CREDA
Colorado River Energy Distributors Association

Family Farm ALLIANCE SM

NWRA
National Water Resources Association

May 11, 2018

The Honorable Brenda Burman
Commissioner
Bureau of Reclamation
1849 C Street, N.W.
Washington, DC 20240

Re: Proposed Directive & Standard on Project Use Power, FAC 04-06

Dear Commissioner Burman:

On behalf of the Colorado River Energy Distributors Association (CREDA), the Family Farm Alliance, and the National Water Resources Association (NWRA), we write to thank you for extending the public comment period an additional 60 days on the proposed Directive and Standard (D&S) on Project Use Power (FAC 04-06). The additional time you provided us allowed us further opportunities to address these important issues with our members. Our organizations have coordinated these comments and agree upon recommended adjustments to the D&S. These proposed adjustments are consistent with the legislative language being considered by Congress in S. 2560 and H.R. 3281, as conveyed to you last month by Arizona attorney Robert S. Lynch.

The draft D&S defines the eligible uses and recipients of project use power and related cost recovery and rate setting methodology and is an update to an existing D&S, adopted in 2005. We understand that the latest draft of the D&S reflects comments received per the initial review and comment period, announced in April 2017.

Certain of our members who rely on project power have already expressed concern over some of the proposed changes in the draft D&S. The newly released version is written a bit more clearly, but both versions of the draft D&S limit the use of project power to facilities owned by the United States. Although there is a "deviation" process in the draft D&S, the policy ultimately requires specific Congressional authorization to use project power at facilities where the Federal title has been transferred to irrigation districts. Such a policy would prevent title transfers – even those with no impact on the power use status quo.

Overview of Concerns with Draft D&S

The 2017 draft D&S acknowledged that Project Use Power could be used to move water in facilities that do not belong to the United States because of a transfer of title. However, the most recent draft D&S appears to contradict this by stating that "The use of Project Use Power is restricted to facilities and equipment wholly owned by Reclamation." Paragraph 5.B(3). Although the provision does say that Reclamation might deviate from this requirement and refers to Appendix A for the deviation criteria, the negative tone of the current text and Appendix is of concern to our organizations.

The Administration, including Reclamation, has repeatedly expressed its support title transfers for facilities like delivery canals. This change in tone seems counterintuitive to that policy.

Appendix, Paragraph A.3 speaks in terms of a non-federal load consistent with the underlying Reclamation Project. That may be part of the problem. In most of these situations, an irrigation district or water users' association takes title to canal delivery systems that it already manages as transferred works. Historically, the operation of those systems has required some electrical load. Importantly, in most instances following title transfer, Project Use Power would continue to be used to move the same Reclamation water to the same irrigable lands within the same Reclamation Project. In other words, title transfer would have no impact on the power use status quo. In such instances, the irrigation district or water users' association should continue to have access to Project Use Power.

As one of 8 conditions, all of which must be met, Appendix A, Paragraph 3.1 requires that: "Specific authority exists to deliver Project Use Power to facilities and equipment regardless of ownership." We do not believe that general project authorizations contemplated this issue when the projects were initially authorized.[1] Thus, imposing this condition likely blocks the title transfer of the most ordinary kind, water delivery facilities. Here again, this seems counter to Administration policy supporting title transfer.

Specific Comments and Questions

To aid in the discussion, the following list of specific comments and questions have been developed, in the hopes that it will lead toward a positive solution.

1. **Section 3. Definitions. A** - If this paragraph said "minimum electrical service using the most economical methods ("minimum electric service")" and then used the short definition thereafter, the consistency would improve the document.

2. **Section 4. Responsibilities. B(1) -** The Regional Directors make rate decisions but there is no process for reconciling different interpretations of common provisions in this D&S

[1] Congress has, at least once, specifically provided that project power continue to be available after a title transfer. Wellton-Mohawk Title Transfer Act, P.L. 106-221, Section 3.

that could end up creating internal conflict in implementing it.

3. **Section 5. Project Use Power Usage –** Transferred works should be added to provision "A". It is referred to later in the D&S. In Section B(3), the negative language in this provision as compared to the 2017 draft version is not explained. Nor does this appear to reconcile with Administration policy concerning title transfer or the provisions of *S. 2560* or *H.R. 3281*.

4. **Section 6. Energy Obligations Resulting from Exchanges -** In considering an exchange, where will the Project Use Power come from? Is it an amount of power held in reserve at each project? Is any such use - either temporary or permanent - depending on circumstance?

5. **Section 7. Cost Recovery/Rate Setting Methodology for Project Use Power.** There appears to be no rate process or opportunity to comment in any formal way in this rate setting. We also note in Subparagraph A(2), that there is a reference to the private market as a parameter for rate setting for government quarters. Some areas – particularly in the Southwest - are now experiencing market rates that are below cost-based rates at Reclamation facilities. This particular provision could result in Reclamation not recovering its full costs for this use.

   Under "B", the reference to preference rates is insufficiently detailed. There can be a number of different preference rates.

   Under "C", it is not clear what is meant by stating that the rate for M&I uses "will be consistent with the preference rate". Is this a firm electric service rate, or something else?

   Section E, Subparagraph (1) uses the terms "low voltage", "intermediate voltage", and "full voltage" without definition or reference to some other document that would define these terms.

6. **Section 8. Transmission.** There is a footnote reference to master agreements with the PMAs and a reference is made to one with the Western Area Power Administration. It would be important for us to be able to access and review that document if it is a continuing control, as it appears to be in references found in many contracts.

   Footnote 2 references Section 5 of the Flood Control Act of 1944 as the standard for cost-based rates as if it applied directly to Reclamation law. That is not the case. Before World War II, the then Solicitor opined that Section 5, along with Section 6 of the Northwest Power Planning Act, had to be read *in pari materia* with Section 9(c) of the Reclamation Project Act of 1939. It is the 1939 Act, read together with these other two provisions, that applies the standard of "lowest possible cost consistent with sound business principles."

7. **Appendix A**

Paragraph 3 - consider inserting "directly associated with Reclamation Project operations" at the end of the first sentence. The quote is from Subsection 5.B(2) of the draft D&S.

Subparagraph 3.1 – Subparagraph 3.1 should be amended because no such general authority in project authorizations seems to exist. The provision could be revised to say: "Using Project Use Power will create no new adverse operational or economic impacts on other existing Project Use Power uses or existing firm electric service contract deliveries."

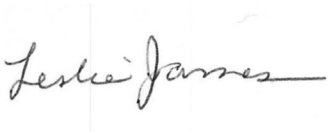
This amended language allows the status quo to be maintained if title to a delivery facility that requires electrical use (such as a lift pump) is transferred. In this scenario, the irrigation district or water users' association would continue to use project use power because the lands being served remain a Reclamation project and the water begin delivered remains Reclamation water. The Project Use Power involved is the same regardless of who has title to the facility. No entity will be harmed by maintaining the status quo with regard to electrical use and the overarching purpose of the Reclamation project will continue to be achieved.

Finally, the last sentence in Appendix A should be deleted. Allowing consideration of "any mitigating factors or considerations" is a provision without a standard.

Thank you again for consideration of these recommendations, which are intended to be constructive. We are proud of our partnership with Reclamation, and we believe that Reclamation has much to be proud of in its service to water and power users and the public .

Please do not hesitate to contact us if you have any questions or concerns regarding this letter.

Sincerely,



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