer, would be the potential exchange of a portion or all of the 3,000 acre-feet of UBRP M&I water assigned to DCWCD. All or part of this M&I water would be exchanged from Big Sand Wash Reservoir to Starvation Reservoir. Currently, 1,500 acre-feet of this water is being temporarily used for instream flows under the authority of Section 207 of CUPCA. The water, delivered from Starvation Reservoir, could be used for instream flows or M&I use. A study and NEPA compliance would need to be conducted.

Future Transfers

In the future, land, facilities, and a portion of the water rights transferred from the United States to CUWCD could be transferred from CUWCD to ASSOCIATION and/or the DCWCD.

IN WITNESS THEREOF, the Parties have thereto caused this MOA to be executed as of this 27th day of June, 2018.

CENTRAL UTAH WATER CONSERVANCY DISTRICT

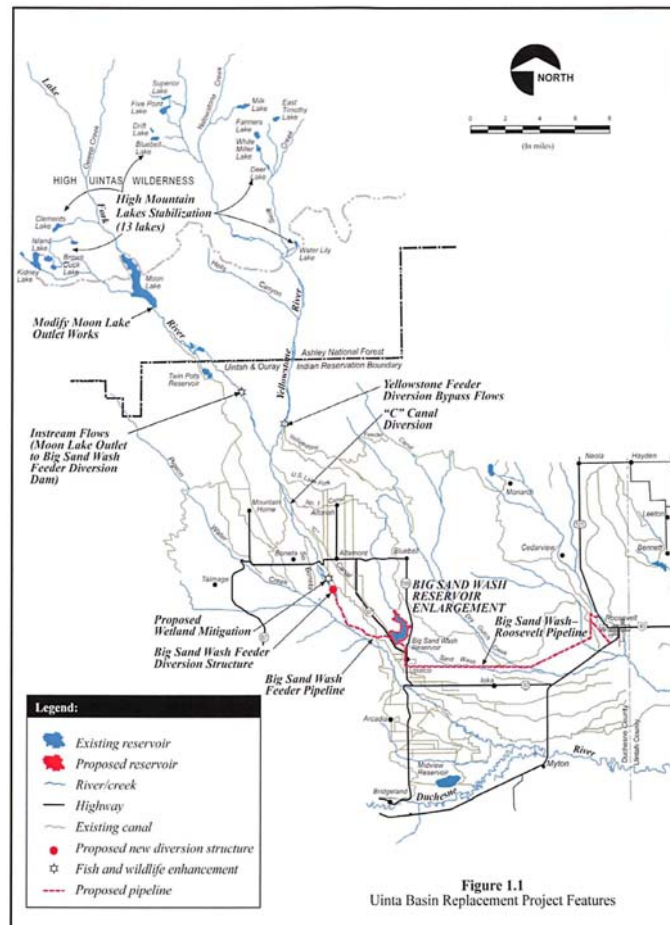
By: Gene Shawcroft, P.E.
General Manager/CEO

MOON LAKE WATER USERS ASSOCIATION

By: Dex Winterton
General Manager

DUCHESNE COUNTY WATER CONSERVANCY DISTRICT

By: Clyde Watkins
General Manager



Mr. LAMBORN. Thank you.
Mr. Winterton, you are now recognized for 5 minutes.

**STATEMENT OF DEX WINTERTON, GENERAL MANAGER, MOON
LAKE WATER USERS ASSOCIATION, ROOSEVELT, UTAH**

Mr. WINTERTON. Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee, good afternoon. My name is Dex Winterton, and I am the General Manager of the Moon Lake Water Users Association. Thank you very much for your time and for your consideration of H.R. 6583, Big Sand Wash Project Title Transfer Act.

We would first like to thank Chairman Rob Bishop and his great staff for getting us to this point. Without Chairman Bishop's leadership, this resolution would not have been possible.

