S. HRG. 109–781

MISCELLANEOUS WATER AND POWER BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

S. 1106	**S. 3851**
S. 1811	**S. 3798**
S. 2070	**H.R. 2563**
S. 3522	**H.R. 3897**
S. 3832	

SEPTEMBER 21, 2006

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CONTENTS

STATEMENTS

	Page
Allard, Hon. Wayne, U.S. Senator from Colorado	5
Craig, Hon. Larry E., U.S. Senator from Idaho	2
Donnelly, Thomas F., Executive Vice President, National Water Resources Association	46
Feinstein, Hon. Dianne, U.S. Senator from California	4
Hatch, Hon. Orrin, U.S. Senator from Utah	2
Johnson, Hon. Tim, U.S. Senator from South Dakota	4
Long, Bill, President, Southeastern Colorado Water Conservancy District	38
McNulty, Hon. Michael R., U.S. Represenative from New York	59
Murkowski, Hon. Lisa, U.S. Senator from Alaska	1
Radanovich, Hon. George, U.S. Represenatative from California	14
Rinne, William, Acting Commissioner, U.S. Bureau of Reclamation	17
Robinson, Mark, Director, Office of Energy Projects, Federal Energy Regulatory Commission	26
Salazar, Hon. Ken, U.S. Senator from Colorado	15
Schumer, Hon. Charles E., U.S. Senator from New York	8
Smith, Hon. Gordon H., U.S. Senator from Oregon	35
Thalacker, Marc, Manager, Three Sisters Irrigation District, on behalf of the Oregon Water Resources Congress	41

APPENDIXES

APPENDIX I

Responses to additional questions 53

APPENDIX II

Additional material submitted for the record 59

MISCELLANEOUS WATER AND POWER BILLS

THURSDAY, SEPTEMBER 21, 2006

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:32 p.m., in room SD–628, Dirksen Senate Office Building, Hon. Lisa Murkowski presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. I call to order the subcommittee. It is a pleasure to welcome everyone today to the Water and Power Subcommittee. We have Senator Allard with us this afternoon at the subcommittee. We are expecting Senator Schumer and Congressman Radanovich will be joining us a little bit later. He is in a committee over on the House side, but will be coming across.

But we do have a busy agenda, so I would like to begin with the bills that we have before us today. We have nine pieces of legislation: S. 1106, sponsored by Senators Allard and Salazar, to authorize construction of the Arkansas Valley Conduit in Colorado; S. 1811, sponsored by Senators Hatch and Bennett, which authorizes a feasibility study to enlarge the Arthur V. Watkins Dam; S. 2070, sponsored by Senator Schumer, to provide requirements for hydropower projects on the Mohawk River; S. 3522, sponsored by Senators Wyden, Smith, Craig, and Murray, to reauthorize and amend the Fisheries Restoration and Irrigation Mitigation Act of 2007; S. 3798, sponsored by Senator Feinstein, to address Folsom Canal costs; S. 3832, sponsored by Senators Domenici and Bingaman, to direct the Interior Secretary to establish transfer title criteria for reclamation facilities; S. 3851, which I have sponsored, which extends FERC preliminary permits for hydro projects in Alaska; H.R. 2563, sponsored by Mr. Otter, to authorize feasibility studies to address water shortages within the Snake, Boise, and Payette River systems.

We also have H.R. 3897, which is sponsored by Mr. Radanovich, to authorize the Secretary of the Interior to enter into a cooperative agreement on the Madera water supply and groundwater enhancement project.

The subcommittee has received written testimony on several of the bills before us today and that testimony will be made part of the official record. After we hear from our congressional witnesses,

we will have two panels which we will welcome at that point in time.

Before we get started, I would like to ask, Senator Craig, if you have any opening statements that you would like to present.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF HON. ORRIN G. HATCH, U.S. SENATOR FROM UTAH

Mr. Chairman, I am grateful for the opportunity to share my support for the Arthur V. Watkins Dam Enlargement Act of 2005 (S. 1811). The bill, if enacted, would authorize the Bureau of Reclamation to conduct a feasibility study on raising the height of the Arthur V. Watkins Dam in Weber County, Utah.

The dam is a 14.5 mile long earthfill dam which encloses Willard Bay Reservoir. The reservoir has a storage capacity of roughly 215,000 acre-feet of water. It is estimated that raising the dam by five to 10 feet would increase the reservoir's storage capacity by 50,000 to 70,000 acre-feet. My bill simply authorizes a feasibility study to determine whether enlarging the dam is an appropriate way to help address the Weber Basin's expanding water needs. I believe it is, and I believe it will be an easy, cost effective, environmentally sound way to increase water storage capacity in the Weber Basin.

Thousands of Utah residents and businesses already rely on the reservoirs in the Weber Basin system to provide both culinary and secondary water. But, Mr. Chairman, the Weber Basin is one of the state's fastest growing areas. In order to meet the area's growth demands, we must find additional water sources and make better use of existing resources.

Further, Utah is the second most arid state in the union, and increasing water storage capacity will help citizens in the Weber Basin better manage the state's frequent drought cycles. I believe that my bill is a simple way to help improve water management in Utah and provide citizens in the Weber basin with increased capacity to meet their rapidly-growing needs.

Again, Mr. Chairman, thank you for holding this hearing today. I recognize that we are quickly running out of time in this legislative session, but I hope that the Committee will make S. 1811 one of its priorities and send it to the Senate floor this year. Thank you.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Well, thank you very much, Madam Chairman, for holding this hearing and for getting all of these bills before the subcommittee and therefore the full committee. As you have mentioned, I am here on S. 3522, the Fisheries Restoration and Mitigation Act. Also, H.R. 2563, put in by my fellow colleague from Idaho, Congressman Otter, as it relates to studies in the Snake and the Payette River watersheds for purposes of looking for additional storage.

Let me ask unanimous consent that my full statement be a part of the record and I will make some brief comments.

Senator MURKOWSKI. It will be included.

Senator CRAIG. In fact, this afternoon I am flying out to San Diego to host a water conference. It will be the second that the Center for the New West, once in Denver, now in Boise, has hosted dealing with water in our Western arid States. I and my colleagues are putting a special emphasis now on the West and our very limited water resources, for obvious reasons, Madam Chairman. Three of the most arid States in the Nation are now some of our fastest populating States: Arizona, Nevada, and my State of Idaho. New Mexico is beginning to grow and there will be in time some very fundamental decisions to be made as to the allocation of water or the reallocation of water as it relates to human uses versus agricultural, fisheries, all of those other important issues.

H.R. 2563 embodies an approach toward looking to see if we cannot retain more runoff, storage water. Obviously, more water is a part of a solution, but making decisions as it relates to how water gets used or where it gets used as a finite resource is another approach. So it is critical that through the Bureau of Reclamation we reenergize the reality that the West may some day need to build more storage, while at the same time recognizing the critical nature of water quality within our systems for fish and fish habitat, mitigation, all of those types of things that are addressed in S. 3522.

So it is an issue that I am spending a good deal more time on, as are my Western colleagues, and I thank you very much for holding these hearings today. It is an issue in the West that we worry about because we do not have enough of it, whereas in some areas of our country they worry about it because there is too much of it. It is an interesting juxtapose.

Thank you.

[The prepared statement of Senator Craig follows:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Madam Chair and members of the committee, the arid West is what it is today, with vast fields of green and growing, healthy, vibrant communities, because of our ability to store water and channel it through irrigation. The West is also fortunate to have a variety of fish populations that at times creates multiple demands from providing increased flows to fish screens.

I would like to join my colleagues from Oregon in supporting S. 3522, the Fisheries Restoration and Irrigation Mitigation Act (PRIMA) of 2006. It is important that we pool our resources and work together in the region to get serious about fish restoration. PRIMA has proven to be cost effective and efficient at this goal and, therefore, should be reauthorized.

The FRIMA program exemplifies the great potential of forward-thinking public-private partnerships, and the wisdom of working closely with local communities. Since it was enacted in 2000, we have achieved real results. In my home state of Idaho, according to the Fish and Wildlife Service, 13 projects have been completed and 206 miles of streams have been "protected, enhanced, or made accessible to fish." One example of work being done is in the Salmon River Basin near Salmon, Idaho, where partners such as the Lemhi Soil and Water Conservation District and the U.S. Forest Service have installed fish screens on three irrigation water diversions. These screens protect salmon and other fish species and allow farmers to continue to irrigate their farms. Let me emphasize that in supporting the reauthorization of this program, there are important projects such as these that are yet to be completed.

This program makes sense, especially from a financial perspective. FRIMA extends the reach of federal dollars by enlisting other interested parties. This results in more money for FRIMA projects and more talent and experience working to achieve success. In fact, from fiscal years 2002 to 2004, local and state government, businesses, irrigation districts, and environmental groups, to name just a few, have shouldered 58% of the cost. This cost-sharing surpassed the 35% threshold required in the original legislation. This program is making a difference on the ground and deserves to be reauthorized.

Also helping fish is Idaho's storage capacity that is being stressed by increasing demands from irrigation, power generation, industrial users, municipal users, and also fish habitat.

Idaho is growing at an unprecedented rate, particularly in the Treasure Valley. The assessment has already pointed out that, in less than 30 years, over 100,000 additional acre feet of water per year will be needed to meet increased demand. Beyond additional water, there is concern over current flood control because the increasing development and channelization of the Boise River is decreasing flood control capacity. Additionally, Idaho has four species of salmonids that are listed as threatened or endangered under the Endangered Species Act that require a significant amount of water for flow augmentation. This will reduce the pressure of other impoundments that are losing significant amounts of water causing different resource concerns.

These increasing demands, coupled with limited storage, have caused concern for me and many of my constituents. In 2003, dialogue regarding needed water supplies began and a Stakeholder Working Group was created from many interest groups from federal, state and local partners to address irrigation, municipal, and environmental interests. These parties have worked collaboratively with the Bureau of Reclamation to locate appropriate storage options from adding to existing impoundments to building new structures to recharge.

As you know, Madam Chair, the Bureau of Reclamation needs congressional authorization to take the next step and do feasibility studies in the areas identified by the Stakeholder Working Group. I support this legislation and hope through the feasibility study process, we can determine needed additional storage for my constituents in Idaho.

Again, I support Representative Butch Otter and H.R. 2563 that authorizes the Secretary of the Interior to conduct feasibility studies and address certain water shortages within the Snake, Boise, and Payette River systems in Idaho.

I ask unanimous consent that the Idaho Water Users Association testimony be made part of the record.

Thank you Madam Chair.

Senator MURKOWSKI. Thank you, Senator Craig, and your full comments will be included as part of the record.

Senator Johnson, did you want to make an opening statement?

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Just briefly, Madam Chairman. Thank you for convening today's hearing. We have got a large number of bills before us today that address a diverse set of interests, so I will keep my remarks very short.

I would like to extend a quick welcome to Senators Schumer and Allard and Congressman Radanovich, who are providing their statements today. I would also like to welcome back Acting Commissioner Rinne of the Bureau of Reclamation and Mark Robinson of FERC, who are once again giving testimony to the subcommittee, and thank our second panel of witnesses for making themselves available this afternoon.

From the testimony we have received from the administration witnesses, it looks as if a number of today's bills will require some additional work before they can move through the committee. Nonetheless, this afternoon's hearing is an important first step in that process and I am ready to work with you, Madam Chairman, and the sponsoring members to try to address the identified issues and secure committee action on these bills in the near future. I look forward to receiving today's testimony and appreciate everyone's input, and thank you again, Madam Chairman.

Senator MURKOWSKI. Thank you, Senator.

Senator Feinstein, would you care to make an opening statement?

STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

Senator FEINSTEIN. No, Madam Chairman. Thank you. I want to thank you. You have been just terrific and I really appreciate it. There are a couple of bills on the calendar that relate to California and I just want to be here just in case.

[Laughter.]

Senator MURKOWSKI. I appreciate you being here and again appreciate your cooperation as we work through the title 16.

With that, we welcome to the committee Senator Allard and Senator Schumer. Senator Allard, if you would care to present your comments here this afternoon, and again welcome.

STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM COLORADO

Senator ALLARD. Madam Chairman, thank you.

Today Colorado is experiencing the fifth year of an unprecedented drought. This drought is a strong reminder that water is indeed our most precious natural resource. This is true most especially in rural Colorado. In southeastern Colorado, home of the Arkansas River, it is difficult to find clean, inexpensive water that can meet the ever-increasing Federal water standards. It is for this reason that I, along with my colleague Senator Salazar, introduced S. 1106. Identical legislation has been introduced by Congresswoman Musgrave in the House of Representatives.

S. 1106 will ensure the construction of the Arkansas Valley Conduit, which is envisioned as a pipeline that will provide the small, financially strapped towns and water agencies along the lower Arkansas River with safe, clean and affordable water. By creating an 80 percent Federal and 20 percent local cost-share formula to help offset the construction costs of the conduit, this legislation will protect the future of southeastern Colorado's drinking water supplies and prevent further economic hardships.

It is extremely important to note that the Arkansas Valley Conduit was originally authorized by Congress in 1962, over 40 years ago, as a part of the Fryingpan-Arkansas Project. The original Fry-Ark Project authorizing legislation grants the Secretary of the Interior the authority to construct the Arkansas Valley Conduit. Our legislation simply authorizes that authority and adds a cost share provision.

Due to the authorizing statute's lack of a cost share provision and southeastern Colorado's depressed economic status, the conduit was never built and until recently there was no urgent need for it. The region was fortunate to enjoy an economical and safe alternative to pipeline transportation of project water and that was the Arkansas River itself.

