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BUREAU OF RECLAMATION SMALL CONDUIT HYDROPOWER DEVELOPMENT AND RURAL JOBS

JUNE 3, 2013.—Ordered to be printed

Mr. WYDEN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 306]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 306) to authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act".

SEC. 2. AUTHORIZATION.

Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) is amended—

(1) by striking "The Secretary is authorized to enter into contracts to furnish water" and inserting the following:

"(1) The Secretary is authorized to enter into contracts to furnish water";

(2) by striking "(1) shall" and inserting "(A) shall";

(3) by striking "(2) shall" and inserting "(B) shall";

(4) by striking "respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects" and inserting "respecting the sales of electric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development"; and

(5) by adding at the end the following:

"(2)(A) When carrying out this subsection, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association oper-

ating the applicable transferred conduit, or to the irrigation district or water users association receiving water from the applicable reserved conduit. The Secretary shall determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege offer for a small conduit hydropower project.

"(B) If the irrigation district or water users association elects not accept a lease of power privilege offer under subparagraph (A), the Secretary shall offer the lease of power privilege to other parties in accordance with this subsection.

"(3) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands.

"(4) The Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.

"(5) Nothing in this subsection shall obligate the Western Area Power Administration, the Bonneville Power Administration, or the Southwestern Power Administration to purchase or market any of the power produced by the facilities covered under this subsection and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

"(6) Nothing in this subsection shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved, nor shall it create any unmitigated financial or physical impacts to the project or division involved. The Secretary shall notify and consult with the irrigation district or water users association operating the transferred conduit before offering the lease of power privilege and shall prescribe terms and conditions that will adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.

"(7) Nothing in this subsection shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

"(8) Nothing in this subsection shall alter or affect any existing preliminary permit, license, or exemption issued by the Federal Energy Regulatory Commission under Part I of the Federal Power Act (16 U.S.C. 792 et seq.) or any project for which an application has been filed with the Federal Energy Regulatory Commission as of the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act.

"(9) In this subsection:

"(A) CONDUIT.—The term 'conduit' means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

"(B) IRRIGATION DISTRICT.—The term 'irrigation district' means any irrigation, water conservation or conservancy, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.

"(C) RESERVED CONDUIT.—The term 'reserved conduit' means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.

"(D) TRANSFERRED CONDUIT.—The term 'transferred conduit' means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.

"(E) SMALL CONDUIT HYDROPOWER.—The term 'small conduit hydropower' means a facility capable of producing 5 megawatts or less of electric capacity.".

PURPOSE

The purpose of S. 306 is to authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law.

BACKGROUND AND NEED

The Bureau of Reclamation is the largest wholesale water supplier, operating 337 reservoirs with a total storage capacity of 245 million acre-feet of water. These reservoirs provide irrigation water to 10 million farmland acres through hundreds of miles of canals. Reclamation is also the second largest producer of hydroelectric power in the western United States. Fifty-three Bureau of Reclamation power plants annually provide more than 40 billion kilowatt hours generating nearly a billion dollars in power revenues and produce enough electricity to serve 3.5 million homes.

There is potential to develop additional hydropower on existing small conduits at Reclamation's water canals and pipelines. Small conduit hydropower projects are defined as projects producing 5-megawatts or less. According to a study completed by the Bureau of Reclamation, 373 existing canals and conduits have the combined potential of generating over 365,000 MW-hours of additional hydropower annually.

In order to develop small conduit hydropower, developers must use the Lease of Power Privilege (LOPP) process where hydropower is an authorized use. In developing small conduit hydropower, the Secretary of the Interior must first offer the LOPP to the irrigation district or municipality that currently operates the project. S. 306 facilitates small hydropower development at existing conduits by expediting and improving the LOPP process.

LEGISLATIVE HISTORY

Senator Barrasso introduced S. 306 on February 13, 2013. The bill is co-sponsored by Senators Crapo, Enzi, Risch, and Flake. The Senate Committee on Energy and Natural Resources held a hearing on S. 306 on April 23, 2013. On May 8, 2013, the Committee ordered S. 306 favorably reported, by voice vote, with amendment in the nature of a substitute to conform S. 306 to the text of H.R. 678.