Moon Lake Water Users Association is a Utah non-profit corporation and a mutual irrigation company. The Association's eight shareholders are non-profit mutual irrigation companies. The Association was formed in 1934. It provides agricultural irrigation water to over 75,000 acres in the Uintah Basin, located in the northeast of Utah.

Over our history, the Association has acquired, participated in, and built many projects. Among these was the original private off-stream Big Sand Wash Reservoir, as well as 13 small Depression-era reservoirs in the Uintah Mountains, inside the area which Congress designated as High Uintas Wilderness Area in 1984.

Water storage is a precious and scarce commodity in the Uintah Basin. The priority water rights are tribal. The mountains are steep with predominately south-facing slopes, so the majority of the volume of the streamflow comes in a short amount of time early in the irrigation season. These two factors mean that, without storage, water right holders like the Association have insufficient water for mid- to late-season irrigation.

Federal land ownership has restricted available locations to store early runoff flows for more productive use later in the season. As a result of these factors, available storage volume relative to need in the Basin remains a serious limitation on productivity. For these reasons, we are always looking to improve our system by adding storage or improving facilities and efficiencies.

In the early 1990s, the Association was approached by the Department of the Interior's CUPCA Completion Office and the Central Utah Water Conservancy District about including the enlargement of the Association's privately owned and financed offstream Big Sand Wash Reservoir as a component of the Uintah Basin Replacement Project.

The Uintah Basin Replacement Project was authorized in 1992 by passage of what is commonly called the Central Utah Project Completion Act. While there were benefits for the Association in allowing the enlargement of Big Sand Wash Reservoir, such as moving some of our water storage out of the wilderness area, there was obvious concern about undue Federal control of a facility that had been entirely built, operated, and completely paid for by the Association.

Nevertheless, after many years of negotiation, agreements were reached which would allow for the Central Utah Water Conservancy District, under Department of the Interior supervision, to enlarge the Big Sand Wash Reservoir.

These agreements called for the Association to continue operation and maintenance of the facility and to own fee title to both the historically-owned Association Big Sand Wash Reservoir lands, as well as the additional lands to be acquired for the enlargement, subject to a very specific form of easement to be held by the United States. Without these specific conditions being included in the agreement, the Association would not have agreed to participate in the enlargement of our reservoir.

In 2001, the U.S. Department of the Interior accepted the agreed form of easement on historic Association Big Sand Wash Reservoir lands, which make up the large majority of lands under the enlarged reservoir, and formally signed the agreement. The agreement called for the United States to acquire the additional needed lands to facilitate the enlargement, then reserve the exact same form of easement that had previously been given by the Association, and then convey fee title to the acquired additional lands to the Association.

Over the course of decades, it has been one battle after another to get the Department of the Interior to live up to the signed agreement with respect to the Association holding fee title to the acquired additional Big Sand Wash Reservoir lands subject only to the agreed form of easement.

We are grateful for the work of Congressman Bishop, who, through his efforts, brought the parties together. We are also appreciative of our friends from the Central Utah Water Conservancy District for their proposed solution of title transfer as outlined in H.R. 6583.

This bill will allow the Moon Lake Water Users Association to move forward and secure what was formally agreed to by the parties in 2001.

We thank the Committee for your time and assistance, and ask for your support and expeditious consideration of H.R. 6583.

[The prepared statement of Mr. Winterton follows:]

PREPARED STATEMENT OF DEX WINTERTON, GENERAL MANAGER, MOON LAKE WATER USERS ASSOCIATION ON H.R. 6583

Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee, good afternoon, my name is Dex Winterton and I am the General Manager of the Moon Lake Water Users Association. Thank you very much for your time and consideration of H.R. 6583—Big Sand Wash Project Title Transfer Act.

We would first like to thank Chairman Rob Bishop and his great staff for getting us to this point. Without Chairman Bishop's leadership this resolution would not have been possible.