Unfortunately, this is no longer the case. While the Federal Government has continued to strengthen its unfunded water quality standards, these communities have fallen further and further behind in attaining those standards. As far back as 1950, the Bureau of Reclamation determined that the quality of local drinking water supplies were simply unacceptable, and you can see that in House Document No. 187, 83rd Congress.

In response to a number of water providers falling out of compliance with existing EPA water quality standards, the local communities formed a committee to evaluate alternative approaches to solving this problem. The committee ultimately hired an independent engineering firm to evaluate two competing options: constructing a series of treatment facilities and constructing the Arkansas Valley Conduit.

That evaluate resulted in the recommendation to construct the conduit because of greater savings in taxpayer dollars. The engineers concluded that local communities were unable to fund either

solution under existing circumstances. The long-term costs of operating individual water treatment facilities, including potential new Federal standards and the costs of disposal of treatment facility water, removed treatment as a viable long-term solution.

The fixed long-term cost of the conduit contributed to the engineers' recommending this solution. In other words, the communities may be too poor not to spend the millions of dollars they would have to spend in partnership with the Federal Government to build the Arkansas Valley Conduit. When you weigh the promise of the conduit versus the fate of building new individual water treatment facilities, it is clear that the conduit is the best choice of action.

S. 1106 is essential if we are to bring local water providers into compliance with Federal water quality standards and it will finally provide a long-term solution to the region's water quality concerns. The Arkansas Valley Conduit would deliver fresh, clean water to dozens of valley communities and thousands of people along the river. To be exact, the conduit will supply 16 cities and 25 water agencies in Bent, Crowley, Kiowa, Prowers, Pueblo, and Otero Counties with water when completed. The largest city served by the conduit is La Jonta, Colorado, population of 12,000.

At this time, if the members would direct their attention to the maps—they should have those in their folders—you will see exactly where the conduit's beneficiaries are situated. One of the most stunning facts that I would like to point out is that the conduit will serve an area slightly larger than the State of New Hampshire.

As I mentioned, the local sponsors of the project have completed an independently funded feasibility study of the conduit and have developed a coalition of support from water users in southeastern Colorado. I am also pleased that the State of Colorado has contributed a great deal of funding for the study through the Colorado Water Conservation Board. These local stakeholders continue to explore options for financing their share of the costs and are working hard to complete the final details surrounding the organization that will oversee the conduit project.

Now, I would like to turn my attention to the Bureau of Reclamation, some of the questions they have raised pertaining to the legislation. I first want to make it clear that the purpose of the legislation is to provide an 80 percent Federal, 20 percent local cost share formula for the cost of construction. The local beneficiaries are to be 100 percent responsible for operation and maintenance. If the Bureau of Reclamation believes that the language of S. 1106 does not reflect this commitment, I am prepared to make such changes as the Bureau believes are necessary to ensure local payment of operation and maintenance.

I also understand that the Bureau of Reclamation is concerned about the cost of the project in light of the current project backlog. As a member of the U.S. Senate Appropriations Committee, you have my full commitment that if the cost share language is approved I will work tirelessly on behalf of this project to make sure that it does not impact other important Reclamation projects. This project was authorized 40 years ago. If the money is not spent now it will be spent later as communities seek Federal grants to fund

their projects individually instead of using a systemwide conduit approach.

The Bureau of Reclamation is also concerned that the cost share legislation will create a new precedent that it opposes changes to the Bureau's standard 100 percent repayment policy. I realize that my legislation is a change to standard policy. Indeed, that is the very purpose of this legislation. However, there are a number of other authorized projects that legislatively change the standard repayment policy. Therefore the Arkansas Valley Conduit cost share would not set a precedent. The precedent has already been set.

With the help of my colleagues, the promise made by Congress 40 years ago to the people of southeastern Colorado will finally become a reality.

Madam Chairman, thank you for your leadership and for holding this hearing today. I apologize for going over my time, but I felt like it is important that the committee get the full picture on this, and thank you for your patience.

[The prepared statement of Senator Allard follows:]

PREPARED STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM COLORADO

Madam Chairman, today Colorado is experiencing the fifth year of unprecedented drought. This drought is a strong reminder that water is indeed our most precious natural resource. This is true most especially in rural Colorado. In Southeastern Colorado, home of the Arkansas River, it is difficult to find clean, inexpensive water that can meet the ever increasing federal water standards.

It is for this reason that I, along with my colleague Senator Salazar, introduced S. 1106. Identical legislation has been introduced by Congresswoman Musgrave in the House of Representatives. S. 1106 will ensure the construction of the Arkansas Valley Conduit, which is envisioned as a pipeline that will provide the small, financially strapped towns and water agencies along the lower Arkansas River with safe, clean, affordable water. By creating an 80 percent federal—20 percent local cost share formula to help offset the construction costs of the Conduit, this legislation will protect the future of Southeastern Colorado's drinking water supplies, and prevent further economic hardship.

It is extremely important to note that the Arkansas Valley Conduit was originally authorized by Congress in 1962, over forty years ago, as a part of the Fryingpan-Arkansas Project. The original Fry-Ark Project authorizing legislation grants the Secretary of the Interior the authority to construct the Arkansas Valley Conduit. Our legislation simply reauthorizes that authority and adds a cost-share provision.

Due to the authorizing statute's lack of a cost share provision, and Southeastern Colorado's depressed economic status, the Conduit was never built. And, until recently, there was no urgent need for it—the region was fortunate to enjoy an economical and safe alternative to pipeline-transportation of project water: the Arkansas River. Unfortunately, this is no longer the case. While the federal government has continued to strengthen its unfunded water quality standards, these communities have fallen further and further behind in attaining them. As far back as 1950, the Bureau of Reclamation determined that the quality of local drinking water supplies were "unacceptable" (House Document Numbered 187, Eighty-third Congress).

In response to a number of water providers falling out of compliance with existing EPA water quality standards, the local communities formed a committee to evaluate alternative approaches to solving this problem. The committee ultimately hired an independent engineering firm to evaluate two competing options: constructing a series of treatment facilities and constructing the Arkansas Valley Conduit. That evaluation resulted in the recommendation to construct the Conduit.

The engineers concluded that local communities are unable to fund either solution under existing circumstances. The long-term costs of operating individual water treatment facilities, including potential new federal standards and the cost of disposal of treatment facility waste, remove treatment as a viable long-term solution. The fixed long-term costs of the Conduit contributed to the engineers recommending this solution. In other words, the communities may be too poor not to spend the millions of dollars they would have to spend, in partnership with the federal government, to build the Arkansas Valley Conduit.

When you weigh the promise of the Conduit versus the fate of building new individual water treatment facilities, it is clear that the conduit is the best choice of action. S. 1106 is essential if we are to bring local water providers into compliance with federal water quality standards and it will finally provide a long term solution to the region's water quality concerns.

The Arkansas Valley Conduit will deliver fresh, clean water to dozens of valley communities and thousands of people along the river. To be exact, the Conduit will supply 16 cities and 25 water agencies in Bent, Crowley, Kiowa, Prowers, Pueblo and Otero counties with water when completed. The largest city served by the Conduit is La Junta, Colorado (population nearly 12,000). At this time, if the members would direct their attention to the maps, they will see exactly where the Conduit's beneficiaries are situated. One of the most stunning facts that I would like to point out is that the Conduit will serve an area slightly larger than the state of New Hampshire.

As I mentioned, the local sponsors of the project have completed an independently funded feasibility study of the Conduit, and have developed a coalition of support from water users in Southeastern Colorado. I am also pleased that the State of Colorado has contributed a great deal of funding for the study through the Colorado Water Conservation Board. These local stakeholders continue to explore options for financing their share of the costs, and are working hard to complete the final details surrounding the organization that will oversee the Conduit project.

Now I would like to turn my attention to the Bureau of Reclamation and some of the questions they have raised pertaining to the legislation. I first want to make it clear that the purpose of the legislation is to provide an 80 percent federal—20 percent local cost share formula for the costs of construction. The local beneficiaries are to be 100 percent responsible for operation and maintenance. If the Bureau of Reclamation believes that the language of S. 1106 does not reflect this commitment, I am prepared to make such changes as the Bureau believes are necessary to ensure local payment of O&M.

I also understand that the Bureau of Reclamation is concerned about the cost of the project in light of their current project back-log. As a member of the United States Senate Appropriations Committee, you have my full commitment that, if the cost-share language is approved, I will work tirelessly on behalf of this project to make sure that it does not impact other important Reclamation projects. This project was authorized 40 years ago. If the money is not spent now, it will be spent later as communities seek federal grants to fund their projects individually instead of using a system-wide conduit approach.

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With the help of my colleagues, the promise made by Congress forty years ago to the people of Southeastern Colorado, will finally become a reality.

Madam Chairman, thank you for your leadership and for holding this hearing today.

Senator MURKOWSKI. We appreciate your comments and your attendance here today, Senator Allard.

Senator Schumer, if you would like to give us your comments. Welcome.

STATEMENT OF HON. CHARLES E. SCHUMER, U.S. SENATOR FROM NEW YORK

Senator SCHUMER. Thank you, Madam Chairman. First I want to thank you for replacing my sign. It said "Sentor Schumer." It reminds me, I was once in New York City and I had an appointment with somebody I wanted very much to see and I said: It is Senator Schumer. She called back a few minutes and said: "Sendar"—she thought that was my first name—"you have no such appointment." Anyway——

Senator MURKOWSKI. Well, we are glad that you are here with us.

Senator SCHUMER. So my staff kept joking that I was Sendar from some foreign planet or something like that.

Anyway, I am glad to be here and I thank you all for your time. I want to thank my two dedicated staff people, Christine Parker and Bridget Petruczok, and one other gentleman who has been running my capital region office—that is Albany area—since I have been Senator, and does a great job and has been, as they say up in Albany, like white on rice about this issue, and that is Steve Mann.

The purpose of S. 2070, the Mohawk River Hydroelectric Projects Licensing Act, is to require FERC to reopen the relicensing proceeding for the School Street project. It is currently a 38 megawatt hydroelectric project located in the city of Cohoes on the Mohawk River near Albany. The bill simply asks that FERC consider all valid license applications when a facility has been operating under annual license for 10 years or more.

My view, Madam Chairman, is that we should not let a technicality of the Federal licensing process stand in the way of progress. The existing situation, temporary annual licenses, should not continue when there are alternatives that will provide more power in an environmentally friendly way.

The history goes like this. In 1991 when the relicensing proceeding for this facility started, the then owners, Niagara Mohawk Power, operated as a monopoly in New York's regulated energy industry. Given that a State-approved monopoly was operating and applying, it came as no surprise there was no competition. No one else applied.

The original license for the current School Street project expired in 1993 and since then FERC has only issued annual licenses, which include no requirement to make improvements, as would the longer license. So this is the 15th year that this relicensing procedure has been before FERC. I understand that it often takes several years for FERC to work through one of these proceedings, but by any measure 15 years is an extraordinary amount of time. It is the second oldest application still pending before FERC.

When former Chairman Patrick Wood attempted to address the backlog of these thorny relicensure cases a few years ago, this was one of the few that was left uncleared. They made an effort to clear all the others.

When alternative projects attempted to raise the issue in the licensing case, relicensing case, the Commission issued a decision that stated it was barred from considering any alternative because of FERC's rules, that they prohibit consideration of applications that were not filed at the time the license expired. As I already mentioned and will explain in more detail, at the time the license was set to expire Niagara Mohawk had a monopoly. It was the only logical applicant.

But unless FERC can look at other applicants who were not around at the time, this problem is going to be left in limbo for another 15 years. Now, I appreciate FERC is in a bind here. In 2005, in response to a letter I sent on this issue, Chairman Wood said: "Should you decide that you would like to propose legislation to

allow this type of application to be considered, we would be glad to provide technical assistance." FERC really wanted us to do this because they are sort of stuck as well.

Now, absent such legislation, I have been informed by the Chairman of FERC that the Commission believes it is barred by law from considering any alternative. So we are going to be stuck with this [indicating] instead of that [indicating] forever. According to FERC, it cannot consider any alternative for Cohoes because the Federal Power Act requires them to only consider proposals that were 24 months before the expiration of the existing license. That was in 1991 in this case.

But as I said, the circumstances were different then. We now have the opportunity to have low-cost, pro-environmental power. It is GIPA, the Green Island Power Authority, which is a public authority, that wants to do this. Everyone is on board, but we are stuck by this technicality.

Cohoes Falls is a natural and historical landmark. It is on the Mohawk River. It is the second largest river waterfall in our State. I guess you can all guess the first. It is over there in Niagara. It was featured in paintings by John James Audubon, a poem by Thomas Moore, the national poet of Ireland. They are beautiful. But since 1911 these falls have remained dry on all but the rarest of occasions, because when the project was built it diverted the river through a canal, which leaves a one-mile stretch of the Mohawk River dry.

The current situation prohibits an alternative. We could bring back the beauty of the falls. There are fish lanes that are proposed that would allow fishing. Most important of all, you would get much more power at a much lower cost. So it is a win-win-win for the one million people of the capital region.

Our bill will allow FERC simply to consider other applications, to ensure the public does not lose the benefits of more energy production and a revitalized falls through a more environmentally sound and friendly approach.

My bill takes into account the sweeping changes that have occurred since deregulation of the energy market and the important technological advances like the state of the art fish screens. Those did not exist 15 years ago and they would preserve the fish, and fishing again is a recreational activity that is very much appreciated and prized on the Mohawk.