Representative Tipton introduced similar legislation, H.R. 678, on February 13, 2013. The House Committee on Natural Resources held a hearing on the bill on March 25, 2013, and reported the bill favorably out of committee. The bill passed the House by a roll call vote of 416–7 with amendments. At its business meeting on May 8, 2013, the Senate Energy and Natural Resources Committee ordered H.R. 678 favorably reported.

In the 112th Congress, similar legislation, H.R. 2842, was introduced by Representative Tipton on September 6, 2011. H.R. 2842 passed the House on March 7, 2012, by a roll call vote of 265 to 154. The Senate Committee on Energy and Natural Resources Subcommittee on Water and Power held a hearing on H.R. 2842 on September 19, 2012 (S. Hrg. 112–301).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on May 8, 2013, by voice vote of a quorum present, recommends that the Senate pass S. 306, if amended as described herein.

COMMITTEE AMENDMENTS

During its consideration of S. 306, the Committee adopted an amendment in the nature of a substitute. The amendment modifies S. 306 to conform it to the text of H.R. 678. The provisions of the substitute are described in more detail in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title

Section 2 amends section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) to authorize sales of electric power and leases of power privileges as a function at all Bureau of Reclamation conduits. Section 2 of H.R. 678 clarifies that the Bureau of Reclamation, not the Federal Energy Regulatory Commission, is responsible for authorizing conduit hydropower development on Reclamation-owned facilities through its Lease of Power Privilege program.

This section further amends section 9(c) of the Reclamation Project Act of 1939 by adding a number of new provisions as it relates to small conduit hydropower development. Section 9(c)(2) of the Reclamation Project Act of 1939, as added by section 2, requires that power privilege leases be offered first to an irrigation district or water users association operating or receiving water from the applicable transferred or reserved conduit. The Secretary is directed to determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege so that the Secretary can offer the lease of power privilege to other parties if the irrigation district or water users association elects no to develop small conduit hydropower at the applicable conduit.

Section 9(c)(3) of the Reclamation Project Act of 1939, as added by section 2, requires the Bureau of Reclamation to "apply its categorical exclusion process under the National Environmental Policy Act of 1969 . . . to small conduit hydropower develop under this subsection, excluding siting of associated transmission facilities on Federal lands." A "categorical exclusion" is defined by the Council on Environmental Quality (CEQ) as a category of actions that normally do not have a significant effect on the environment and thus do not normally require preparation of either an environmental assessment or an environmental impact statement under the National Environmental Policy Act. 40 C.F.R. 1508.4. The CEQ's regulations authorize federal agencies to adopt categorical exclusions for such actions, subject to "extraordinary circumstances in which a normally excluded action may have a significant environmental effect," in which case an environmental assessment or environmental impact statement may be required.

Under its current authority, the Bureau of Reclamation has adopted a categorical exclusion for lease of power privilege projects "if the scope of the project is consistent with the terms" of the categorical exclusion, "and there are no extraordinary circumstances." Reclamation Manual, Directives and Standards, FAC 04–08 at 10 (Sept. 28, 2012). Extraordinary circumstances are identified in the Department of the Interior's NEPA rules at 43 C.F.R. 46.215. The Bureau's manual provides that "where any extraordinary cir-

cumstances exist, a higher level of NEPA evaluation will be required."

Paragraph (3) does not create a new statutory categorical exclusion. It simply provides that the Bureau shall apply its existing categorical exclusion process, which includes review for possible extraordinary circumstances, to small conduit hydropower development under subsection 9(c). The Bureau's witness testified at the Committee's hearing that, if H.R. 678 is enacted, the Bureau "would interpret this language as endorsing its current directive and standard to potentially apply categorical exclusions, provided that no extraordinary circumstances exist, pursuant to 40 C.F.R. § 1508.4." He went on to state that the Bureau believes section (3) would "preserve its discretion to determine whether a closer review under NEPA is appropriate."

Section 9(c)(4) of the Reclamation Project Act of 1939, as added by section 2, designates the Power Resources Office in Reclamation's Denver headquarters as the lead office for small conduit hydropower policy and procedure setting activities.

Section 9(c)(5) of the Reclamation Project Act of 1939, as added by section 2, clarifies that the Western Area Power Administration, the Bonneville Power Administration and the Southwestern Power Administration are not obligated to purchase or market the conduit hydropower generated at Reclamation facilities and that none of the costs associated with the generation shall be assigned to these agencies' power rates.