Moon Lake Water Users Association is a Utah non-profit corporation and a mutual irrigation company. The Association's eight shareholders are also non-profit mutual irrigation companies. The Association was formed in 1934. It provides agricultural irrigation water to over 75,000 acres in the Uintah Basin, located in the northeast of Utah. Over our history the Association has acquired, participated in and built many projects. Among these was the original private off-stream Big Sand Wash Reservoir, as well as 13 small depression-era reservoirs in the Uintah Mountains, an east-west oriented mountain range, the relevant portion of which Congress designated as the High Uintas Wilderness Area in 1984.

Water storage is a precious and scarce commodity in the Uintah Basin. The priority water rights are tribal. The mountains are steep with predominately south-facing slopes, so the majority of the volume of the streamflow comes in a short amount of time early in the irrigation season. These two factors mean water right holders like the Association have insufficient water for mid to late irrigation season without storage. Federal and tribal land ownership has restricted available locations to store early runoff flows for more productive use later in the season. As a result

of these factors available storage volume relative to need in the Basin remains a serious limitation on productivity. For these reasons, we are always looking to improve our system by adding storage or improving facilities and efficiencies.

In the early 1990s, the Association was approached by the Department of the Interior's CUPCA Completion Office and the Central Utah Water Conservancy District (CUWCD) about including the enlargement of the Association's privately owned and privately financed off-stream Big Sand Wash Reservoir as a component of the Uintah Basin Replacement Project (UBRP). UBRP was authorized in 1992 by passage of what is commonly called the Central Utah Project Completion Act (CUPCA). While there were benefits for the Association in allowing the enlargement of Big Sand Wash Reservoir for the Association, such as moving some of our water storage out of the wilderness area, there was obvious concern about undue Federal control of a facility that had been entirely built, operated and completely paid for by the Association.

Nevertheless, after many years of negotiation, agreements were reached which would allow for CUWCD, under DOI supervision, to enlarge Big Sand Wash Reservoir. These agreements called for the Association to continue operation and maintenance of the facility and to own fee title to both the historically owned Association Big Sand Wash Reservoir lands, as well as the additional lands to be acquired for the enlargement, subject to a very specific form of easement to be held by the United States. Without these specific conditions being included in the Agreement, the Association would not have agreed to participate in the enlargement of our reservoir.

In 2001, the U.S. Department of the Interior (DOI) accepted the agreed form of easement on historic Association Big Sand Wash Reservoir Lands, which make up the large majority of lands under the enlarged Big Sand Wash Reservoir, and formally signed the Agreement. The Agreement called for the United States to acquire the additional needed lands to facilitate the enlargement, then reserve the exact same form of easement that had been given by the Association as to the historically owned Association Big Sand Wash lands, and then convey fee title to the acquired additional lands to the Association, subject to that easement.

Over the course of decades, it has been one battle after another after another to get DOI to live up to the signed Agreement with respect to the Association holding fee title to acquired additional Big Sand Wash Reservoir lands subject only to the agreed form of easement.

We are grateful for the work of Congressman Bishop who through his efforts brought the parties together. We are also appreciative of our friends from CUWCD for their proposed solution of Title Transfer as outlined in H.R. 6583. This Bill will allow the Moon Lake Water Users Association to move forward and secure what was formally agreed to by the parties in 2001.

We thank the Committee for your time and assistance and ask for your support and expeditious consideration of H.R. 6583.

Mr. LAMBORN. All right. Thank you all for your testimony on H.R. 6583. We will take up questions now for that bill, and then a little bit later we will move into the other bill. I will now recognize myself for 5 minutes.

Mr. Ewell, thank you for being here. As you are aware, I have put forth a bill, H.R. 3281, which aims to streamline the title transfer process, in general. In your testimony, you had mentioned the Administration's proposal, which reflects many of the ideas in my bill. Do you believe these title transfers, or parts of them, would be candidates for consideration under these proposals—your proposal and my bill proposal?