Most important, it would permit alternative applications that are supported by all of the surrounding communities. The existing owner does not want to change things. It is just sitting there. The new owner has great plans, as you can see, for lower cost energy, preserving the fish, and bringing back the beauty of the falls.

So I hope that the committee will consider that. We do not want to be stuck with this for another 15 years. I have tried to abbreviate my statement. I feel pretty strongly about this, Madam Chair. But in the interest of time I would like that—I will conclude my remarks and ask that my full remarks be written into the record.

[The prepared statement of Senator Schumer follows:]

PREPARED STATEMENT OF HON. CHARLES E. SCHUMER, U.S. SENATOR FROM NEW YORK

Thank you Madam Chair and members of the committee for welcoming me here today to talk about a critically important project for the Capital Region in upstate New York. The purpose of S. 2070, the Mohawk River Hydroelectric Projects Licensing Act of 2005, is to require the Federal Energy Regulatory Commission (FERC) to reopen the re-licensing proceeding for the School Street Project, currently a 38 Mega-Watt hydroelectric project located in the City of Cohoes on the Mohawk River.

This bill simply asks that FERC consider all valid license applications when a facility has been operating under annual license for 10 years or more. We should not let a technicality of the. federal licensing process stand in the way of progress. The existing situation, temporary annual licenses should not continue when there are alternatives that will provide more power in a more environmentally friendly way.

In 1991, when the re-licensing proceeding for this facility started, the then owners, Niagara Mohawk Power Corporation, operated as a monopoly in New York's regulated energy industry. Given that a state-approved monopoly was operating and applying for the re-license, it should come as no surprise that there was no competition from other entities for the application.

The original license term for the current School Street Project expired in 1993. Since then, FERC has issued only annual licenses, which include no requirements to make any improvements

Madam Chairwoman, this is the fifteenth year that this re-licensure proceeding has been before FERC. I understand that it often takes several years for FERC to work through one of these proceedings, but by any measure, fifteen years is an extraordinary amount of time. Indeed, it is the second oldest application still pending before it.

And, when former FERC Chairman Patrick Wood attempted to address the backlog of thorny re-licensure cases a few years ago, this project was one of the few that was left uncleared.

When alternative projects attempted to raise the issue in the School Street re-licensing case, the Commission issued a decision that stated it was barred from considering any other alternative because of FERCs rules prohibit consideration of applications that were not filed at the time the license expired. As I already mentioned, at the time the license was set to expire in 1993, Niagara Mohawk had a monopoly and thus was the only logical applicant. But unless FERC is permitted to look to other applicants who were not around at the time of the re-licensure, I am afraid this the problem could be left in limbo for another fifteen years. That in sum is why we are here today.

I appreciate that FERC is in a bind here. In March, 2005 in response to a letter that I sent on this issue, former FERC Chairman Wood said, "Should you decide that you would like to propose legislation to allow this type of application to be considered under the Federal Power Act, we would be glad to provide technical assistance." Soon after, based in large part on Chairman Wood's response, I proposed this legislation.

Absent such legislation, I have been informed by the Chairman that FERC believes it is barred by law from considering any other alternatives, even a superior alternative. According to FERC, it cannot consider any alternative proposal for Cohoes Falls because the Federal Power Act requires them to only consider proposals that were filed 24 months before the expiration of the term of the existing license, which in this case was all the way back in 1991.

But circumstances were very different then. At that time, New York's regulated electric industry permitted Niagara Mohawk (NIMO) to have a monopoly. New Yorkers knew that this low-cost power would remain in the Region at state-regulated prices. But with deregulation, the world has changed. The monopoly is gone, and NIMO has long since sold off this facility. In fact, it has been sold and resold several times.

In addition, the region served by the facility has changed. Any plant licensed at Cohoes Falls should meet the power needs of the growing Capital Region and protect the aquatic life and scenic beauty that have been nearly ravaged by the current facility.

Cohoes Falls is a true natural and historical landmark and is located on the Mohawk River, just west of its confluence with the Hudson River. It's the second largest waterfall in New York State and the site is still considered sacred to the Iroquois. It is also was featured in a painting by John James Audubon and a poem by Thomas Moore, the National Poet of Ireland.

Since 1911, these majestic falls have remained dry on all but the rarest of occasions. When the School Street Project was built, it diverted the flow of the river

through a canal, which leaves a one mile stretch of the Mohawk River, including the Cohoes Falls dry on all but a handful of days a year.

The current situation prohibits consideration of alternative projects or additional evidence into the existing School Street re-licensing record despite the need of the electricity consumers in my State for clean, renewable resources. Existing regulations have thus created a situation where it has but one choice and that one choice is to re-license a power plant that under-utilizes the waters of the Mohawk River and wreaks adverse environmental effects. Now, 15 years have passed and it makes no sense to pretend, at the time of decision making, that we are back in 1991, when the world was a very different place.

This is especially true when the decision making involves the next fifty years as well. Here, where the application of the existing law in this case works so patently against the public interest, then it is time for Congress to take steps to remedy the situation. My bill will allow FERC to consider other applications to ensure that the public does not lose benefits of more energy production and revitalized falls through a more environmentally friendly approach.

My bill will take account of the sweeping changes that have occurred since the deregulation of the energy market and important technological advancements in areas like state of the art fish screens, which didn't exist fifteen years ago.

Most important, however, it would also permit consideration of alternative applications that would be supported by the surrounding communities. The communities around the Projects are very enthusiastic both about the benefits of the new Cohoes Falls power project and the prospects of replacing the School Street Project, which has long been an eyesore. Local interests and associations thus support consideration of alternative applications in the re-licensing proceeding.

I hope the committee will agree with me that this proceeding has gone on too long. In fact, it has been going on for twice the length of a FERC Commissioner's term. If a re-licensing proceeding cannot be worked out in that length of time, I believe it is in the best interest of the community that the process be opened up for alternative proposals.

I believe that S. 2070 would preserve the integrity of FERC's procedures while allowing for new applicants to compete for this license. I look forward to working with the committee to move this important matter forward.

As the Committee knows well, the Federal Power Act requires FERC to license only the "best adapted" proposal that will be in the public interest. Federal Power Act ("FPA") § 10(a)(1),16 U.S.C. § 803(a)(1). I believe Congress gave FERC clear instructions that the public deserves "the best" project when FERC issues a license and that it authorized FERC to include conditions to protect the public interest. It is unfortunate that other provisions of FERC regulations have hampered this mandate from Congress in this case.

Under these circumstances, the most appropriate way to avoid a bad result for the public and the Nation lies in the passage of a law to remove the barrier to FERC's inability to consider other applicants in the School Street re-licensing case. Specifically, S. 2070 would require the Commission to reopen the current School Street proceeding within 90 days of the enactment of this legislation, for a reasonable period of time to permit the filing of other license applications that would use the same waters as the School Street Project.

After that time period, which must include adequate time to process a license application under the Commission's own regulations, the Commission would proceed to process all timely-filed applications and promptly make its decision as to which of the proposals before it constitutes the best adapted Project. If no acceptable license applications are filed, FERC would issue a license to the existing licensee, with appropriate conditions to protect the opportunity in the future for a better project to be developed.

FERC may also want to consider the benefits of local ownership in the development of local resources when reviewing additional applications. Productive power projects can initiate other beneficial projects in local communities, whether economic, recreational or environmental. Local populations are highly aware of the potential uses for the natural resources in their respective communities and should be given the opportunity to develop them. All they ask for is an equal opportunity to participate in the process Congress established to issue licenses for these public natural resources in the public interest.

I want to emphasize the uniqueness of this situation at Cohoes Falls. For almost 15 years, the public has been denied the benefits that could be achieved if a competitive application process were available including lower cost electricity and environmental protections and enhancements. Because the existing licensee has received annual temporary licenses, it has recouped substantial economic benefits of an out-

dated license, especially as the prices for electricity have sharply risen, without having to invest in the facility.

FERC's role is to consider all options and select the one that best ensures the public interest will be served. That is what my legislation will do in this very unique circumstance where previous regulation of the industry created a monopoly and no other applicant was eligible. In other words, it will free FERC to allow it to engage in the very kind of reasoned and comparative decision making intended by the provisions of the Federal Power Act. I urge the Committee to move this bill forward as quickly as possible. I thank my colleagues for their time and consideration of this important bill.

Senator MURKOWSKI. They will be include as part of the full record.

Senator SCHUMER. Thank you.

Senator MURKOWSKI. We appreciate you being here today.

Senator SCHUMER. Thank you. I thank all the members of the committee for taking the time here.

Senator MURKOWSKI. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Could I ask a question of Senator Schumer?

Senator SCHUMER. Please.

Senator MURKOWSKI. Certainly.

Senator FEINSTEIN. Let me ask you, talk about these two charts. Now, this is today [indicating].

Senator SCHUMER. Correct.

Senator FEINSTEIN. And this was when at the latest [indicating]?

Senator SCHUMER. I cannot see that, but——

Senator FEINSTEIN. When the falls were there.

Senator SCHUMER. That is how it was and would be in the future.

Senator FEINSTEIN. When? When was it?

Senator SCHUMER. 1911. That is a rendition.

Senator FEINSTEIN. When did it stop being that way?

Senator SCHUMER. 1911.

Senator FEINSTEIN. Ah. And now, so you are——

Senator SCHUMER. See, what they did is they built—back then, Niagara Mohawk built a bypass, so the falls are gone. Even though they were very famous in the 19th century, they were less environmental then, less environmentally oriented.

It was a monopoly, so no one, when the license came up, no one tried to change it in 1991. Since then we have had deregulation and you have a group of people interested in going from this [indicating] to that [indicating]——

Senator FEINSTEIN. Oh, I see.

Senator SCHUMER [continuing]. Which would provide three benefits——

Senator FEINSTEIN. So what is it you need?

Senator SCHUMER. We simply need this legislation, which would—the rules of FERC are you can only consider a license within the 24 months. This license has not been renewed since 1991. This would make an exception and allow—we do not even tell FERC what to do. We say just consider alternatives as if they have applied a year and a half ago.

Senator FEINSTEIN. Thank you.

Senator MURKOWSKI. Thank you for the clarification.

Congressman Radanovich, your timing is impeccable. We have just concluded with the comments by Senator Allard and Senator

Schumer on their respective pieces of legislation. We are delighted to have you come across to the Senate side and give us your comments to the subcommittee this afternoon. Welcome.

STATEMENT OF HON. GEORGE RADANOVICH, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. RADANOVICH. Thank you very much, Madam Chairwoman. I do appreciate your indulgence. We had votes on the other side, and also chairing a hearing on California water as well.

But the bill that I wanted to speak today to is H.R. 3897, which is the Madera Water Supply Enhancement Act. It is legislation that is vital to the economic wellbeing of Madera County in the San Joaquin Valley. Water is the lifeblood of this region and the project ensures that Madera County has a stable, reliable, and efficient water supply. Specifically, the project will enable water users to store excess river flows in a nearby aquifer underground. This stored water bank would then be used during dry years and could prove critical to meeting water demands.

The over 13,000-acre ranch where the water bank is located is well suited for this project. The soils on and underneath the land are ideal for percolating water from the surface into the aquifer for storage. In addition, the land is valuable habitat for numerous species and contains large sections of the region's native grasslands. In fact, this is a rare part of the San Joaquin Valley that has never been tilled since man arrived on the scene.

Funding for the project is under way. The Madera Irrigation District which will operate and maintain the project issued a $37.5 million bond to purchase the property. Also, a fiscal year 2006 energy and water appropriations measure allocated $200,000 to conduct an appraisal study of the water bank, which is nearly complete.

Further, H.R. 3897 includes a 50 percent Federal cost share for a feasibility study and a 25 percent Federal cost share for the capital cost of the project. The remainder of the funding will come from local and State funds.

I recognize that there may be some questions raised as to why this legislation both authorizes a feasibility study and an underlying project in one bill. A little bit if history, if you will indulge me, will explain why we have chosen to take this comprehensive approach. For over a decade the Madera Ranch property on which the project will be located has been recognized as an ideal site for a water bank. In 1996 the Bureau of Reclamation began water bank investigations on the property. Two years later in 1998, the Bureau finalized plans to fund a water on the property in the amount of approximately $60 million.

But the Bureau withdrew from the project due to local concerns regarding sizing, water quality, and the lack of ownership. As a part of this process, the Bureau conducted numerous studies of the property and the feasibility of utilizing it for a water bank, including the Madera Ranch groundwater bank phase 1 report in 1998 and other studies and reports.

Following the Bureau's efforts to fund a water bank project, Azurex, which was an Enron subsidiary, attempted to pursue the same water bank project, but ran into the same local concerns.

In 2003, millions of dollars were spent on feasibility studies for a reformulated project to ensure local concerns were addressed. To date over $8 million have been spent on studies related to the project, not counting the Bureau's own substantial efforts to fund a water bank at the site. All of this work, including four successful pilot tests, has verified that the project is not only feasible, but, with a certified environmental impact report now in place, is ready to move to the construction phase.

I would like to submit for the record a document prepared by the Bureau entitled "Suggested Content Feasibility Report and/or Planning Report, IES." And I am also submitting an annotated version of the Bureau document that identifies the specific studies and reports that have been done by the Bureau itself, the Madera Irrigation District and others that address each of the subject matter categories that the Bureau wants covered in a feasibility report and corresponding material for such category.*

This project may be studied more than any other comparable project in the history of the Bureau. As such, the Bureau should be able to utilize previously prepared material, updated required information, and complete the feasibility study soon for a modest cost.