Section 9(c)(6) includes provisions that declare nothing in the bill will alter or impede the delivery and management of water for original project purposes, and deems water used for conduit hydropower generation to be incidental to use of water for the original project purposes.

Section 9(c)(7) includes provisions that declare nothing in the bill will alter or affect any existing agreements for conduit hydropower development projects or disposition of revenues.

Section 9(c)(8) specifies that nothing in this bill shall alter or affect any existing permit, license, or exemption issued by FERC under Part I of the Federal Power Act or any project with a pending application at FERC as of the date of enactment of this Act.

Section 9(c)(9) defines key terms used in section 9(c), as amended.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

S. 306—Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act

CBO estimates that enacting S. 306 would increase federal offsetting receipts by about $1 million over the 2014–2023 period because it would authorize the Bureau of Reclamation to permit private entities to develop hydropower at certain facilities owned by the bureau. Pay-as-you-go procedures apply because enacting the legislation would increase offsetting receipts (a credit against direct spending). Enacting the bill would not affect revenues.

S. 306 would clarify that the jurisdiction over small hydropower development by private entities on all bureau irrigation canals and

conduits lies solely with the bureau. Under current law, the bureau or the Federal Energy Regulatory Commission (FERC) has jurisdiction over hydropower development at such facilities. CBO expects that this change would result in a small increase in receipts from hydropower development because the federal government collects no funds from project developers if a project is authorized by FERC.

Typically, the bureau's agreements with private developers of hydropower facilities on small conduits generate annual receipts to the federal government ranging from about $10,000—at most facilities—up to $100,000 for a few larger sites. Selecting the lessee, negotiating the leasing contract, and constructing new facilities usually takes two to four years depending on the size of the project. Under the legislation, CBO expects that the federal government would receive some additional receipts beginning two years after enactment and that those additional collections would grow to about $200,000 a year by 2023.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 306 would increase offsetting receipts beginning in 2015. The budgetary changes that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 306 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON MAY 8, 2013

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2013–2018	2013–2023
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	−1

S. 306 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On March 25, 2013, CBO transmitted a cost estimate for H.R. 678, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, as ordered reported by the House Committee on Natural Resources on March 20, 2013. The two pieces of legislation are similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 306.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 306 as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 306, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the April 23, 2013, Full Committee hearing on S. 306 follows.

STATEMENT OF LOWELL PIMLEY, DEPUTY COMMISSIONER OF OPERATIONS, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Chairman Wyden, members of the Committee, I am Lowell Pimley, Deputy Commissioner of Operations at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 306 and H.R. 678, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act. The Department supports the goals of S. 306 and H.R. 678, which aim to increase the generation of clean, renewable hydroelectric power in existing canals and conduits, and believes these bills will provide greater certainty and administrative streamlining of these types of projects. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities. My testimony today will summarize the areas where the Administration supports the objectives of S. 306 and H.R. 678, as well as detail the areas in the bills where we believe improvements could be made, recognizing that the House of Representatives amended H.R. 678 to address many of the Department's concerns.

Reclamation is the second largest producer of hydropower in the country. A 2010 Hydropower Memorandum of Understanding (2010 MOU)[1] signed by the Secretaries of Energy and the Interior, and the Assistant Secretary of the Army (Civil Works) provides a strategy to facilitate the development of sustainable hydropower on federal facilities. Before I share the Department's views on S. 306 and H.R. 678, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. In March 2011, Secretary Salazar and the U.S. Department of Energy Secretary Steven Chu announced nearly $17 million in funding over three years for research and development projects to advance hydropower technology. The funding included ten projects that will receive a total of $7.3 million to research, develop, and

[1] *http://www.usbr.gov/power/SignedHydropowerMOU.pdf,* 2010

test low-head, small hydropower technologies that can be deployed at existing non-powered dams or constructed waterways. The funding will further the Obama Administration's goal of meeting 80 percent of our electricity needs from clean energy sources by 2035.

In March 2011, the Department released the results of an internal study, the Hydropower Resource Assessment at Existing Reclamation Facilities, that estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. In March 2012, Reclamation completed the second phase of its investigation of hydropower development, Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits, as referenced in the 2010 MOU. While the first phase, completed in 2011, focused primarily on Reclamation dams, the second phase focused on constructed Reclamation waterways such as canals and conduits, and estimated the Department could generate over 365,000 megawatt hours of electricity annually by addressing hydropower capacity on 373 of its existing canals. In total, the two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing Reclamation sites.