Mr. EWELL. Thank you, Chairman, for the question. Yes, I believe that portions—at least on the face of it, as it relates to the particular bill in front of us—would be applicable. I think the general theme of streamlining is reflected in both the Administration's proposal, as well as yours, and, ultimately, the goal of looking toward uncomplicated, single-purpose projects, to allow for transfer.

And I think, on the face of it, both the bills before us today have some of those characteristics with some more complexities related to the Big Sand Wash Project.

Mr. LAMBORN. All right. As a followup, I think many of us see the need for a modernized path allowing for non-Federal entities to take title to the facilities they operate and maintain. Can you assure me that you will continue to work with my office and the entire Committee to ensure that we can develop a plan to streamline the title transfer process for appropriate transfers?

Mr. EWELL. Yes, sir. I would be happy to confirm our interest. It is a priority of the Department of the Interior and of the Administration to see a successful process established for streamlining title transfers for projects that are uncomplicated and make sense for meeting that purpose.

Mr. LAMBORN. OK, thank you. Now, we have heard from several Members on the other side that title transfers must protect the taxpayer investment in these projects, and that is a concept I am totally in support of, as well. It is my understanding that these projects are fully paid off before title is transferred.

So, Mr. Ewell, is it the Bureau's general practice to finalize title transfer agreements only once a project is indeed fully paid off?

Mr. EWELL. You are correct. The idea that the project is repaid prior to any transfer taking place, that would then include title transfer.

In this case, you have two projects which have remaining amounts due, based upon the repayment. Those would be repaid prior to any actual transfer of title.

Mr. LAMBORN. Does that leave any taxpayer vulnerability in the kind of title transfer process that my bill or these specific bills anticipate?

Mr. EWELL. I don't believe so. The intent is to identify what amounts are owed, either in the repayment contract, as well as any other associated revenues due to the United States, whether it be due to easements or other revenue-generating streams associated with the ownership of those projects. Those are all identified in the process with the Memorandum of Understanding.

Once those are calculated and determined, those amounts are fully paid in advance, prior to any transfer of title, thus protecting the interests of the taxpayers.

Mr. LAMBORN. OK, thank you.

Mr. Shawcroft and Mr. Winterton, concerns have been raised to make sure that the environment continues to be protected. Would there be any lessening of environmental protection if your stakeholders were to take possession of a property and take ownership of a property, as opposed to Federal ownership?

Mr. SHAWCROFT. No, sir. There would be no reduction. Those agreements in place now are between the Central Utah Water Conservancy District, the sponsor of the project, and the Department of the Interior. And those agreements would not change.

Mr. LAMBORN. Mr. Winterton?

Mr. WINTERTON. No, there has been agreement that nothing will change, as far as deliveries or instream flow commitments.

Everything remains the same. Just fixing the issue that we have with the easements is our interest.

Mr. LAMBORN. Well, I like the sounds of what we are doing, whether it is for specific projects or in general. The government is repaid, the taxpayers are satisfied. Environmental protections go forward. I like the idea of local oversight, as opposed to from a distance, like here from Washington, DC, and I like the fact that taxpayers don't have any continuing liability, either.

With that, I will turn over for 5 minutes to the Ranking Member, Mr. Huffman.

Mr. HUFFMAN. Thanks, Mr. Chairman. Mr. Ewell, welcome to the Subcommittee. I am going to start with you. I know that H.R. 6583 requires compliance with NEPA, and I know that the Bureau has carried out about 30 or so title transfers, as I understand it. And there has been a NEPA process associated with all of that.

I am interested in hearing you speak to what kind of issues came to light during the NEPA process of these previous transfer processes.

Mr. EWELL. Thank you very much for the question, Congressman, and it is a pleasure, good to see you again.

Since about 1996, there have been roughly 30 title transfers which the Reclamation has completed. My understanding is approximately 2 or 3 of those—besides those 2 or 3, the remaining 27, 28 of those transfers all were completed with an EA and a FONSI.

Only one of those actually required a mitigated EA FONSI, and that was due to the tribal lands that were associated with the project facilities. Other than that, historically they have been completed environmentally through the environmental assessment with the finding of no significant impact.