Madam Chairwoman, thank you so much for consideration of H.R. 3897. It does enjoy broad, widespread support in the district and I appreciate its fair consideration.

Senator MURKOWSKI. Thank you. We appreciate your being here and the reports that you referenced in your comments will be made a part of the full committee record.

Mr. RADANOVICH. Thank you very much.

Senator MURKOWSKI. So we appreciate that and appreciate your willingness to come over this afternoon.

Senator Salazar, I have given other members of the subcommittee time to make opening comments, if you would like to do the same.

STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Senator SALAZAR. Thank you. Thank you very much, Madam Chairman. I appreciate the opportunity. And thank you, ranking member Johnson, for holding this hearing today.

I will submit a much longer comment for the record, but I want to summarize just a couple of points if I may. I join my colleague Senator Allard in support of S. 1106 for the construction of a conduit that would essentially fulfill a promise that was made back in 1962, take a pipeline from Pueblo Reservoir and essentially provide clean water supply for about 100 miles downstream of Pueblo to an area in the lower Arkansas Valley which is very rural and struggles economically, perhaps more than any other region in the State of Colorado.

Without us being able to build this pipeline to provide clean water into those communities, many of those communities do not have any economic development opportunities and will wither on the vine and we are going to have a southeastern part of Colorado

*The additional material has been retained in subcommittee files.

that essentially is going to dry up and blow away. So I very much look forward to working with this committee, working with my colleague Senator Allard and all the stakeholders of the communities in the Lower Arkansas River Valley to get this project finally done after some 44 years in waiting.

With that, Madam Chairman, I do have a more formal statement that I will submit for the record.

[The prepared statement of Senator Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Thank you Madam Chair and Ranking Member Johnson for holding this hearing today to consider S. 1106, the Arkansas Valley Conduit Act. I want to welcome County Commissioner Bill Long and thank him for coming all the way from Las Animas, Colorado to be here today.

In 1962, Congress authorized the Fryingpan-Arkansas project, a water diversion and delivery project that brings water from the Western Slope of Colorado to communities in the Arkansas Valley on the Eastern Slope of the Rockies.

Much of the Fry-Ark Project is complete. Each year, over 69,000 acre-feet of water flow from the Roaring Fork Basin through the Fry-Ark's tunnels and reservoirs to farms and households in the Arkansas Valley. This water is the lifeblood of southeastern Colorado.

But one key piece of the Fryingpan-Arkansas Project remains unfinished. Congress envisioned that the Bureau of Reclamation would not only help bring water for agricultural and municipal use to southern Colorado, but also that it would help deliver clean, safe, drinking water to towns like Eads, La Junta, Ordway and Lamar. Congress envisioned the construction of a pipeline, or conduit, which would pipe drinking water from the Pueblo Reservoir down the Arkansas River corridor to the communities in the southeastern corner of Colorado.

Unfortunately, the original legislation did not include the federal-local cost-share provision needed for the conduit's construction. As a result, these communities have to rely on the compromised Arkansas River to deliver water for their citizens, factories and farms. Unfortunately, by the time the Arkansas River winds its way through eastern Colorado and reaches these small communities in the Lower Arkansas Valley, it is laden with natural contaminants like selenium and has picked up effluent from upstream communities and users.

The small towns of Southeastern Colorado have been struggling for years under the weight of protracted drought, soaring energy costs and low commodity prices. Farms are drying up, Main Street shops are shuttering their windows, and families are struggling to pay the bills. And Washington seems to have forgotten its four-decade old commitment to help build the Conduit. Like so many other communities in Rural America, the southeastern corner of the state is withering on the vine.

It is time for the federal government to keep its promise from 40 years ago, and to help provide clean, safe, drinking water to southeastern Colorado. If we fail to fulfill this commitment, I am afraid that we will see more small farms dry up and more towns disappear. Colorado will lose a large component of its economic base. The agricultural heritage that built this country will be one step closer to becoming a quaint memory.

Many of the towns and municipal water treatment systems in the Lower Arkansas Valley have already received notices from the Colorado Department of Public Health and Environment, advising them of the need to upgrade or replace their water treatment systems to treat water taken out of the Arkansas River. The fact is, these communities cannot afford to pay the estimated $640 million for new treatment systems that would be necessary to meet the new federal water quality standards. And if those communities were forced to upgrade their water treatment systems individually, they would have to come to the federal government for help—because they simply cannot afford to do it themselves.

Therefore, Madam Chair, even though this is an expensive project and has a large federal cost-share, the conduit will be far more economical in the long run. And as you will hear today, it still places a sizable burden of funding on the local communities.

I am proud to report, however, that the affected towns and counties have shown that they are able and willing to cover the local cost-share. Remarkably, they have collected letters of intent for 94% of the Conduit's projected capacity, at a sufficient price to cover the local cost-share. The local communities have made this financial

commitment because they understand that this is a valuable and wise long-term investment for the region.

As one who feels that it is critical that local communities participate in and support these types of water projects, I am pleased that this bill has such strong backing in southeastern Colorado.

And I am optimistic that the construction of the conduit will help spur a rural renaissance in southeastern Colorado. Farmers and ranchers are already excited about the new opportunities that renewable energy production offers—from hosting huge wind turbines to growing fuel for biodiesel. With a reliable, affordable source of clean drinking water, these communities can be at the forefront of our renewable energy economy. We need to get the conduit built for this to happen, and we need to do so as quickly as possible.

Madam Chair and Ranking Member Johnson, I again thank you for holding this hearing today and I thank you for responding to my request that Mr. Long be invited to testify. This bill is of great importance to the future of tens of thousands of people across my state and I hope we will soon have an opportunity to pass it out of committee.

Senator MURKOWSKI. Your full comments will be included as part of the record.

With that, we will go to our first panel and invite up William Rinne, the Acting Commissioner of the U.S. Bureau of Reclamation, as well as Mark Robinson, Director of Energy Projects at the Federal Energy Regulatory Commission.

Welcome, gentlemen. Mr. Rinne, if you would like to proceed with your comments first.

STATEMENT OF WILLIAM RINNE, ACTING COMMISSIONER, U.S. BUREAU OF RECLAMATION

Mr. RINNE. Thank you, Madam Chairwoman. members of the subcommittee, I am Bill Rinne, Acting Commissioner of the Bureau of Reclamation. Thank you for the opportunity to present the Department's view on S. 1106, S. 1811, S. 3832, S. 3798, H.R. 2563 and H.R. 3897. Madam Chairman, I am sensitive of the committee's time and will be as brief as possible, although I may go a little over the 5 minutes since there are 6 bills to address, and I request my full statement be submitted for the record.

Senator MURKOWSKI. It will be included.

Mr. RINNE. S. 1106 is a redraft of the Arkansas Valley Conduit legislation previously introduced. We commend the sponsors for addressing a number of Reclamation's concerns expressed in our prior testimony before this subcommittee in October 2003. Among these concerns was the assurance that the costs of the operation, maintenance, and replacement of the conduit will not be borne by the Federal Government. However, the current bill states that the Federal share of planning, design, and construction costs shall be 80 percent. This is contrary to the original Fry-Arkansas authorizing legislation, general Reclamation law, and current policy, in that generally municipal and industrial beneficiaries pay 100 percent interest of the M&I project costs. Therefore the administration cannot support the bill as introduced.

S. 1811 authorizes study of enlarging Arthur Watkins Dam in Utah. The proposed feasibility study would analyze alternatives for water storage and consider environmental issues, foundation stability, and public safety. Due to the limited focus of the one to two-foot dam raise, the estimated cost of this study is $2 million. The Department cannot support S. 1811 in its current form. However, if the bill were amended to include the appropriate Federal cost

ceiling and a minimum of 50 percent non-Federal cost sharing in the financing of the feasibility study in line with Reclamation policy and practice, the Department would not oppose enactment of S. 1811. Of course, any potential authorization to raise the dam would have to compete with the many other Reclamation projects vying for funding.

S. 3832 would require the Secretary of the Interior to establish criteria to transfer title to Reclamation facilities, and for other purposes. The Department believes that S. 3832 is consistent with an initiative that the Bureau of Reclamation currently has under way under its Managing for Excellence Action Plan. The goals of S. 3832 would be furthered by those efforts and the Department supports passage of the measure.

S. 3798 would defer payment and the cost of unused water capacity in Folsom South Canal in California. It would also authorize CVP customers to convey an equivalent amount of non-CVP water through the canal without additional payment. Because of the incomplete status of the Auburn Dam, water deliveries from the canal have never occurred at the levels anticipated. This act would compute the deferred use of the canal based upon the unused capacity and adjust the reimbursable costs accordingly.

However, the Department has not prepared a detailed cost estimate for this bill and has unanswered questions about its fiscal impact. The Department cannot support S. 3798 as written, but is willing to work with the sponsor on this legislation.

Turning to H.R. 2563, it authorizes feasibility studies to address water shortages within the Snake, Boise, and Payette River systems in Idaho. I previously provided testimony before the House Subcommittee on Water and Power in November 2005 and said that the administration could not support H.R. 2563 because it did not contain time or funding limitations and had no requirement for a 50 percent non-Federal cost share, as is required by Reclamation policy.

Since that time Reclamation has worked with congressional staff to modify the legislation. I am pleased to testify that the administration now supports H.R. 2563 as passed by the House and referred to this committee.

H.R. 3897 would authorize a feasibility study for the Madera Water Supply Enhancement Project in Madera County, California. The bill would also authorize construction of the project and would allow the Secretary to enter into a cooperative agreement with the Madera Irrigation District for planning, design, and construction.

The Department does not support this bill. An appraisal report for this project is expected to be complete by the end of calendar 2006, so sufficient information about this project is not yet known. H.R. 3897 also directs that a feasibility report, which usually requires up to 3 years to complete, be completed by the end of 2006. Additionally, H.R. 3897 does not set a construction cost ceiling, but only limits the Federal share of the construction cost not to exceed 25 percent of the total cost of the project, which is not known at this time. This underscores the Department's position that it is premature to authorize construction of the project and establish the Federal share of the cost prior to completion of the feasibility level cost estimates and a determination of Federal interest.

Madam Chairman, this concludes my remarks and I would be pleased to try to answer any questions.

[The prepared statements of Mr. Rinne regarding S. 1106, S. 1811, S. 3798, S. 3832, H.R. 2563, and H.R. 3897 follow:]

PREPARED STATEMENT OF WILLIAM RINNE, ACTING COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

S. 1106

Madam Chairwoman, I am William Rinne, Acting Commissioner of the Bureau of Reclamation. I appreciate the opportunity to provide the Department of the Interior's views on S. 1106, legislation to authorize the construction of the Arkansas Valley Conduit in the State of Colorado. The Administration cannot support S. 1106.

The Conduit is an authorized feature of the 1962 Frying-Arkansas Project, but was never constructed. The Conduit would transport water from Pueblo Dam, a feature of the Fry-Ark Project, to communities along the Arkansas River, extending about 110 miles to near Lamar, Colorado. The Lower Arkansas River Basin is comprised of rural communities, with the largest town, Lamar, having an estimated population of 8,600. The population anticipated to be served by the Conduit is approximately 68,000. This proposed rural water project would tap into an existing reservoir and provide municipal, residential, and industrial water via 160 miles of pipeline to a series of small towns and surrounding rural areas; one option would also include a water treatment plant. Total project costs are roughly estimated at between $265 million and $340 million, depending on the particular project features. While the project is technically do-able, the project sponsors have not identified where they would get all the water identified as needed for the project, and the financial capabilities of the project sponsors is unclear.

The Fryingpan Arkansas Project Act required that municipal water supply works either be constructed by communities themselves or, if infeasible, by the Secretary, with repayment of actual costs and interest within 50 years.

During development of the original Project, Reclamation found the Conduit to be economically feasible, but the beneficiaries lacked the bonding capability to construct the works themselves. The beneficiaries of the Conduit found that it also was financially infeasible to repay Reclamation within 50 years if Reclamation were to construct the Conduit.

Increased water treatment costs, due to the poor quality of locally available groundwater, and requirements of the Safe Drinking Water Act have renewed local interest in the need for alternative means of obtaining safe and clean water supplies. We understand that the beneficiaries are looking for Federal financing for the Conduit, given that some of the communities in the Arkansas River Valley may be facing considerable expense to comply with federally mandated water quality standards.

S. 1106 is a re-draft of legislation previously introduced. The legislation addresses a number of Reclamation's concerns, including some that the previous Commissioner Mr. John Keys discussed in testimony before this Subcommittee on October 15, 2003. This includes clarification that the cost for operation, maintenance and replacement of the Conduit will not be borne by the Federal Government.

The current bill, as introduced, again contains a Federal and a Non-Federal cost share. The legislation states that the Federal share of total costs of the planning, design, and construction of the Conduit shall be 80 percent. This is contrary to the original Fry-Arkansas authorizing legislation, general Reclamation law and current policy, in that generally municipal and industrial beneficiaries pay 100 percent, plus interest, of M&I project costs. The legislation as drafted is also inconsistent with the 35 percent local cost share set forth in the Administration's proposed rural water legislation that was transmitted to Congress on March 3, 2004. Therefore, the Administration does not support the bill.

At the request of Otero County Water Works Committee, and with funding provided in fiscal years 2003 and 2004 appropriations bills, Reclamation prepared a Re-evaluation Statement on the feasibility and viability of the conduit. The Statement assesses if the construction of the conduit would be responsive to current needs and are consistent with the Principles and Guidelines; and the National Environmental Policy Act. The Re-evaluation statement contains updated implementation costs for construction and O&M, and provides an assessment of the Conduit sponsors' ability to pay. The final Statement incorporates comments received from direct beneficiaries and includes a revised draft cost estimate, which compares favorably with

the cost estimate recently prepared by Black & Veatch, under a contract with Conduit proponents.

