

**STATEMENT  
OF  
SHARON BLACKWELL, DEPUTY COMMISSIONER OF INDIAN AFFAIRS,  
BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR  
ON S. 2350  
“DUCHESNE CITY WATER RIGHTS CONVEYANCE ACT”**

**July 11, 2000**

Good afternoon, Mr. Chairman and members of the Committee. I am Sharon Blackwell, Deputy Commissioner, Bureau of Indian Affairs, Department of the Interior. I am pleased to provide the Administration's views on S. 2350, which seeks to transfer to the City of Duchesne, Utah, two water rights certificates which the United States obtained under the State of Utah's water laws at the turn of the 20<sup>th</sup> Century.

Mr. Chairman, along with the City, the Administration supports the purposes of S. 2350 that is before this Committee. As described in this statement, the Administration recommends the inclusion of a few provisions and modifications to S. 2350 in order to protect the interests of the United States and other interested parties and to describe the history and unique nature of the water rights involved in order to clarify the intent of this legislation. These recommended revisions, attached to this testimony, in no way change the purposes of S. 2350. With these recommended changes, the Department would support the bill.

I understand that the City of Duchesne (City) and the Ute Indian Tribe of the Uintah and Ouray Reservation (Ute Indian Tribe) have worked closely on the concepts addressed in this legislation and that the Ute Indian Tribe does not oppose the City's efforts in this matter. The Tribe has no objection to the bill with the Administration's recommended changes.

Since earlier hearings before the House Resources Committee on April 4, 2000 and the Senate Indian Affairs Committee on May 2, on identical legislation, members of the Department and the City's representative have worked hard to refine the proposed revisions of the City and the Administration in order to satisfy the concerns of all interested parties. I am pleased to announce that the Department and the City have recently reached agreement on these proposed revisions. In addition to the Department's proposed revisions, I also attach to this testimony a revised draft bill presented to the Department by the City last month which embodies the changes agreed to by the City and the Department; the revised bill adopts our recommended changes (with a couple of minor wording differences) and is acceptable to the Administration. With the inclusion of these revisions, the Administration supports S. 2350, and we look forward to working with the Committee, the Utah delegation and the City of Duchesne to move this legislation forward.

As introduced, S. 2350 would direct the Secretary of the Interior to convey specified water rights appropriated by the United States under the laws of the State of Utah, and which the State of Utah issued certificates in the name of the United States Indian Service for those water rights, to the City of Duchesne. S. 2350 also requires certain terms to be part of the conveyance, such as requiring the City to allow the Ute Indian Tribe, its members, and those using lands held in trust for the Tribe by the United States located within the City's water service area to connect to the City's municipal water system without any connection fees or transfer of water rights for the connection. S. 2350 further specifies that the conveyance would not prohibit the City from charging anyone connected to the City's water system reasonable and customary operation and maintenance fees.

The circumstances surrounding the water rights identified for transfer under S. 2350 are unique. Various Executive and Congressional actions in the mid- to late 1800s established the present-day Uintah and Ouray Indian Reservation for the bands now known collectively as the Ute Indian Tribe. Subsequent acts of Congress provided for the allotment of Reservation lands to individual Tribal members and for the restoration of unallotted lands to the public domain to be disposed of under the homestead and townsite laws. In July 1905, President Theodore Roosevelt reserved lands for the townsite of Duchesne by Presidential proclamation under the applicable townsite laws. In the same month, prior to the articulation of the reserved water rights doctrine in *Winters v. United States* in 1908, the United States - through the Acting U.S. Indian Agent - filed two applications under the laws of the State of Utah to appropriate waters for the benefit of the Indians of the Reservation. The applications filed by the United States identified the purposes of the appropriations to be for domestic and irrigation supplies for the townsite of Duchesne and for irrigation supplies for Indian allotments on the Reservation. The State of Utah then issued water rights certificates in the name of the United States Indian Service for domestic and municipal purposes in the town of Duchesne. Non-Indians settled the town of Duchesne, and its inhabitants have used the waters appropriated by the United States since then for townsite purposes. Since the appropriation of the water rights and the settlement of the town, confusion over the ownership of the water rights has clouded the use of those rights. In addition, over the past few decades the State of Utah and the Ute Indian Tribe have worked to quantify, under the *Winters* doctrine, the Tribe's reserved water rights. Congress ratified the quantification of the Tribe's reserved water right in 1992, subject to re-ratification by the State and the Tribe, under Title V of Public Law 102-575.