Mr. HUFFMAN. These were the kind of uncomplicated, single-purpose projects that we talk about. Is it fair to say, or would you agree with me that the NEPA process provided an important way for you to validate that these were not controversial, and that the title transfer was appropriate for all the stakeholders involved?

Mr. EWELL. Yes, sir. I believe that is a fair statement. I think the existing NEPA process, which goes through to identify what impacts, if any, are associated with the facilities, and the transfer of those facilities in most cases, the operations and the facilities themselves remain the same. They just go to, quite frankly, the districts that are already operating and maintaining the facilities. This just allows them to now hold title to those facilities.

Mr. HUFFMAN. Thank you.

For Mr. Shawcroft and Mr. Winterton, a question for both of you. As I said in my opening remarks, I do support uncomplicated title transfers if they don't negatively impact local tribes, fishing groups, power users, environmental, and recreational interests, et cetera.

As far as you know, are there any objections to this proposed title transfer from any such stakeholders in your community?

Mr. SHAWCROFT. None that I am aware of.

Mr. HUFFMAN. All right. And I would just ask the same of Mr. Freeman.

Mr. FREEMAN. No, sir.

Mr. HUFFMAN. OK. Terrific. And I also understand that you may be considering some additional title transfers involving other

Reclamation assets. You have done a great job working with the Yakima Tribe and other stakeholders. Are you committed to continuing that kind of collaborative inclusion and outreach as you consider other facilities?

Mr. FREEMAN. Yes, sir.

Mr. HUFFMAN. All right. Thanks.

I have nothing further, Mr. Chairman. Thank you.

Mr. LAMBORN. All right. I now recognize Chairman Bishop for 5 minutes.

The CHAIRMAN. Thank you.

Mr. Shawcroft and Mr. Winterton, let me ask you both the same question. In your testimonies, you described going back in history to 2001, when there was an agreement that should have enabled Moon Lake Water Users Association to retake the title of the Big Sand Wash Reservoir land, but DOI changed its legal interpretation and renege on the deal.

Can you simply describe what impact that had on the communities in the Basin who rely on these secure water deliveries?

Let's start with you, Mr. Shawcroft.

Mr. SHAWCROFT. I am unaware of any impact that has had. The project has functioned, it has been working well. Mr. Winterton actually operates that project, and I will let him answer. But as far as I am concerned, there has not been any impact, as far as the deliveries have been concerned.

The CHAIRMAN. Mr. Winterton?

Mr. WINTERTON. For me, I think, and for the Association, it brings about a lot of uncertainty and questions about the future. This is not the only project that we operate.

As these things move forward, if they can question and renege, as was said, on these agreements, what else can they find in other agreements that we handle?

So, that is our biggest concern, security going into the future, being able to make our deliveries, handling our own water rights.

The CHAIRMAN. To follow up, does this title transfer alleviate that challenge?

Mr. WINTERTON. Yes, it should, as long as we can complete these issues, like we have discussed, and get the easement, as proposed.

The CHAIRMAN. And, once again, the water supply that is already under contract, that would remain untouched?

Mr. WINTERTON. Yes.

The CHAIRMAN. It would still be available, it would still be delivered?

Mr. WINTERTON. Yes.

The CHAIRMAN. There has been some question in certain places simply about the completion of environmental compliance, if this was actually transferred. Do either of you—once again, Mr. Winterton first, then Mr. Shawcroft—have any concerns about the actual compliance with any kind of environmental regulations, were this transfer to take place?

Mr. WINTERTON. No. Essentially, operations shouldn't change in any way, shape, or form. I think the mutual agreement between the Association and Central Utah Water Conservancy District is to leave those operations, as far as the agreement is concerned, in

place. I see no concern, moving forward, to keep those environmental protections in place.