In addition, Reclamation has a concern about the requirement in the current legislation requiring the Federal Government to pay the entire cost of fundamental design changes conducted at the request of any person other than the lead non-Federal entity. This language leaves open the possibility that design changes recommended by the direct beneficiaries become the sole financial responsibility of the Federal Government. This provision is not in the best interest of the taxpayer. Furthermore, we are concerned about the implications this has to restrict the ability of Reclamation's engineers to exercise their professional judgment in designing projects. The legislation as written could create undue pressure to avoid changes to the original project, even if those changes would be in the best public interest.

In conclusion, Madam Chairwoman, the Administration cannot support a bill with a Federal cost share that is inconsistent with Fry-Ark legislation, general Reclamation law and current policy. There are also many uncertainties regarding project water supply and the financial capability of the project sponsors to go forward with project authorization. I would like to emphasize that the existing Fry-Ark Project authorization appropriately address the responsibility of the beneficiaries to pay for associated reimbursable costs. Finally, if authorized, this project would need to compete with other, ongoing rural water projects for scarce funds. Although we cannot support this bill, the Administration recognizes the water quality issues facing the Arkansas River Valley and we are open to working with the project sponsors and members of the Committee to explore other options.

This concludes my statement. I would be pleased to answer any questions.

S. 1811

Madam Chairwoman, thank you for the opportunity to present the Department of the Interior's views on S. 1811, a bill to authorize the Secretary of the Interior to study the feasibility of enlarging the Arthur V. Watkins Dam. I am William Rinne, Acting Commissioner of the Bureau of Reclamation. The Department regrets that it is not possible to support S. 1811 in its current form because it contains neither non-federal cost sharing for the study nor an overall Federal cost ceiling.

Arthur V. Watkins Dam, built in 1964, is located 12 miles northwest of Ogden, Utah, on the shore of the Great Salt Lake. It is an off stream structure which extends into the Great Salt Lake and is constructed on lake deposits. The embankment is 14.5 miles long, has a structural height of 36 feet, and contains about 17 million cubic yards of material. It encloses a reservoir of 215,000 acre-feet, with a surface area of more than 9,900 acres.

Arthur V. Watkins Dam forms Willard Bay Reservoir. The dam is a Reclamation feature of the Weber Basin Project and was authorized by Congress in the Weber Basin Project Act of August 29, 1949 (PL 81-273). The Weber Basin Project was constructed in the 1950's.

The original design anticipated settling of the foundation of the embankment during the life of the dam. In the early 1990's, the embankment was raised, re-establishing the original elevation of the embankment. The project was completed by the Weber Basin Water Conservancy District (WBWCD) under a Rehabilitation and Betterment loan.

The proposed feasibility study would analyze viable alternatives for water storage and consider environmental issues, foundation stability, and public safety. In addition, the feasibility study would evaluate potential future foundation settling. Due to the limited focus of the 1 to 2 foot dam raise, the estimated cost of this study is $2 million.

Growth in the project area has been significant during the last decade. The State population projections for the future show continued growth. With the extensive growth, water development projects and supplies are being investigated for the northern part of the Wasatch Front. The WBWCD has asked Reclamation to provide additional storage in Willard Bay for approximately 10,000 acre-feet of annual yield available under existing Weber Basin Project water rights.

The additional storage of water would be used for municipal and industrial, flood control, fish and wildlife enhancement, and recreation purposes along the Wasatch Front in northern Utah. The added capacity could postpone the need for the State of Utah to begin development of the water resources of the Bear River in northern Utah. The additional storage of water would be consistent with the purposes identified in the original authorizing legislation (PL 81-273) and current contracts.

If the legislation were amended to include a reasonable Federal cost ceiling and a minimum of fifty percent non-federal cost-sharing in the financing of the feasibility study, in line with Reclamation policy and practice applied in virtually every

similar situation, we would not oppose enactment of S. 1811. Of course, we will be happy to work with the bill's sponsors, Senator Hatch and Senator Bennett, and this Committee to make this improvement. However, any potential authorization to raise the dam would have to compete with the many other Reclamation projects vying for funding.

This concludes my testimony. I am happy to answer any questions.

S. 3798

Madam Chairwoman, I am William E. Rinne, Acting Commissioner of the Bureau of Reclamation. For the reasons discussed below, the Department cannot support S. 3798. This legislation would defer repayment of the capital cost of the unused capacity in the Folsom-South Canal, Auburn-Folsom South Unit, Central Valley Project (CVP), Public Law 89-161 (79 Stat. 615). It would also authorize entities that pay capital and operation costs associated with CVP water assigned to the Folsom-South Canal service area to substitute for conveyance through the Folsom-South Canal up to an equivalent amount of non-CVP water without additional payment.

Only the initial two reaches of the planned five reaches of the Folsom-South Canal were constructed. Both reaches contained deferred-use capacity for the East Side Division. However, because of the incomplete status of the Auburn-Folsom South Unit, water deliveries have never developed as anticipated. Annual water deliveries generally average less than 2% of the designed capacity of the canal. This act would allow the Secretary to compute the deferred use capacity of the facility based upon the overall unused capacity of the canal rather than just that portion of the facility that was provided for the East Side Division.

Under the bill, these computations would be reevaluated "as appropriate" to reflect any changes in the use of the canal and reflect those changes in the pooled reimbursable capital conveyance costs of the CVP. This act would not be retroactive to previous year payment computations. As current and future capital costs are identified for CVP cost repayment purposes they will be calculated in accordance with the then-current CVP water rate setting policies.

Reclamation is still in the process of trying to ascertain the costs of implementing this bill, but the bill sponsors estimate the reduced revenues to the Treasury at $2.2 million per year. The Department has concerns about deferring the repayment of the costs of a Reclamation facility based on the amount of capacity in use and its implications for other projects. This precedent, if applied to other projects, could result in significantly reduced revenues to the United States.

Estimating unused capacity also poses implementation challenges. This is illustrated by the ambiguous language contained in this bill requiring that the minimum unused conveyance capacity in the canal should "be based upon actual historic measured flows in the canal and planned future flows." Given the many factors that impact actual use of a facility, making a determination about how to balance between historic flows and planned future flows would not necessarily be straightforward.

Reclamation would support section 1(e) of the bill. This provision allows entities that are paying costs associated with the Folsom-South Canal to substitute for conveyance through the Folsom-South Canal up to an equivalent amount of non-CVP water without additional payment. This bill addresses a situation where an assignor may have use of the Folsom-South Canal but assigns all or part of their share of project water entitlement to an assignee that does not use the facility. In an assignment of this water, the assignee is required to pay for the canal facilities so that the costs are not stranded for repayment by either the federal government or other water users. The bill addresses the concern that payments are made for the canal facilities but that the assignee should be able to receive some benefit of Folsom-South Canal use for non-project water without additional payment.

While Reclamation cannot support S. 3798 as written, we are willing to continue to work with the sponsors and this subcommittee to address issues of fairness in the allocation of Folsom Canal costs. That concludes my prepared remarks. I would be pleased to answer any questions.

S. 3832

Madam Chairwoman and members of the Subcommittee, I am William Rinne, Acting Commissioner of the Bureau of Reclamation. I am pleased to provide the views of the Department of the Interior on S. 3832, The Reclamation Facility Title Transfer Act of 2006. We support passage of this measure.

S. 3832 would require the Secretary of the Interior to establish criteria to transfer title to Reclamation facilities and for other purposes. The Department believes that S. 3832 is consistent with an initiative that the Bureau of Reclamation currently

has underway, that I will outline in my statement. We also believe that the goals of S. 3832 would be furthered by those efforts and we would appreciate the opportunity to work together to develop a comprehensive approach to title transfer.

BACKGROUND

In 1995, the Bureau of Reclamation began an effort to facilitate the transfer of title to Reclamation projects and facilities in a consistent and comprehensive way. Reclamation developed a process known as the *Framework for the Transfer of Title*—establishing a process whereby interested non-Federal entities would work with and through Reclamation to identify and address all of the issues that would enable the title transfer to move forward. Once completed, Reclamation and the entity interested in taking title would work with the Congress to gain the necessary authorization for such a title transfer. Over the past ten years, the process has evolved and improved as we worked through various transfers—some were successful and some not. Over that time period, we've learned important lessons and have modified the process to improve the efficiency and reduce the associated costs.

Since 1996, the Bureau of Reclamation has transferred title to eighteen (18) projects or parts of projects across the west—pursuant to various Acts of Congress. On October 2, 2006, several features of the Provo River Project including the Salt Lake Aqueduct, as authorized by P.L. 108-382, are scheduled to be conveyed to the Metropolitan Water District of Salt Lake and Sandy. The remaining features of this project, that are authorized to be transferred by that Act, are scheduled to be transferred by the end of 2007. Before that can take place, however, several water districts and municipalities that benefit from these facilities are working together to address a number of complicated post-transfer project management operational issues. There are two additional transfers that are authorized and awaiting completion. In both of these cases, the districts receiving title are completing real estate surveys and preparing the quit claim deeds necessary to record the change of ownership with the county. In addition, there are two other authorized transfers which require compliance with various Federal laws including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) as called for by the authorizing legislation.

Since each project is unique, each of the authorizing laws enacted has different terms. Each requires that different actions be taken prior to transfer such as the completion of the process under NEPA, or agreements with State and local agencies over recreation or cultural resources management.

LESSONS LEARNED

While Reclamation has had success with title transfer of projects and facilities over the past ten years, we remain concerned that the process still takes too long, is potentially too costly and the number of new proposed transfers is declining. We believe that there may be a number of opportunities of mutual benefit that could come from the transfer of projects or facilities that are not being realized.

As such we have undertaken a number of important activities that I want to outline that fit in with the goals of S. 3832.

Comprehensive Review of Title Transfer: In 2003, a Team lead by the Department of the Interior's Office of Policy Analysis undertook a comprehensive review of Reclamation's title transfer effort. The review looked, not only at the process, but also at the individual transfers that succeeded and those that did not move forward. This effort included a survey of Reclamation employees involved in title transfer, a water users workshop and numerous interviews with water users that both pursued title transfer and those that opted not to pursue title transfer. It also included interviews with stakeholders from states, local governments, the environmental community and congressional staff members who were involved in various legislative efforts related to individual transfers at the time.

With that data, the Team identified a number of important lessons and a number of programmatic changes were implemented to make the process more efficient and cost effective.

I would like to highlight some of the lessons that this Team identified:

> Each Project is Unique: One of the early lessons that we learned and that is reinforced with each new title transfer effort is that each project and set of facilities is unique. Each project was authorized to address a particular set of circumstances, both hydrologic as well as economic. As such, a "cookie cutter" or "one size fits all approach" wouldn't meet the needs of the water users, the customers, other stakeholders or Reclamation. That isn't to say that there cannot be a set of criteria developed, but those would need to be flexible.

No Such Thing As a "Simple Project": Many Reclamation projects may appear to be "simple" title transfers or "simple" projects for title transfer because complex or controversial issues are absent. However, even the "simple" title transfers such as those involving the American Fall Reservoir District #2 in Idaho, the Carpinteria Valley Water District in California, and the San Diego Aqueduct in California, had unique complexities that were unknown when we started the process that must be identified and addressed.

Older projects or projects with facilities that cover a relatively large geographical area and particularly those where significant amounts of land or structures, such as houses or warehouses, are to be conveyed, tend have complicating issues that arise unexpectedly. Land records associated with older projects may be missing or the quality of the information in existing records is poor. Projects covering a wide geographical area, such as the San Diego Aqueduct, have a large volume of land records which must be located, assembled, and reviewed.

Develop Local Agreements Prior to the Legislative Process: While Reclamation's title transfer process has evolved, we believe that one central tenet of the process continues to hold true. Since each project is unique and has their own potentially complex circumstances, the analysis of the implications of that transfer should be completed and an agreement should be reached on the terms and conditions before seeking authorization of the transfer of projects and facilities.

Early on in the title transfer effort, some districts opted not to go through Reclamation's locally negotiated process. Instead, they immediately approached their congressional representatives in hopes of getting legislation passed and the facilities transferred quickly. In most cases, this proved to be a slower route than those that went through Reclamation's cooperative process. In many of these cases, there were issues or controversies related to the facilities that were not addressed at the local level between customers and stakeholders of the facilities. Instead, they were being negotiated through the legislative process. In some situations, where legislation was authorized prior to the analysis being completed, circumstances or problems were identified that required further legislative action to address, thereby delaying the ultimate transfer even further.

In many recent cases, we have seen districts and interested non-Federal entities work with Reclamation to complete all the necessary analysis and public involvement, then reach an agreement prior to pursuing the legislative authorization from Congress. This has made the legislative process less controversial and has made implementation, once the transfer was authorized, smoother, less costly and more efficient. Two excellent examples are two proposed transfers currently before this Committee—S. 2129, the American Falls Reservoir District #2 Conveyance Act of 2005 and S. 1965, the Yakima Tieton Irrigation District of 2005. In both these cases, Reclamation worked closely with the districts, the states involved and other stakeholders to identify all the issues and concerns and reached agreements. In doing so, we worked through some complications that arose, we reached agreement and the Administration was able to enthusiastically support both bills in testimony before this Committee.