Thus, even though the Acting U.S. Indian Agent filed the appropriations on behalf of the Ute Indians to protect their interests, history shows that the appropriations really did not serve the purposes of the United States in this regard. Furthermore, the full amount of the Tribe's reserved water right has been ratified by Congress, subject to re-ratification by the State and the Tribe, and that right did not include the State certificated rights appropriated in 1905. Finally, the proposed transfer of the water rights certificates held by the United States also includes benefits for the Ute Indian Tribe and its members.

Given this unique history, the Administration supports conveying title to the water rights certificates to the City of Duchesne as proposed in S. 2350. The Administration recommends the following additions or modifications to S. 2350 to protect the interests of the United States and other interested parties and to describe the unique circumstances surrounding these water rights in order to clarify the intent of the legislation.

First, the Administration recommends the inclusion of a Congressional Findings section which outlines the unique circumstances of the water rights certificates at issue. The history described above provides the fundamental factual circumstances which the Administration views important to clarify the intent and purposes of this legislation. Proposed findings are attached. The Duchesne draft bill, section 2, adopts our findings with a slight wording difference discussed below.

As noted previously, members of the Department and the City's representative have worked to refine the proposed findings since the hearings before this Committee and the Senate Indian Affairs Committee. One point of discussion has centered on the finding regarding the

filing of the water rights applications by the Acting U.S. Indian Agent. We must emphasize that, as expressly stated in the applications, the Acting U.S. Indian Agent could only file the water rights applications on “behalf of the Indians of the Uintah Indian Reservation, Utah.” Thus, any suggestion that the Acting U.S. Indian Agent would file for anyone other than the Ute Indians is incorrect, and the finding addressing the filing of the water rights must necessarily confirm that the Agent filed “on behalf of the Indians of the Reservation.” This recognition in no way changes the purposes or goals of this legislation.

Our proposed finding 2(d) addresses this issue. The draft bill of the City alters this wording slightly. We still prefer our wording; however, we believe that the Duchesne wording does not change the effect to confirm that the Agent filed on behalf of the Indians of the Uintah reservation.

Second, the Administration recommends the inclusion of language in section 3 on conveyance of water rights which acknowledges the Secretary’s responsibility to comply with all applicable environmental laws and regulations prior to conveying the water rights certificates to the City of Duchesne. In light of the history and use of the water rights involved here, such compliance will likely require little time and effort. Nonetheless, the Administration has insisted that legislation involving natural resources, including title transfers, shall require compliance with all applicable environmental laws prior to making irreversible commitments.

Therefore, we recommend inserting the language below which is identical to language agreed to between the Administration and the House Resources Committee in H.R. 992,

concerning the Sly Park Unit in California and which has now passed the House, in addressing a similar transfer issue.

We recommend that proposed new section 3(a) (now 2(a)) begin as follows: “The Secretary of the Interior shall, as soon as practicable after the date of enactment of this Act and in accordance with all applicable law, convey to Duchesne City, Utah ....”

The City bill does this.

We note that some earlier discussion drafts of the bill included a specific date by which the transfer must take place. We have objected to the inclusion of any specific date by which the Department must complete the transfer. This opposition results both from the uncertainties involving the timing of the enactment of this legislation and, more importantly, from the possibility that a date certain could foreclose the Department's ability to complete necessary environmental reviews. We are opposed to an arbitrary transfer date as a matter of policy and precedent. We think the agreed Sly Park language noted above is the most satisfactory approach to the timing issue.

Third, the Administration recommends the inclusion of a provision which clarifies that this legislation does not otherwise affect water rights held by the United States. Fourth, the Administration recommends the inclusion of a provision which clarifies that this legislation does not affect or modify any treaty or other right of the Ute Indian Tribe or any other Indian tribe. Similar provisions have been incorporated into various pieces of legislation in the past. These provisions will ensure that no one misconstrues this legislation to affect any other

interest of the United States, the Ute Indian Tribe, or any other Indian tribe and thus will ensure continued support for the legislation. The City bill adopts these provisions.

Finally, the Administration also recommends a few other modifications to the language of S. 2350. Particularly, in the introductory text, the Administration recommends modifying the text to state that the legislation authorizes, rather than directs, the Secretary to convey title to the water rights. The City bill does this.

In addition, the operation and maintenance fee provision should also specify that the imposition of such fees shall be done in a non-discriminatory way. A few other technical modifications are also recommended to clarify the legislation. these have been incorporated in the City draft.

Thus, with the revisions recommended above and as set out in the attached documents, and as adopted by the City draft, the Administration supports S. 2350. Again, we look forward to working with the Committee, the Utah delegation and the City of Duchesne to move this legislation forward. I would be happy to answer any questions.