Reclamation worked diligently with our stakeholders and the hydropower industry to improve our Lease of Power Privilege (LOPP) processes, and this collaboration culminated in the release of an updated and improved LOPP directive and standard in September 2012. These new procedures better define roles, timelines and responsibilities that will allow us to better support and encourage sustainable hydropower development at Reclamation facilities.

In summary, both S. 306 and H.R. 678 would do two things: 1) provide a blanket authorization for the installation of small hydropower units on all Reclamation-owned canals and conduits and 2) require that Reclamation offer preference to water user organizations for the development of canal/conduit hydropower under a LOPP. Additionally, S. 306 would exempt small canal/conduit hydropower projects below 5 MW from the requirements of the National Environmental Policy Act (NEPA), while H.R. 678 directs Reclamation to apply its categorical exclusion process under NEPA to small conduit hydropower development. Finally, S. 306 designates Reclamation's Power Resources Office (PRO) as the lead point of contact for requests to develop canal/conduit hydropower under a LOPP. Per the Department's recommendation, H.R. 678 was amended to direct Reclamation's PRO as the lead office for policy and procedure setting activities.

Section 2 of S. 306 and H.R. 678 would clarify that Reclamation is responsible for authorizing conduit hydropower development on Reclamation-owned facilities through LOPP contracts. As background, Reclamation is authorized by existing law to issue LOPP contracts that utilize Rec-

lamation-owned facilities for private hydropower development under Section 5 of the Townsites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c). Statutes that are specific to individual Reclamation projects may also apply. Similar to the LOPP process, the Federal Energy Regulatory Commission (FERC) may also issue licenses for hydropower development under the authority of the Federal Power Act, 16 U.S.C. § 791 et seq. To resolve potential confusion over whether a Reclamation LOPP contract or a FERC license should govern hydropower development at Reclamation facilities, Reclamation and FERC entered into agreements in 1981 and 1992 to address hydropower development. In particular, a 1992 memorandum of understanding between Reclamation and FERC (1992 MOU)[2] established a process to resolve questions of jurisdiction over hydropower development at Reclamation facilities. Reclamation and FERC continue to work together to improve that process and make the process more efficient.

Section 2 of S. 306 and H.R. 678 would specifically authorize Reclamation to develop or enter into LOPP contracts for the development of new hydropower on conduits or canals on Reclamation-owned projects. This language would streamline the issuance of LOPP contracts by simplifying the Reclamation-FERC jurisdictional consultation that was established in the 1992 MOU. This language also could provide Reclamation with an opportunity to discuss programmatically resolving jurisdiction over hydropower development on Reclamation conduits with FERC, thus creating the potential to eliminate case-by-case jurisdictional consultations for development on Reclamation conduits.

Section 2 of S. 306 and H.R. 678 would also require that Reclamation offer preference in the award of LOPPs to "irrigation districts or water users associations" with which Reclamation has an existing contract for operations and maintenance (O&M) of that project or project feature. While Reclamation already provided preference to existing irrigation districts and water user associations pursuant to Section 9(c) of the Reclamation Projects Act of 1939 we agree that these irrigation districts and water users currently operating and maintaining Reclamation transferred works should get additional favorability. In September 2012 we incorporated this concept into our revised LOPP directive and standard. Reclamation would be happy to work with the sponsors of the bills and the Committees to resolve any concerns regarding preference.

Section 2 of S. 306 would provide that NEPA "shall not apply to small conduit hydropower development, excluding siting of associated transmission on Federal lands[.]" The Department opposes a waiver of NEPA. Furthermore, this language is in contrast to the existing provision in Section

[2] The 1992 MOU is available in the Federal Register at: 58 Fed. Reg. 3269 (Jan. 8, 1993).

30 of the Federal Power Act (16 U.S.C. 823a) that allows FERC to approve an application to develop hydropower within conduits located on non-federal lands under certain conditions. Accordingly, as provided in FERC's regulations at 18 CFR § 380.4(a)(14), FERC is not required to prepare an environmental assessment or environmental impact statement for certain conduit hydropower projects that meet the statutory and regulatory criteria and do not have the potential for significant environmental impacts.

