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**Testimony for the Hearing Record of Dan Keppen  
Executive Director  
The Family Farm Alliance**

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

**Hearing to Examine the Bureau of Reclamation's Title Transfer Process and  
Potential Benefits to Federal and Non-Federal Stakeholders  
January 17, 2018**

Chairman Flake, Ranking Member King, and Subcommittee Members:

Thank you for this opportunity to present testimony for the hearing record on behalf of the Family Farm Alliance (Alliance). My name is Dan Keppen, and I serve as the executive director for the Alliance, which advocates for family farmers, ranchers, irrigation districts, and allied industries in seventeen Western states. The Alliance is focused on one mission - To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. Our members include irrigation districts and water agencies across the West that are responsible for the operation and maintenance of most of the Bureau of Reclamation's water supply and distribution facilities. Several of our members have worked with the federal government over the past two decades to transfer all or parts of Bureau of Reclamation (Reclamation) projects to these local operating entities. In fact, I would like to recognize two of the hearing witnesses, Mr. Paul Arrington, executive director of the Idaho Water Users Association, in that one of the first title transfers of a Reclamation district was approved by 105<sup>th</sup> Congress to the Burley Irrigation District (IDAHO) in 1998 and was facilitated by the Alliance, and Mr. Jason Phillips, CEO of the Friant Water Authority, a founding member of the Alliance.

The Family Farm Alliance supports the transfer of Reclamation-owned facilities to willing non-federal project beneficiaries, and would advocate for congressional authorization for the Secretary of the Interior to better facilitate the timely transfer of appropriate Reclamation projects or facilities into non-federal ownership.

### **Overview of Family Farm Alliance Philosophy**

The members of the Family Farm Alliance believe that streamlined and efficient federal regulation and decision-making are the keys to sound Western water policy. Wherever possible and

practicable, meaningful delegation of decision-making authority and ownership responsibility should be transferred to the local level.

The Alliance believes that in the water arena, a “one size fits all approach” dictated from Washington is counterproductive and ineffective. Federal laws and regulations should be drawn to recognize that facts and circumstances can vary significantly from region to region. Given the federal ownership and liability for each Reclamation-owned water project, bureaucratic inefficiencies sometimes overlay the process of managing and operating this important water infrastructure, even though operations and maintenance are typically performed by non-federal state-based local entities, such as irrigation or water districts. Such facilities, known as “transferred works”, where project operation, maintenance and replacement responsibilities (other than title) are contracted to the non-federal entity, are still owned by the federal government, superimposing a layer of bureaucratic federal control over a project that has, for all intents and purposes, been transferred (other than in title) to the non-federal entity. Many of these projects are ripe for title transfer, yet there remain many barriers to an efficient transfer of title out of federal ownership to these local operating entities.

### **Role of Family Farm Alliance in Advancing Project Title Transfers**

As noted above, Reclamation’s transfer of canals, natural flow water rights, pumping plants, roads and other assets to Burley Irrigation District (BID) in 2000 was a watershed moment in the history of Western irrigated agriculture and the title transfer process. In the years leading up to that transfer, the BID demonstrated its ability to operate, maintain and manage its facilities in a highly professional and competent manner. The effort to transfer the facilities into BID ownership took eight years after the district completed repayment of the Project’s construction cost.

The BID transfer was a primary objective of an initiative launched by the Alliance in 1997. That year, the Alliance distributed a survey to determine the level of interest among our members in developing a more coordinated and concerted effort to facilitate Reclamation project transfers to local water users. We decided to gather this information because of the lack of progress on pending legislation in Congress and a less than acceptable ability of Reclamation to process project transfer requests from local interests on a timely and effective basis.

Based on an overwhelmingly positive response received in these surveys, the Alliance Board of Directors established a “Project Transfer Council” and launched a related pilot project. The primary objective was to lay the groundwork for concerted Congressional action on project transfers with an immediate focus on helping both the Carlsbad (NEW MEXICO) and Burley irrigation districts with their project transfer legislation, both in Congress and with the Clinton Administration. By assisting both districts – both of which had been pursuing facilities transfers for quite some time and who were at the leading edge of title transfer efforts – we intended to create positive precedents others could follow.