Mr. SHAWCROFT. I would agree with that. The commitments that were made are under a Record of Decision, which was provided on the Uintah Basin Replacement Project. Those commitments will continue. I see no reason why there would be any modification at all in any of those environmental commitments.

The CHAIRMAN. It was implied in some of the written testimony that there might have to be follow-up legislation because of operating agreements. Do either of you see a need for that?

Mr. SHAWCROFT. I do not. I think if the agreements that are listed and enumerated are completed, there will be no further legislative action.

Mr. WINTERTON. Yes, as long as we are making sure these agreements come together, as long as they come together, then there shouldn't be any need.

The CHAIRMAN. As you two were working out the agreement that went into this, and making the agreement that you signed together, was the Utah office of the Bureau of Reclamation involved in that?

Mr. SHAWCROFT. They were involved in the discussion and the negotiation as Mr. Winterton and I and our staff got together. They were not involved in every meeting, but they have been involved with all of the communication, everything that has been in writing they have been involved with, and they have been very supportive and have been helpful as we have concluded these negotiations.

The CHAIRMAN. So, basically, you have signed off on what we are attempting to do here.

Mr. WINTERTON. Yes.

The CHAIRMAN. OK, and are supportive of that?

Mr. WINTERTON. Correct.

The CHAIRMAN. Cool.

Mr. Ewell, within the context of this legislation, do you think there is further language that is necessary?

Mr. EWELL. Thank you for the question, Mr. Chairman. I believe that the idea behind the legislation, and especially if it allows some room should future items be discovered, for those to be included, I think that the legislation as written is appropriate.

The CHAIRMAN. Thank you. I appreciate that. I also appreciate the oral testimony that you have given here today. I think it has been spot on. Written one, eh, but the oral testimony has been very good.

[Laughter.]

The CHAIRMAN. I also have some concerns about trying to follow any Senate pattern that we have, as far as coming up with an overall standard. If we actually were to follow the Senate in any kind of possibility, that would basically mean we do nothing, and then we would follow the Senate standards. Thank you for your testimony.

Mr. LAMBORN. All right, thank you. We have now finished our consideration of H.R. 6583. Mr. Winterton and Mr. Shawcroft, thank you for traveling to be here with us today. You are now excused.

And we will move into discussion on our second and final bill of the day, H.R. 6652.

Mr. Freeman, you are recognized for 5 minutes.

**STATEMENT OF CHUCK FREEMAN, DISTRICT MANAGER,
KENNEWICK IRRIGATION DISTRICT, KENNEWICK,
WASHINGTON**

Mr. FREEMAN. Thank you, Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee. I am Charles Freeman, District Manager for the Kennewick Irrigation District (KID). With me today are Vice President of my Board of Directors, Mr. Kurt Huffman and my Land and Water Resource Manager, Seth Defoe.

KID is a water provider serving the urban and agricultural customers at the end of the Yakima Basin project in Washington State.

I want to thank you for holding a hearing on H.R. 6652, the Kennewick Irrigation District title transfer bill. We appreciate Congressman Dan Newhouse's leadership on this and other water infrastructure issues, and I would also like to thank Chairman Lamborn and other members of the Committee for their work on the Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act.

The KID has been supplying water in the lower Yakima Basin for over 100 years. Our partnership with the Bureau of Reclamation began in the 1950s to build much of the canal system we use today. Since 1958, the District has been responsible for operation, maintenance, and replacement of the facilities we hope to take title to. We have a long proven history of successfully managing and operating our system. The District is scheduled to conclude its repayment requirements to Reclamation in 2024, however we are prepared to prepay the remaining balance of our loan.

H.R. 6652 authorizes the transfer of ownership of the Kennewick Irrigation District transferred works from Reclamation to the District. The transferred works include about 80 miles of canal laterals, associated works, easements, drains, and waste-ways. The transfer of title would enable the District to have more direct control over an important infrastructure asset and can provide added service to our operations.

The transfer would also benefit the Federal Government by reducing its liability. And with us prepaying our repayment loan early, the Federal taxpayer will also see a fiscal benefit.