The Department understands the intent of S. 306 to be that conduits and canals are existing, manmade structures where environmental impacts associated with construction have already occurred and/or been mitigated. However, the Department's view is that low-impact hydropower, particularly in conduits and canals, can be efficiently developed by utilizing existing environmental review provisions that will not unduly delay project development and ensure environmental health and safety. Environmental analysis for many LOPP contracts has, for example, been addressed through environmental assessments rather than environmental impact statements. Reclamation's newly published LOPP procedures also allow for an existing categorical exclusion under NEPA to be applied to low-impact hydropower projects where low impact is defined by their impact to project operations as opposed to the size of the project. Reclamation believes that low-impact hydropower developed in conduits or canals may be appropriately analyzed under the same categorical exclusion procedures that are documented in the Departmental Manual at 516 DM 14.5(C)(3) and (D)(4).

H.R. 678, as amended by the House of Representatives, directs Reclamation to "apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands." The Department recognizes the intent of H.R. 678 to encourage the use of the categorical exclusion procedures that are allowed for in its LOPP directives and standards and documented in the Departmental Manual. If enacted, Reclamation would interpret this language as endorsing its current directive and standard to potentially apply categorical exclusions, provided that no extraordinary circumstances exist, pursuant to 40 C.F.R. § 1508.4. Under Section 2 of H.R. 678, Reclamation does not guarantee that categorical exclusions will apply on every small hydropower project. Reclamation believes it should preserve its discretion to determine whether a closer review under NEPA is appropriate.

The Department believes that environmental protections should continue to apply in the context of new construction undertaken on federal lands, and will continue to apply NEPA through the use of categorical exclusions or environmental assessments. We understand the value and importance of expedient environmental review and believe devel-

opment of hydropower within Reclamation's existing conduits and canals can be efficiently analyzed utilizing these existing review processes.

I would also like to address concerns raised by language in Section 2 of S. 306 specifying that "the Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower activities conducted under this subsection." The Department understands the bill sponsor's desire to simplify points of contact for entities seeking to develop hydropower. However, in practice, project-specific expertise concerning Reclamation facilities resides first at the field level where ownership responsibility for the specific infrastructure resides. It is preferable for developers to approach the appropriate Reclamation regional or area office with proposals to develop conduit hydropower, and contact the PRO as needed. There is a robust channel of communication between the PRO, other Denver Offices, and Reclamation regional and field offices that allows for successful implementation of a LOPP agreement. Reclamation organizes its workforce as appropriate to maximize the efficiency and expertise of personnel.

For these reasons, the Department is pleased to support the House amended language in H.R. 678 specifying that "the Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.".

S. 306 and H.R. 678 would amend 9(c) of the Reclamation Project Act of 1939, which in addition to providing LOPP authority, authorizes the Secretary to enter into contracts for municipal water supply and miscellaneous purposes. Several of the definitions in S. 306 as drafted would affect the other authorities in the 1939 Act. In particular, the proposed definition of "transferred work" is too narrow to refer to all works affected by subsection 9(c) of the 1939 Act, since that subsection authorizes contracts involving works other than conduits. Either the definition would need to be broadened to include all affected works, or the term defined narrowed from "transferred work" to "transferred conduit." Also, the existing 1939 Act has a definitions section. Any definitions that are of general application should be included in the existing definitions section, rather than in subsection 9(c). Definitions that apply solely to conduit hydropower need to do so explicitly, to avoid misapplication or confusion. The Department would be happy to work with the Committee on S. 306 to make these technical changes to the language of the proposed definitions and their placement within the existing 1939 Act. The Department appreciates and supports the language in H.R. 678 that narrows the terms defined as recommended above.

As referenced above, Reclamation has procedures in place through the LOPP process for the sites where Reclamation has the authority to develop hydropower. In Sep-

tember 2012 we released an updated LOPP Directive and Standard that improved our processes, especially for conduits and canals, and incorporated the concept of additional favorability for irrigation districts and water user associations with O&M responsibility on Reclamation projects.