Not a Significant Budgetary Savings Available: When the title transfer effort began in 1995, there was an expectation that title transfer would result in a smaller Bureau of Reclamation (in terms of fewer staff and/or lower appropriations levels). While Reclamation's budget declined by 19% (between 1992 and 2000) and the number of Reclamation employees (FTEs) was reduced by 26 percent during this timeframe, this result has not occurred as a result of title transfer. The explanation for this is multifaceted:

1. Nearly all those facilities transferred to date were already being operated and maintained by non-Federal entities. This means that neither Reclamation employees nor Reclamation appropriated funds were being used to operate and maintain the facilities. Therefore, there is limited budgetary savings, related to project operations, to be identified.
2. Reclamation's administration of the facilities prior to transfer involved relatively few Reclamation employees (by FTE) and limited appropriated funds were associated with the projects and facilities that have been transferred. In those cases where some staff time may have been freed up, those resources have been redirected to other ongoing issues faced by their offices.
3. The administration costs avoided due to the transfers have been relatively minor.
4. Only relatively small facilities which tend to be widely scattered across Reclamation's jurisdictional areas have been transferred—thereby diluting

any potential Reclamation-wide, region or even area office impacts. In other words, there has not been a concentration of title transfers which would result in a significant savings.

MANAGING FOR EXCELLENCE

While Reclamation's work thus far has lead to procedural improvements and efficiencies, we determined that we needed to take further steps to find ways to reap the benefits of title transfer for Reclamation and for its customers. In 2006, as part of the Secretary's Managing for Excellence initiative (M4E), a Team was established to "determine if opportunities exist for mutually beneficial transfer of title to project sponsors in order to eliminate Reclamation's responsibility and costs for those facilities. "This M4E Team is following up on the previous effort to identify the barriers that exist and the incentives that may encourage more entities to pursue title transfers.

The M4E Team, using the data, conclusions and analysis of the previous effort is developing a set of recommendations on how Reclamation might reinvigorate its title transfer effort—finding ways to reduce the barriers that discourage entities from pursuing title transfer and identifying appropriate incentives that might encourage entities to pursue title transfer.

The Team received significant input from stakeholders at the Managing for Excellence workshop held in July, 2006 in Las Vegas, NV and they are expected to complete their effort early in 2007.

We believe that the result of that effort will provide a significant benefit to meeting the goals that the sponsors have identified, and which we share, for title transfer. We hope we will have the opportunity to continue to work with this Committee when that Team's effort has been completed.

We laud and share the goal identified in S. 3832 for title transfer of Reclamation projects and facilities. Transferring title can result in increased efficiencies and other benefits that would be of significant importance to both the project beneficiaries as well as Reclamation. Furthermore, we believe that our M4E effort will add significant value to meeting this goal and we look forward to working with the Committee in this effort.

That concludes my statement. I would be happy to answer any questions.

H.R. 2563

I am William Rinne, Acting Commissioner for the Bureau of Reclamation. I am pleased to be here today to provide the Administration's views on H.R. 2563, legislation to authorize the Secretary of the Interior to conduct feasibility studies to address water shortages within the Snake, Boise, and Payette River systems in Idaho.

I previously provided testimony before the House Resources Committee's Subcommittee on Water and Power on November 3, 2005, regarding the Administration's views on H.R. 2563. At that time, I testified that the Administration could not support H.R. 2563 as introduced because it did not contain any time or funding limitations and it had no requirement for a 50 percent non-federal cost share, as is required by Reclamation policy. Since that time, Reclamation has worked with congressional staff to modify the legislation. I am pleased to testify that the Administration now supports H.R. 2563 as passed by the House and referred to this committee on July 11, 2006.

The State of Idaho continues to experience the effects of a prolonged drought as well as tremendous growth and urbanization in the Boise and Payette River basins. Projected population growth will eventually over-extend existing ground water supplies for these rapidly growing areas. In light of this and other water resource issues elsewhere in the state, the Idaho House of Representatives issued Joint Memorial No. 24 in 2004, which "recognizes the need for additional water to meet Idaho's emerging needs and encourages Federal and State agencies to cooperate with Idaho in identifying and developing such water supply projects."

Under existing authorities, Reclamation initiated an assessment level water supply study specifically in the Boise and Payette basins. Stakeholders with wide representation from the State, Federal, agricultural, environmental and municipal sectors participated in that study. The Final Boise/Payette Water Storage Assessment Report was completed in July 2006 and was distributed to local State, Federal, agricultural, environmental and municipal parties.

H.R. 2563 would go the next step by authorizing Reclamation to conduct feasibility studies within the Boise and Payette River basins. Reclamation supports focused, basin-by-basin water resource studies with input and local involvement from the State and the stakeholder communities. We recognize the need to address projected water supply shortages in the Boise and Payette River systems. We would

welcome the opportunity to be an active partner in addressing these water supply issues with the State of Idaho and its water users. However, even though the technical difficulties with the legislation have been addressed, any studies conducted under this new authority would still need to compete with other needs within the Reclamation program for priority for funding in the President's Budget.

That concludes my testimony. I would be pleased to answer any questions.

H.R. 3897

My name is William Rinne, and I am Acting Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of Interior's views on H.R. 3897, a bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to prepare a feasibility study for the Madera Water Supply Enhancement Project, Madera County, California. The bill would also authorize construction of the Project and would allow the Secretary to enter into a cooperative agreement with the Madera Irrigation District for planning, design, and construction. The Department does not support this bill as currently written.

In Fiscal Year 2006, Congress appropriated $200,000 to conduct an appraisal investigation. The purpose of the appraisal investigation is to determine if the project is potentially feasible and if there is a potential Federal interest. The Appraisal Report is in draft form at this time. It is our hope to have it completed by the end of Calendar Year 2006. Since the appraisal level report is not yet completed sufficient information about this proposed project is not yet known.

H.R. 3897 would authorize the Secretary to (1) study the feasibility of the Madera Water Supply Enhancement Project, that would provide additional water supply, reduce the overdraft of the groundwater aquifer, and improve water management reliability through the development of new groundwater storage, extraction, and conveyance facilities; (2) enter into a cooperative agreement with the Madera Irrigation District for planning, design, and construction; and (3) construct the project. Clearly there are many water supply issues in the San Joaquin Valley and in Madera County in particular. Many of these issues, related to the Central Valley Project, have a clear federal nexus. The federal nexus with this project is unclear and speculative.

H.R. 3897 directs the Secretary, not later than December 30, 2006, to complete and transmit to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate, a feasibility study. Although the bill does not establish a ceiling for the Federal share of the cost to complete the study, under current Reclamation policy the Federal share would not exceed 50 percent of the total study cost. Feasibility studies, which integrate National Environmental Policy Act compliance documentation, and are completed in conformance with the Principles and Guidelines for such studies, typically require a minimum of 3 years to complete, contingent upon appropriation of funds by Congress. Legislation authorizing a feasibility study should allow a minimum of 3 years for completing the feasibility study after the appraisal investigation is concluded, and should be separate from legislation to authorize project construction. Moreover, project authorizing legislation should not be considered until the results of the feasibility study are known.

It is premature to authorize a feasibility study before the appraisal study has been completed and reviewed. Moreover, this study would compete for funding with other currently authorized projects, including several authorized storage feasibility studies authorized under CALFED.

I should also note that Reclamation did not seek funding for this project in the President's Fiscal Year 2007 budget.

H.R. 3897 would also authorize the construction of the Madera Water Supply Enhancement Project. However, the bill does not set a construction cost ceiling, but only limits the Federal share of the construction cost to not exceed 25 percent. We appreciate that the total cost of the project may not be known at this time. This underscores our belief that it is premature to authorize construction of the project and establish the Federal share of the cost prior to completion of the feasibility level cost estimates and the determination of the Federal interest.

The Administration appreciates local efforts to address future water issues. However, in light of the concerns expressed above, the Department cannot support this bill authorizing Reclamation participation in a feasibility study for, and construction of, the Madera Water Supply Enhancement Project. We would be happy to work with local sponsors when the time is right to make improvements to the bill, at which time the Administration will also consider whether pursuing further studies for this project is in the best federal interest. That concludes my prepared remarks. I would be pleased to answer any questions.

Senator MURKOWSKI. You did that in pretty good order. I think it was 13 seconds over your 5 minutes. Very fine job. We will probably have some questions for you.

Mr. Robinson.

STATEMENT OF MARK ROBINSON, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. ROBINSON. Thank you, Madam Chairman. My name is Mark Robinson. I am the Director of the Office of Energy Projects at FERC. We are responsible for LNG terminals, natural gas pipelines, and, more appropriate to the discussion today, the 1,600 hydroelectric projects that we monitor and authorize across the United States.

I would like to thank you for the opportunity to discuss S. 2070, which would provide for the commission to review an application for a project at an existing project on the Mohawk River in New York, and S. 3851, which would provide for extensions of preliminary permits for three preliminary permits in Alaska.

First I would like to say I have to do a disclaimer. I do not speak for the Commission or for the Chairman. I just represent my own views here.

First, on S. 2070. As you heard earlier, specifically this goes to the School Street Project, which has been under relicensing since 1991. The Commission—I want to make this very clear up front. The Commission has been unable to relicense that project for one reason specifically. The Clean Water Act, section 401, requires that we have a Clean Water Act certification from the State prior to licensing. We do not have that certification from the New York Department of Environmental Conservation—New York DEC—and therefore by law we are precluded from relicensing.

However, it has gone through the relicensing process and in 2005 the School Street——

Senator FEINSTEIN. Madam Chairman.

Senator MURKOWSKI. Senator Feinstein.

Senator FEINSTEIN. Could I ask a favor, Mr. Robinson. When you mention the bill number, because there are so many of them, would you mention the subject as well.

Mr. ROBINSON. Oh, okay.

Senator FEINSTEIN. Thank you.

Mr. ROBINSON. S. 2070 is the bill that would allow the Commission to review a license application from Cohoes Falls or from Green Island Power actually for the Cohoes Falls Project on the Mohawk River in New York.

As I was saying, we have been precluded from issuing a license to this project because we do not have the 401 from the State of New York. However, the New York DEC in 2005 signed a settlement agreement with the School Street licensee on how that project would operate, and so they have reached agreement on everything from flows over the falls to fishery protection to recreational development, protection of archaeological and historic resources. All of those things have been reached in an agreement with the New York DEC.

In 2004, Green Island Power came in for a preliminary permit on the same site as the existing School Street Project and the Commission rejected that filing for a preliminary permit pursuant to section 15(c)(1) of the Federal Power Act. It is not a regulation of the Commission. It is not a policy of the Commission. It is the law in the Federal Power Act that competition for a particular site at relicensing can only be accomplished at a period in time set by the Federal Power Act, which is 2 years prior to the license expiration. That means anyone who wanted to compete for that site had to file by 1991, now 15 years ago. That is just the law, and the Commission has repeatedly made that clear to the applicant for the Cohoes Falls Project.

If this bill would pass, it would provide a special advantage to a proponent of a proposal of a project that does not exist in the act and it would act in this way. The existing licensee filed their application in 1991, has pursued it during that entire period, passed the competition period when they would have had an opportunity to make a decision whether or not to pursue this project or not back in 1991 if in fact there had been competition and they had seen what that competition entailed. They have spent that money. They have pursued it. They have reached agreement and are moving forward with the project and it is ready to be relicensed once we get the 401 from the State. So that would be, I think, sort of an injustice in the way the act is set up, if in fact this bill would pass as is.

I want to just spend one more minute on this project and compare the two. There have been assertions about the Cohoes Falls Project, like the pictures that you saw here. Those are assertions. They have not been tested by the licensing procedure. The School Street Project has not only been tested, it has been redefined. It is now proposed under the settlement agreement to be expanded by 11 additional megawatts. Under this proposal it will use, on the flow duration curve, up to about 20 percent of all the water that passes that site, except for perhaps the last 20 percent, which are the high flow periods. Typically rule of thumb, hydro projects are sited or sized in the 20 to 30 percent range, with 20 being the high end. As you go on the flow duration curve, it is sort of reverse logic.

So this is a well sized by rule of thumb project to capture economically about as much of the water and the power as you can produce out of that site.

There are assertions about what the Cohoes Falls Project would do. But those assertions have not been tested. We have not reviewed them because we have no application. The agencies have not reviewed them because it has not been before them. It is just, here is what we could do. That is the difference between what you are hearing right now. We have a project that has gone through the licensing process and we have assertions about another project, some of which I think would—well, I will just leave it at that.

Turning to S. 3851, this would provide for license extension—or, I am sorry, for preliminary permit extensions in Alaska for three projects known as the Thomas Bay Project. Currently the preliminary—not currently. Preliminary permits are provided to ensure that someone can maintain priority over a site during the period when they would study the feasibility of it. They offer no oppor-

tunity to construct or get on the lands or anything like that. It is just a place in time that is held through the preliminary permit so that they can spend their money and study the site.

Should somebody do that with all due diligence and 3 years turns out to be not enough, which is the term of a preliminary permit, then that permittee can come back in and ask for a successive permit, and the Commission has a history of granting successive permits where somebody has pursued a project and not completed those studies.

Since the Commission has a mechanism for handling that type of scenario, I would not support S. 3851, which would give legislatively mandated extensions for those preliminary permits.

Thank you very much. I appreciate the opportunity.