The District is committed to going through the title transfer process in a collaborative manner. As part of this, the District will go through an environmental assessment under the National Environmental Policy Act. This process includes tribal consultation, which Ranking Member Huffman referred to today.

When the Board of Directors authorized me to investigate and go forward with the idea of title transfer transferred works, our first meeting was at the Yakima Nation. I am very humbled and very pleased with their letter today. We have no issues with what they are asking; it is just clarification of what the head gate is, and other terms with respect to the water right. So, we will continue dialoguing with them, as well as going through the Endangered

Species Act review and National Historic Preservation Act review, and the hazardous materials review.

The District and Reclamation have signed an MOA that lists tasks and environmental reviews associated with the title transfer process. The costs of these tasks total over \$189,000, of which KID has paid \$115,000. The largest expenditures associated with the title transfer are these reviews. The District does not object to going through the process. It should be noted that the project will not change. We are transferring facilities that have already been constructed, and that KID has been operating and responsible for for over 60 years. In large part, the title transfer is an exchange of documents.

Water providers face numerous challenges in their efforts to supply water, including growing demand, aging infrastructure, and changing precipitation patterns. Managing challenges are one of the reasons we are pursuing title transfer. A title transfer will help make our district as responsive, innovative, and efficient as possible.

Last year, KID celebrated its centennial anniversary. As the District looks toward the future, a title transfer will help ensure reliable and efficient water supplies for the next century and beyond.

Chairman Lamborn, Ranking Member Huffman, and Congressman Newhouse, we would like to thank you for consideration and support in legislation, and for your attention to our Nation's water infrastructure.

I would be happy to answer any questions.

[The prepared statement of Mr. Freeman follows:]

PREPARED STATEMENT OF CHARLES FREEMAN, DISTRICT MANAGER, KENNEWICK
IRRIGATION DISTRICT ON H.R. 6652

Chairman Lamborn, Ranking Member Huffman, and members of the Subcommittee, I am Charles Freeman, the District Manager for the Kennewick Irrigation District (the District). I want to thank you for holding a hearing on H.R. 6652, the Kennewick Irrigation District title transfer bill. We appreciate Congressman Dan Newhouse's leadership on water infrastructure issues and for introducing the bill. I would also like to thank Chairman Lamborn and the other members of the Committee for their work on the Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act.

The District has been supplying water in the lower Yakima Basin for over 100 years. It was first formed as a special purpose district in 1917 and today provides irrigation water to approximately 23,400 landowners across 20,201 acres of land within a 55,000-acre boundary. In the 1950s, the Bureau of Reclamation (Reclamation) partnered with local farms to build the canal system we still use today. This system diverts water from the Yakima River at Prosser Dam. The water travels 11 miles down a diversion canal along the river to Chandler. There hydraulic pumps send the water up the Horse Heaven Hills to the head of the main canal.

Since 1958, the District has been responsible for operations, maintenance, and replacement of our facilities. We have a long proven history of successfully managing and operating our water system. The District is scheduled to conclude its repayment requirements to Reclamation in 2024, however we are prepared to prepay the remaining balance. Currently, Congress has to specifically authorize title transfers. This is because Reclamation retains the title or ownership of the facilities and projects, even after a repayment contract is completed. Since 1996, Congress has authorized title transfer for 30 projects. H.R. 6652 authorizes the transfer ownership of the Kennewick Irrigation District's Transferred Works from Reclamation to the District. The Transferred Works include the canals, laterals, and appurtenant works and lands, which begin at the District's head gate and extends approximately 40 miles east to the Columbia River.

The transfer of title would enable the District to have more direct control of an important infrastructure asset and could provide value added service to our operations. The transfer will also benefit the Federal Government by reducing its liabilities and, because we are willing to prepay our remaining repayment balance, the Federal taxpayer will also see a fiscal benefit.