Finally, H.R. 678 provides that "nothing in this subsection shall alter or affect any existing preliminary permit, license, or exemption issued by the Federal Energy Regulatory Commission under Part I of the Federal Power Act (16 U.S.C. 792, et seq.) or any project for which an application has been filed with the Federal Energy Regulatory Commission as of the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act." This language allows for existing and pending FERC licenses to remain within FERC's jurisdiction, rather than be redirected into Reclamation's LOPP process.

In conclusion, as stated at previous hydropower hearings before this committee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, or recreation. As the nation's second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource. With these recommended revisions, S. 306 and H.R. 678 will go a long way towards meeting the Administration's goals of developing clean, reliable, cost-effective, and sustainable hydropower in the United States.

Thank you for the opportunity to discuss S. 306 and H.R. 678. This concludes my written statement, and I am pleased to answer questions at the appropriate time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 678, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

RECLAMATION PROJECT ACT OF 1939

Act of August 4, 1939 (53 Stat. 1187; 43 U.S.C. 485 et seq.)

AN ACT To provide a feasible and comprehensive plan for the variable payment of construction charges on United States reclamation projects, to protect the investment of the United States in such projects, and for other purposes.

* * * * * * *

SEC. 9. (a)

* * * * * * *

(c) [The Secretary is authorized to enter into contracts to furnish water]

(1) The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: Provided, That any such contract either—

[(1) shall] *(A) shall* require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or

[(2) shall] *(B) shall* be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper: Provided further, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 [7 U.S.C. 901 et seq.]. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection [respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects.] *respecting the sales of electric power and leases of power privileges shall be an authorization in addition to and alternative to any authority in existing laws related to particular projects, including small conduit hydropower development.* No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

(2)(A) When carrying out this subsection, the Secretary shall first offer the lease of power privilege to an irrigation district or water users association operating the applicable transferred conduit, or to the irrigation district or water users association receiving water from the applicable reserved conduit. The Sec-

retary shall determine a reasonable time frame for the irrigation district or water users association to accept or reject a lease of power privilege offer for a small conduit hydropower project.

(B) If the irrigation district or water users association elects not to accept a lease of power privilege offer under subparagraph (A), the Secretary shall offer the lease of power privilege to other parties in accordance with this subsection.

(3) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal Lands.

(4) The Power Resources Office of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection.

(5) Nothing in this subsection shall obligate the Western Area Power Administration, the Bonneville Power Administration, or the Southwestern Power Administration to purchase or market any of the power produced by the facilities covered under this subsection and none of the costs associated with production or delivery of such power shall be assigned to project purposes for inclusion in project rates.

(6) Nothing in this subsection shall alter or impede the delivery and management of water by Bureau of Reclamation facilities, as water used for conduit hydropower generation shall be deemed incidental to use of water for the original project purposes. Lease of power privilege shall be made only when, in the judgment of the Secretary, the exercise of the lease will not be incompatible with the purposes of the project or division involved, nor shall it create any unmitigated financial or physical impacts to the project or division involve. The Secretary shall notify and consult with the irrigation district or water users association operating the transferred conduit before offering the lease of power privilege and shall prescribe terms and conditions that will adequately protect the planning, design, construction, operation, maintenance, and other interests of the United States and the project or division involved.

(7) Nothing in this subsection shall alter or affect any existing agreements for the development of conduit hydropower projects or disposition of revenues.

(8) Nothing in this subsection shall alter or affect any existing preliminary permit, license, or exemption issued by the Federal Energy Regulatory Commission under Part I of the Federal Power Act (16 U.S.C. 792 et seq.) or any project for which an application has been filed with the Federal Energy Regulatory Commission as of the date of the enactment of the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act.

(9) In this subsection:

(A) CONDUIT.—The term "conduit" means any Bureau of Reclamation tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(B) IRRIGATION DISTRICT.—The term "irrigation district" means any irrigation, water conservation or conservancy, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.

(C) RESERVED CONDUIT.—The term "reserved conduit" means any conduit that is included in project works the care, operation, and maintenance of which has been reserved by the Secretary, through the Commissioner of the Bureau of Reclamation.

(D) TRANSFERRED CONDUIT.—The term "transferred conduit" means any conduit that is included in project works the care, operation, and maintenance of which has been transferred to a legally organized water users association or irrigation district.

(E) SMALL CONDUIT HYDROPOWER.—The term "small conduit hydropower" means a facility capable of producing 5 megawatts or less of electric capacity.

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