[The prepared statement of Mr. Robinson follows:]

PREPARED STATEMENT OF J. MARK ROBINSON, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Madam Chairman and members of the subcommittee, my name is J. Mark Robinson and I am the director of the Office of Energy Projects at the Federal Energy Regulatory Commission. Our office is responsible for the licensing, administration, and safety of non-federal hydropower projects; the certification of interstate natural gas pipelines and storage facilities; and the authorization, safety, and security of liquefied natural gas (LNG) terminals. I appreciate the opportunity to appear before you to comment on two bills: (1) S. 2070, a bill to provide certain requirements for hydroelectric projects on the Mohawk River in the State of New York; and (2) S. 3851, a bill that would allow extension of preliminary permit periods by the Federal Energy Regulatory Commission for the Thomas Bay projects in Alaska, defined as FERC Project Nos. 12495, 12619 and 12621.

I appear today as a Commission staff witness speaking with the approval of the Chairman of the Commission. The views I express are my own and not necessarily those of the Commission or of any individual Commissioner.

Under Part I of the Federal Power Act (FPA), the Commission issues licenses to non-federal interests authorizing the construction, operation and maintenance of water power projects on navigable waters of the United States, on federal lands and on streams, over which the Congress has jurisdiction. Licenses are also required to utilize surplus water or waterpower from government dams.

Licenses are issued under the FPA for terms up to 50 years and contain conditions that reflect consideration of all environmental and developmental aspects of the project, including such factors as the effect of project construction and operation on fish and wildlife resources, irrigation, flood control, water supply, recreation, and the safety of the public. Section 15 of the FPA, authorizes the Commission, at the expiration of an existing license and where the United States does not exercise its right to take over the licensed project, to issue a new license to the existing licensee or to a new licensee. Where there is no federal takeover and where the Commission does not issue a new license before the existing license expires, the Commission must issue from year to year an annual license to the current licensee under the terms and conditions of the current license until the project is taken over or a new license is issued. Section 15(c)(1) provides that "[e]ach application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license."

S. 2070

S. 2070 would require the Commission to accept other valid license applications, if submitted not later than July 31, 2006, to develop the project works or water resources of a hydroelectric project located on the Mohawk River in the State of New York that has been operating under annual licenses for 10 or more years. S. 2070 would require that the Commission expeditiously process any pending valid license applications and issue a license only if the Commission determines that the project will best develop the affected water resources. S. 2070 further requires that any such new license issued shall include the same license conditions relating to the use of affected waters provided in articles 32 and 33 of the license for Potomac Light & Power Company's Millville Project, FERC No. 2343. The Commission included Article 32 in the Millville license to reserve its authority to issue a license for a project

that was recommended in a comprehensive plan by the Department of the Army, Corps of Engineers to be constructed downstream of the Millville Project and would more completely utilize the water resources of the Shenandoah River. Article 33 requires the Millville Project licensee to surrender its license if its project becomes inoperative by reason of inundation by a more complete hydroelectric project.

S. 2070 would affect one project licensing proceeding currently pending before the Commission. On December 23, 1991, Niagara Mohawk Power Corporation filed an application to relicense the 38.8-megawatt School Street Project, FERC No. 2539. The project is located at river mile 2.5 on the Mohawk River in Albany and Saratoga counties, New York.

Since the application was filed, the license was transferred to Erie Boulevard, LP (Erie). The School Street Project was among a group of 10 projects filed in 1991 by Erie's predecessor for which the New York Department of Environmental Conservation (New York DEC) denied Clean Water Act water quality certification, the grant or waiver of which is a prerequisite to the Commission issuing a hydropower license. Following these denials, the state, along with Erie's predecessor and other interested parties, entered into settlement negotiations for each project. Settlement negotiations have been concluded for each of the 10 projects. The New York DEC has issued water quality certifications and the Commission has issued licenses for nine of the projects. The School Street Settlement Agreement, dated March 7, 2005, was signed by Erie and seven other parties including the New York DEC, although New York DEC has not yet issued water quality certification for the project. The School Street Project, the last of the 10 projects, has been operating under annual licenses since 1993.

In response to the draft water quality certification notice issued by New York DEC on March 7, 2005, Green Island Power Authority (GIPA) and the Town and Village of Green Island sought party status in the certification proceeding and challenged various aspects of the project. The water quality certification process before the New York DEC is currently undergoing adjudication proceedings. Because the New York DEC has not yet issued water quality certification for the project, the Commission has been unable to act on the School Street license application.

On July 19, 2004, GIPA filed an application for a preliminary permit to study the potential development of the 100-megawatt Cohoes Falls Project and asked the Commission to waive its regulations to the extent necessary to consider GIPA's application. As described in its application, the project would be located at the site of the existing School Street Project. GIPA proposes to construct, slightly downstream of the School Street Project's dam, a new dam, remove part of the existing School Street dam, and decommission various other facilities of the School Street Project.

On January 21, 2005, the Commission dismissed GIPA's application for preliminary permit for the proposed Cohoes Falls Project, stating that the statutory deadline established by FPA section 15(c)(1) for filing relicense applications for the Cohoes Falls Project (including competing applications) fell in 1991, 2 years before the School Street license would have expired, and that any development application GIPA might file would be more than 13 years late. Because such applications are not permitted by section 15(c)(1), the Commission found that there was no reason to process a preliminary permit to study a project for which an application cannot lawfully be filed.

On February 22, 2005, GIPA filed a timely request for rehearing which was denied by the Commission on March 24, 2005. Subsequently, GIPA filed an appeal of the Commission's orders with the U.S. Circuit Court of the District of Columbia. The appeal was voluntarily dismissed in December 2005.

On May 15, 2006, GIPA filed its offer of settlement in the proceeding to relicense Erie's School Street Project. GIPA's offer proposed two alternatives: (1) terminate Erie's license and dismiss its relicense application; or (2) issue a relicense to Erie that would terminate upon the licensing and construction by GIPA of its Cohoes Falls Project. GIPA attached to its offer of settlement an application for licensing the Cohoes Falls Project. By notice issued May 24, 2006, the Commission rejected GIPA's offer of settlement on the previously stated grounds that its competitive proposal was not filed within the time frame established by section 15(c)(1) of the FPA. On June 5, 2006, GIPA and Adirondack Hydro Development filed a motion to present evidence or, in the alternative, offer of proof and if necessary, motion to reopen the record in the proceeding to relicense the School Street Project. The motion sought to put into the record GIPA's previously rejected pleading. As before, the Commission rejected the motion by notice issued June 28, 2006. Rehearings of both Commission notices are currently pending.

The FPA provides a complete and well-reasoned method for the orderly development of the nation's non-federal hydropower resources. It also provides hydropower licensees certainty regarding the period when competitive license applications may

be filed. This bill would negate that certainty in the case of the School Street Project.

In addition, this bill would provide a special advantage to an entity which did not meet the requirements of the FPA to the disadvantage of an entity which met the statutory deadline. Approval of this bill could encourage applicants in other cases and locations to petition Congress for similar relief in order to promote their interests at the expense of the FPA's well-established procedures and of other existing licensees and could introduce further uncertainty into the licensing process.

As a result of these concerns, I do not support S. 2070.

S. 3851

This legislation provides that notwithstanding section 5 of the FPA or any other provision of law (including regulations), on receipt of a request from the preliminary permit holder of a Thomas Bay project and after providing reasonable notice, the Commission may extend the period for the Thomas Bay project for not more than two consecutive three-year periods following the expiration of the initial preliminary permit for the Thomas Bay project, in accordance with applicable procedures of the Commission. S. 3 851 defines the term "Thomas Bay project" as including: (1) the hydroelectric project of the Commission at Cascade Creek, Alaska, preliminary permit number 12495; (2) the hydroelectric project of the Commission at Ruth Lake, Alaska, preliminary permit number 12619; and (3) the hydroelectric project of the Commission at Scenery Lake, Alaska, preliminary permit number 12621.

Section 5 of the FPA allows for the filing of applications for preliminary permit by a potential hydroelectric project developer before the filing of a license application. The Commission issues preliminary permits for three years for the following purpose. The purpose of a preliminary permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project, and if the project is found to be feasible, prepares an acceptable license application.

Cascade Creek LLC filed applications for preliminary permits for the proposed 80-megawatt (MW) Cascade Creek Project, FERC No. 12495, on May 4, 2004; 20-MW Ruth Lake Project FERC No. 12619, on October 12, 2005; and 80-MW Scenery Creek Project, FERC No. 12621, on October 11, 2005.

The Cascade Creek permit was issued on October 8, 2004, and will expire September 30, 2007. The Ruth Lake and Scenery Creek permits were issued on February 23, 2006, and will expire January 31, 2009. Standard Article 4 of all issued preliminary permits requires a permittee to file six-month progress reports. If the permittee fails to comply with these conditions, the permit is subject to cancellation.

As required by Article 4 of the issued permits, Cascade Creek LLC, the permittee, filed six-month progress reports for Project No. 12495 on May 25, 2005, September 29, 2005, and March 31, 2006, generally describing for that report period, the nature and timing of what it has done under the pre-filing requirements, and other applicable Commission regulations and what studies it was planning on conducting the following six months. The first report shows that the permittee obtained information from previous studies, from the British Columbia Transmission Corporation, and from British Columbia, Canada; on transmission line routing, characteristics, and permitting requirements. The second report indicates the permittee provided drawings and consulted with U.S. and Canadian government agencies and private companies. The third report shows the permittee persuaded the State of Alaska and British Columbia Transmission Corporation to conduct feasibility studies for an interconnection, which found the interconnection to be feasible.

Likewise, Cascade Creek, LLC filed timely progress reports for Project No. 12619 and Project No. 12621 on July 31, 2006. The initial progress reports for these two projects indicate the permittee has developed stream flow data and did reconnaissance inspections of the sites.

In general, if a permittee has not completed the studies and consultation at the expiration of a permit necessary to file an application for license, it may file an application for a new preliminary permit. The Commission may grant another permit if it concludes that the applicant has diligently and in good faith pursued the requirements of its prior permit. Because there is already a mechanism whereby a permittee can apply for a new three-year permit to pursue development of a proposed hydroelectric project, I do not support the proposed legislation.

I appreciate the opportunity to present my views to the Subcommittee. Thank you.

Senator MURKOWSKI. Thank you, Mr. Robinson.

I will turn to my colleagues here before I ask my series of questions. Senator Feinstein, would you like to propound some questions?

Senator FEINSTEIN. I would if I might. Mr. Rinne, if I might. My understanding is that, while the Folsom South Canal capacity is 2.5 million acre-feet of water per year, it is used for a maximum of 20,000 acre-feet a year. This means California water payers are paying a bill that is 1,200 percent or 12 times greater than the amount of water they are actually getting.

I think you think that this is a fine arrangement, and I think that it is not a fine arrangement. I think government ought to charge people fees that are reasonably related to the benefits they are receiving and that is the point. If you would respond to that I would appreciate it.

Mr. RINNE. Senator Feinstein, I appreciate your point, and I would just say that it is a challenging issue. It is one that we have been trying to work with some of the contractors on. I know that you are real familiar with the area and the arrangement there. But the fact that it is part of what is called the CVP pool for the repayment there, that is where that gets picked up.

Senator FEINSTEIN. Wait a minute. You are saying that money is used to pay the capital costs of the CVP, is that right?

Mr. RINNE. What I am saying is for the M&I, the CVP ratepayers have pooled costs for the capacity that they are helping to repay the CVP features that are paid back, that is correct. The end use capacity there, as I started to say, was not—while it is an unfortunate thing, it is the type of thing—and I know you are aware of it—only the first two sections, the first two reaches of the Folsom South Canal were completed. So you have a situation where that is part of the reason for the capacity not being used. Auburn Dam was not completed.

But the repayment of that project on the CVP on the M&I repayment, I think you have somewhere in the neighborhood of 58 entities that would share in the capital cost repayment along with the interest. So it is a hard thing just to separate that out, so it is when I say pooled costs.

Senator FEINSTEIN. Madam Chairman, I think what happened was this canal was built with the predicate that the Auburn Dam would be built and then a fracture zone was located under the dam and a lot of conflict with the area. In any event, it has not been built. But the water coming into this canal is drastically reduced, but the contractors are paying fees as if it were full. That is a shorthand version of what I understand in any event.

So I would like to talk to you a little bit more about it and see if there cannot be some way fairness can be worked into this situation.

I also wanted to ask: You oppose the Madera Water Bank bill because it authorizes the project without formal completion of a feasibility study. Now, here is a draft appraisal study and it seems to me the Bureau has already conducted extensive feasibility investigations in the late 1990's. In 1998 the Bureau finalized plans to fund a water bank on the property. The Bureau did not go ahead then.

Another private property, private party, subsequently analyzed the feasibility. So have not enough reports been done?

Mr. RINNE. I guess the best way I can respond to that—and I am aware of the earlier studies that you are speaking of and were mentioned in some of the earlier testimony. At the current time, Senator Feinstein, that we are talking about, I believe it is probably the draft report that shows there the appraisal level. I think that is the one that was authorized to get done at the end of 2006.

Senator FEINSTEIN. That is correct, September 2006.

Mr. RINNE. So underneath our process that would be the appraisal level study, and it would be my sense—and I have not looked at it in detail, but it would be my sense that much of the information you talk about in they early studies, we would try to draw from it. As I understand this proposed legislation, we would be talking about authorizing a feasibility study. I will just call that the next step. Then that feasibility study—it would also authorize construction.

What our concern is is that the draft appraisal report you have there would be finalized at the end of the year. We technically would finish——

Senator FEINSTEIN. The second week of October is my understanding.

Mr. RINNE. Is the final report?

Senator FEINSTEIN. Yes.

Mr. RINNE. Due at the end of calendar 2006, and you may have more updated information than I do.