When the District recognized that it was in a position to pay off its obligation to the Federal Government early it decided to move ahead with title transfer. On August 15, 2017, the District's Board of Directors approved Resolution 2017-29, authorizing KID staff to engage Reclamation and our congressional delegation in the title transfer process. That December, the District and Reclamation agreed to a Memorandum of Agreement (MOA) to facilitate a title transfer of a number of works that will be paid off and that the District already operates and manages. We have greatly appreciated working with Reclamation through this process.

The District is committed to going through the title transfer process in a collaborative manner. As part of the MOA the District will go through an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA). This process includes tribal consultation, and Endangered Species Act Review, a National Historical Preservation Act Review, and a hazardous materials review.

The MOA with Reclamation lists tasks associated with the title transfer process, totaling \$189,757.00, of which Reclamation will pay \$74,757.00 and KID will pay \$115,000.00. The largest expenditures associated with the title transfer are these reviews, while the District does not object to these processes we do think it should be noted that the use of the project will not change, we are transferring facilities that have already been constructed, and that the District has been managing these facilities for over 60 years. In large part the title transfer is an exchange of documents.

On February 14, 2018, I had the privilege of testifying before this Subcommittee on "The State of the Nation's Water and Power Infrastructure." My testimony addressed the growing challenges water providers face in their efforts to supply water including growing demand, aging infrastructure, and changing precipitation patterns. Managing these challenges are one of the reasons we are pursuing title transfer. I believe our district must be as responsive, innovative, and efficient as possible.

As the District looks toward the future a title transfer will help ensure reliable and efficient water supplies for the next generation and beyond.

TITLE TRANSFER AND IMPROVED INFRASTRUCTURE MANAGEMENT

Our community has changed since the District's infrastructure was initially built to serve the agricultural community. Today, the District's water deliveries are almost half agricultural land and half residential areas.

Taking a system designed for agricultural purposes and using it to supply urbanized customers creates unique challenges for the District. Unfortunately, Reclamation has not always been timely in meeting the needs of our community. For example, developers in Kennewick have had to endure years long waiting times for Reclamation's approval to move easement lines on properties a developer already owns. The wait has affected the private development of those properties. Reclamation is a valuable partner and we believe that H.R. 6652 will ease some of the burdens it faces and it will benefit the District as well as the surrounding community.

THE FUTURE OF WATER IN THE YAKIMA BASIN

Last year, KID celebrated its centennial anniversary. The District has been able to supply water for over a century based on investments made by prior generations. We are committed to ensuring that the District is able to supply water for another century, and beyond. To do that KID must continue to invest in its systems, its operations, and partnerships with other stakeholders.

Chairman Lamborn and Ranking Member Huffman, thank you for your consideration of this important legislation and for your attention to our Nation's water infrastructure. I am confident that with this Subcommittee's leadership we can successfully complete this title transfer process and provide the District, its customers, and the Kennewick community with the flexibility we need to continue meeting the needs of our water users. Thank you for allowing me the opportunity to testify. I would be happy to answer any questions.

Mr. LAMBORN. All right. Thank you for your testimony. You have done such a good job of explaining things, I don't have any further questions. I will turn to the Ranking Member and see if he has any questions.

Mr. HUFFMAN. Nor do I. I appreciate the testimony, and I have nothing further.

Mr. LAMBORN. Chairman Bishop?

The CHAIRMAN. Well, I mean, he has to have a question somewhere. So, how are you feeling?

[Laughter.]

The CHAIRMAN. I yield back.

Mr. LAMBORN. I want to thank you, Mr. Freeman and Mr. Ewell, and the other witnesses who were here earlier for coming today and sharing with us your valuable and helpful testimony. Members of the Subcommittee may have additional questions for you, and we would ask that you would respond to those in writing, if you receive those.

Under Committee Rule 3(o), members of the Committee must submit questions to the Clerk within 3 business days following the hearing, and the hearing record will be open for 10 business days for your responses.

If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 2:48 p.m., the Subcommittee was adjourned.]