In late 1997, the Alliance conducted a variety of organized activities intended to facilitate positive Congressional action on pending project transfer legislation. That effort was successful, and ultimately led to the historic transfer to BID two years later. Over a dozen other projects and facilities have been transferred to local interests since that time. Those local agencies are usually

the irrigation or water district that has fulfilled or is close to fulfilling its obligation to pay for construction of the project.

### **Benefits and Regulatory Challenges Associated with Title Transfers**

The Alliance believes title transfers are one of several positive means of strengthening control of water resources at the local level. In addition, they can help reduce federal costs and liability, and allow for a better allocation of federal resources. Operational decisions are more timely and many times are more cost effective when made at the local level. Further, maintenance and rehabilitation of our aging federally owned facilities is more effectively financed and constructed by the local agencies currently responsible for these activities. Title transfer allows for these operational and maintenance benefits to thrive, as title ownership of these facilities is placed with the local beneficiaries and the irrigation districts involved in managing these projects for their benefit. This allows for a broader portfolio of financing alternatives for cost effective reinvestment in these facilities to be made available at the local level.

Despite the benefits, local water agencies are many times discouraged from pursuing title transfer because the process is expensive and slow. Environmental analyses can be time-consuming, even for uncomplicated projects that will continue to be operated in the same manner as they always have been. National Environmental Policy Act (NEPA) and the procedures required to address real property and cultural and historic preservation issues are often very inefficient, time consuming and expensive. Moreover, every title transfer currently requires an act of Congress to accomplish, regardless of whether the project covers 10 acres or 100,000 acres.

### **“Managing for Excellence” Approach to Title Transfers**

The challenge associated with title transfers has been a major concern for our members in recent years, as well. We spent considerable time ten years ago working with Reclamation on the title transfer process via the “Managing for Excellence” (M4E) process. M4E was Reclamation’s response to *Managing Construction and Infrastructure in the 21<sup>st</sup> Century Bureau of Reclamation*, a comprehensive report completed in 2006 by the National Research Council (NRC) of the National Academy of Sciences. Executing the action plan has been primary initiative for Reclamation. Alliance engagement in M4E and the related NRC study has been a priority with the Alliance since early 2005.

Through the M4E process, Reclamation developed a legislative concept for a programmatic approach intended to simplify transfer of federally owned irrigation facilities to the non-federal operating entity. The idea was to create a set of criteria to identify projects whose transfer to local ownership would not impact the environment or taxpayers. Facilities meeting the criteria could be transferred out of federal ownership by the Secretary of the Interior under a new standing authority to be granted by Congress. The Reclamation approach envisioned the use of existing procedures (such as a categorical exclusion) under the NEPA to streamline environmental reviews for proposed title transfers meeting the programmatic criteria.

In essence, Reclamation’s approach would have requested that Congress delegate to the Secretary of the Interior the authority to transfer the ownership of eligible water projects to the non-federal

operating entity. Consistent with the legislation, this could greatly reduce institutional barriers, such as time and expense that can impede transfers beneficial to both local interests and the federal government.

### **The Complexities and Importance of Project / Facilities Title Transfers**

Reclamation projects were built to grow the West, with the implied intent that, once the repayment contracts were paid off, Reclamation would turn these projects over to the local districts to operate, and in due time, transfer the title to the facilities. That simple concept has morphed over the years into a process that can be expensive, uncertain and very lengthy.

The Alliance believes Congress could make the process of title transfer for some projects much more user-friendly through this approach; however, we question what kind of transfer process the Secretary and Reclamation recommend. Federal legislation could be introduced to create an improved, more efficient manner for title transfers to move forward, and Congress must continue to oversee Reclamation's implementation of any legislation in order to not create more barriers in the process.

The Alliance believes such legislation would help those project beneficiaries interested in title transfer, in that the process of passing federal legislation for each and every title transfer would be greatly simplified through Secretarial order. However, some projects will continue to be more complex and still require lengthy NEPA, Endangered Species Act (ESA) and other expensive processes even with any new authorities provided through legislation.

Take, for example, the Newlands Project in Nevada, the oldest Reclamation project in the West. Today, almost 100 years after taking over the operations and maintenance responsibilities of the Newlands Project and after having repaid all project construction costs, the transfer of Project facilities to the Truckee-Carson Irrigation District (TCID) has not been achieved.

Part of the reason transfer has not occurred relates to funding. TCID has analyzed the prospect of a facilities transfer several times, only to conclude that the NEPA process would cost millions of dollars, and resulting in an uncertain outcome. Some of the reasons for this expense include the fact that TCID has been for years dealing with complex issues in the operation of the Project related to the ESA, Tribal water rights, and the fact that the largest land owner in the TCID is the U.S. Fish and Wildlife Service.

TCID could not sustain such an outlay and still financially support its operational and maintenance duties. For example, TCID is currently planning to design, fund and construct the permanent repair to the Truckee Canal. The NEPA work associated with developing an Extraordinary Operation and Maintenance Environmental Impact Statement for that project alone will exceed \$8 million, an amount that exceeds the district's annual budget. District managers believe that the cost and scope of an environmental review associated with a proposed Newlands Project facilities transfer would dwarf those associated with this canal repair effort.

The magnitude of the cost and time required to address historic preservation and NEPA issues for more complicated project title transfers in other parts of the West is staggering. This has proved to

be daunting for other districts and effectively dampens enthusiasm for some districts to even begin undertaking transfer planning efforts. It is clear to the Alliance that other congressional efforts to streamline and simplify environmental review processes could greatly benefit these more complex title transfers.

This is abundantly clear when considering several of the other more controversial Reclamation projects – for example, the Central Valley Project (CALIFORNIA) or the Klamath Project (CALIFORNIA/OREGON). In order for title transfer to be successful for these and other more complicated projects, Congress must continue to play a major role in making title transfers more efficient and streamlined.

The Alliance believes the importance of transfers should be re-examined, with the understanding that there are many benefits to local entities and to the federal government that are yet to be measured. As outlined above, we know there are irrigation districts successfully operating and maintaining transferred works in the West that are interested in acquiring title to Reclamation facilities. Experience throughout the West demonstrates that when control and ownership of projects is assumed by local interests, the projects are run more cost effectively and with far fewer items of deferred maintenance and less bureaucratic red-tape. In addition, the federal government holds title to these facilities only because federal funds that have long since been repaid were used to help construct them.

Reclamation and Western water users continue to confront the massive challenges posed by our aging water infrastructure. Traditional funding opportunities that used to be provided by the federal government to tackle aging water infrastructure no longer exist. Now, where limited federal dollars are available for infrastructure projects, they are stretched to meet the competing needs of highways, airports, water and sewer projects in urban areas. However, if a local district gains title to its facilities, it can take advantage of several financing opportunities and partner with other local, state, federal and /or non-governmental programs to rehabilitate their facilities.

Finally, one other barrier for many title transfers in the past has been the continued use of federal project power at cost-based contracted rates to operate Reclamation projects after a title transfer. Many times, Reclamation projects were developed to include hydroelectric or other power sources that run pumps and other facilities at a low cost, thus ensuring these water supply development projects successfully and economically operated throughout their history. In many cases, these projects continue to require this power at these project rates in order to remain economically viable for the farms and ranches dependent on the water supply. The Alliance believes this issue must be resolved as many future title transfers will depend on the continuation of project power provided at current cost-based contracted rates.

On behalf of the Family Farm Alliance, I would like to thank Chairman Flake, Ranking Member King, and the Subcommittee for holding this important oversight hearing. Thank you for this opportunity to present the views of the Alliance for the hearing record.