Senator FEINSTEIN. I can show this to you. This is rebuttal to the Bureau's testimony, so I would be happy to share it with you.

Mr. RINNE. Okay. We would want to have the appraisal level study completed and it is always on that basis, then we would move to the feasibility study that is in fact proposed in here. So what we are saying is that you would authorize the feasibility study before we have the results of the appraisal study, which is what you typically do to identify are there feasible things here and do you move forward.

So it is sort of like there——

Senator FEINSTEIN. Well, is it possible then to give a conditional opinion based on a draft, which is September? The final will come out in October. Now, this is our one shot to move something. It has passed the House. We are ready. It is on the priority list. It will be signed by the President. Is there a possibility of putting a condition on it that if the final report reflects the findings of the draft?

Mr. RINNE. Well, I am not sure if I am being real responsive here, but let me try anyway. The appraisal level study that you have there, the draft, when that gets—it will move to be finalized, and if your dates on the October, let us just talk about that. Then based on what is there in that appraisal level study, it will talk about the next step and is there something there feasible to move forward.

Obviously, if this legislation is passed we will do exactly what we are directed and move into a feasibility study. But our preference would be, as in the process—it is sort of, it is like we start out now, we call some things an assessment level. Then we move to an appraisal level. The whole idea is to scrunch down and throw off al-

ternatives that really do not have feasibility, and I know you would be aware of that.

That is what I am saying, is we are sort of at that step. It is sort of like jumping into a feasibility before you get an appraisal done.

Senator FEINSTEIN. It is just that for many of us when there is a pressure of so much that needs to be done, all of the money that is spent by study after study after study just wastes it. This is the frustration. I do not understand why the two cannot be combined in one or why—this seems to me to be a rather thorough study—why another one is necessary.

Mr. RINNE. If I had just one last thing——

Senator FEINSTEIN. Sure.

Mr. RINNE. One of the things—this probably will not relieve all your frustration on this, but I would just like to say that what we have experienced on some other projects is sometimes when they move to—the feasibility of course will lead to authorization or can lead to authorization of a project for construction. We have actually experienced one and one example I give would be where we probably did not do our homework well enough in Reclamation and moved on the Animas-La Plata Project, for example. It ended up with a cost that we missed the boat. I mean, it was not fair to people.

So the problem with costs is they are only as good as the data behind them, and if we are not quite there and we put something out for being authorized and we have missed it by quite a few factors, that is the difficulty. That is sort of the rationale for why we are doing it. I appreciate your concern and I understand about studies and studies and studies.

Senator FEINSTEIN. Since this has passed the House, I would just ask that you take another look at it and see if there cannot be some accommodation made.

Mr. RINNE. We will definitely work with you. I think that is fair, yes.

Senator FEINSTEIN. I would appreciate that very much. Thank you.

Senator MURKOWSKI. Let us go on to Senator Salazar.

Senator SALAZAR. Thank you. Thank you very much.

Commissioner Rinne, I have a question concerning S. 1106. Reading your testimony, it is very clear that the administration has taken a position in opposition to the legislation that Senator Allard and I have proposed, and my sense of the opposition is that you do not like the proposed Federal-State cost share that we have included in there and that is the centerpiece of your opposition for it.

If I look back at the testimony that you provided in front of this committee a few months ago, you said that since the 1980's there had been 13 separate single purpose reclamation projects for municipal and industrial water supply in rural communities in the reclamation States. So is it not true that we have had these Federal-State cost share proposals that have been in fact authorized for other rural communities in the reclamation States?

Mr. RINNE. Certainly, Senator, we certainly have had in the rural water type projects I am speaking of, we definitely have had individual, individually authorized rural water projects. And they

all had their own uniqueness, I might say, in the Federal/non-Federal arrangement, that is correct.

Senator SALAZAR. Now, knowing, Mr. Rinne, how well you know my State of Colorado and knowing how you also are familiar with the Fryingpan-Arkansas Project and the communities downstream of Pueblo, I would imagine that you would reach the same conclusion that I have reached for many years, and that is that those rural communities are very poor, struggling on the vine just to keep alive.

So if this Congress were to pass some kind of a legislation that would have a Federal-State cost sharing proposal, do you think it would be beneficial to those rural communities in the same way that these previously 13 authorized projects that have helped rural communities, I am sure have been helpful to those 13 communities.

Mr. RINNE. Yes, and I do want to say—and I understand—and this is not about need. I certainly concur with you on needs, that we see this throughout. The thing that I would want to say, and you did get right on the main point or the main concern, is this. Typically on a municipal or industrial type project, generally I would say in policy and law that we would look for 100 percent of the capital repayment with interest.

So when this one is proposed as 80 percent Federal and 20 percent non-Federal, then, as you would recognize, that is a departure from what we would desire to see. It is not saying that there have not been other ones because sometimes they are authorized in that manner. So that is really where a lot of the opposition. We do appreciate that there was a lot of work done by people on the O&M cost, which is now I understand would be, under this bill, would be all non-Federal. In other words, Southeastern in this case would pick that up, and I think that is an improvement. We would like to work with people on this.

Senator SALAZAR. Well, I appreciate that very much. I note that, for example, one of the rural reclamation projects in South Dakota actually had a zero local cost share. I know there are others that have had 10 percent cost shares, 15 percent cost shares, and the like. The fact of the matter is that Mr. Long, who is here to testify in the succeeding panel, who is the president of the Southeast Water Conservancy District and who comes from Bent County, will tell you that getting those very poor, very poor communities together to agree to come up with a 20 percent Federal cost share has been a monumental undertaking and achievement, and I am very proud of his work and the work of the Southeast Water Conservancy District. And I am hopeful, very hopeful, that we will be able to work with the Bureau and with the members of this committee in making this legislation a reality, because it is very essential to the future of those communities.

Madam Chairman, I know I have just 50 seconds. I am going to have to leave because I am not going to be able to stay for the next panel, but I do want to recognize Bill Long, who is the president of the Southeast Colorado Water Conservancy District. I will not be here for his testimony. Next to him is former Congressman Ray Cagosic, also from Pueblo, Colorado—two champions of rural and forgotten America. Thank you for being here.

Thank you, Madam Chairwoman.

Senator MURKOWSKI. Thank you, Senator Salazar.

Senator Smith, if you would like to ask any questions of our administration witnesses.

STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. I do not have any questions for them, Madam Chairman, but I am grateful for this hearing. I know you have got a number of bills that you are considering, one of which is S. 3522, the Fisheries Restoration and Irrigation Mitigation Act of 2004, of which I am a cosponsor. It will reauthorize an important partnership program in the Pacific Northwest that has provided Federal funding for screening of water diversions and other facilities to protect the fish in our region. It is supported by the Oregon Water Resources Congress, the Idaho Water Users, and the Washington State Water Resources Association.

It goes without saying, madam, in our dry part of the country that this is very important, both to keeping the livelihoods of our farm community up as well as the life of the fish in our region going as well. So it is very important that we continue this.

I wanted to welcome and recognize Mark Thalacker, who is here from Oregon. He is the manager of the Three Sisters Irrigation District, a member of the Oregon Water Resources Congress, who is here to testify about this very bill.

Other than that, I have no questions, Madam Chair.

Senator MURKOWSKI. Thank you for your comments on behalf of that legislation.

Mr. Rinne, I want to follow up with the question that Senator Salazar had asked, and this is in regards to S. 1106, the Arkansas Valley Conduit. You are discussing the non-Federal cost share. In your written testimony you mention the rural water legislation that the administration had submitted to Congress in 2004 sets a 35 percent non-Federal cost share. Would you be willing to support, would the administration support, this legislation if it contained a 35 percent non-Federal share, cost share?

Mr. RINNE. I think if the legislation had a 35 percent cost share that would certainly help, it would help lots. I mean, that would be there. Now, I do not know. There may be other issues that the administration wanted to address. Not like there is another one pulled out of the hat, but I think that would help a lot.

Senator MURKOWSKI. All right.

On S. 1811, this is the Arthur Watkins Dam enlargement. Again referring to your written testimony, you state that raising the Arthur Watkins Dam would postpone the need for Utah to begin development of the Bear River. Do you think that by raising the Arthur Watkins Dam, this would be cheaper than developing the Bear River?

Mr. RINNE. It could be. I am not 100 percent sure. Let me say why. I do not think the Bear River development, looking at that, has been extensively studied. So I suppose it is a question of what kind of things come with it. But it could help.

Senator MURKOWSKI. You think it could make a difference?

Mr. RINNE. We think it would, yes.

Senator MURKOWSKI. In response to Senator Feinstein's question on the Folsom South Canal deferment, S. 3798, she brought up the issue of the inequities that are at issue there. It is my understanding that the Central Valley Project contractors are paying for canal capacity that they are not using and this is the point here.

Do you have any specific suggestions as to how the current arrangement could be made more equitable?

Mr. RINNE. You know, that is the real challenge. You have got your finger right on it. Very challenging. I do not have a specific. I think the answer probably lies in trying to continue to work with the contractors and talk this through. The things Senator Feinstein raises, they are concerns to us too. But it is the way the repayment structure is set up on capital costs.

I think the best way through it is to probably sit down and continue to work with the contractors.

Senator MURKOWSKI. And that effort is ongoing, then?

Mr. RINNE. There are discussions back and forth, but at the current time, just so that I am real clear, that repayment arrangement remains in place. So I mean, we need to try to figure out a way to get through this. But it sort of—it is there right now and they will continue to be paying for this in their rates unless there is some change made.

Senator MURKOWSKI. Well, we would certainly encourage the ongoing dialogue there.

The legislation relating to the Snake, Boise, and the Payette River System study was addressed by several of my colleagues here this afternoon. You have stated in your testimony that Reclamation completed a water supply study for these basins in July. What did you identify as perhaps the most promising opportunities to increase the water supplies in these basins?

Mr. RINNE. I think there were, Madam Chairman, I think there were like eight kind of—it kind of goes back to this assessment level and now an appraisal. There are about eight out of a whole suite of ones studied that we were looking at. I am trying to remember. We had—well, we had eight, yes, eight sites, two possible—excuse me. Eight sites for new surface storage. Two were sort of retrofits of existing facilities. In other words, that would be maybe you enlarge and can get more storage through some modification. The others would all be new projects, new surface storage projects.

So there were many. I think there was actually several hundred that were looked at in those systems, and so you just sort of weed that down and now these we would think could move from appraisal, from assessment level forward.

Senator MURKOWSKI. Mr. Robinson, the Mohawk River hydroelectric project. You had indicated that the one reason you are not able to go forward right now is the Clean Water Act, the certification requirement. You have got that procedural hurdle in place. Has that been requested?

Mr. ROBINSON. Oh, yes, repeatedly. The licensee has been pursuing a 401 certification with the State for over 10 years. I believe the status of it right now is that it is under some appeal process within the State, reviewing a concern raised by Green Island Power about the actual authorization. So the agency that would issue the

401 has reached settlement with the licensee for the existing School Street project. They are just now going through their final procedural steps to issue or to take action on the 401.

Senator MURKOWSKI. But if that certificate were then issued, what then is the next step?

Mr. ROBINSON. The Commission's licensing step.

Senator MURKOWSKI. And the Commission—but you are saying that the Commission could not license because of the FPA relicensing requirements?

Mr. ROBINSON. The Clean Water Act requires that anybody that is authorizing a project, like the Commission under the Federal Power Act, have a clean water certificate or a waiver of that certificate in hand prior to issuance of their action. So we are precluded from acting under the Federal Power Act by the Clean Water Act. And the State controls the Clean Water Act process.

Senator MURKOWSKI. Are you aware of any other instances where the Congress has modified the relicensing requirements in order to benefit a competitor that did not meet the deadlines for the relicense applications? Does this happen?

Mr. ROBINSON. I have been in hydropower licensing for almost 29 years now and I can say with pretty good confidence it has never happened.

Senator MURKOWSKI. I just want to make sure I understand the situation with the Thomas Bay hydroelectric and just how this process works. As you know, with the Thomas Bay project we have got three different projects there. We have got an applicant who has spent several million dollars during this preliminary permit period, and there is a time limit on those preliminary permits. My understanding is that, what they are telling me is, this money is basically going to go down the drain if those preliminary permits expire and the money is gone.

Now, it is my understanding that FERC has the authority to grant a new preliminary permit once the old one has expired, provided that the applicant has acted in good faith. So you have got the authority to go ahead and do it. But if the applicant who is—if a municipal entity is the applicant and they come seeking a new preliminary permit, that FERC is obligated to give the preference to the municipal entity? Am I understanding this right?

Mr. ROBINSON. You are correct. Under section 7 of the Federal Power Act there is a municipal preference for the preliminary permit.

Senator MURKOWSKI. But if it were a private entity that were to come in, then you would be required to give—to reissue an extension to the entity that had sunk the initial investment in. But if it is a municipal entity you are required to give it to them regardless of the fact that they have invested no dollars?

Mr. ROBINSON. The second is correct. The first part—if there are two privates that come in and one is the previous permit holder, there is no legislative, statutory or regulatory preference in place for either of those parties. Further, I cannot recall where the Commission has had to address that, where you had competing preliminary permits, one being successive where there has been due diligence and one being new. So it would be a new condition for the commission.

Senator MURKOWSKI. But really what it comes down to is whether or not you have a municipal entity that might be eyeing the same project, and as long as they come in, make that application, they can bump the private entity regardless of the dollars that have been spent to further that project?

Mr. ROBINSON. That is correct.

Senator MURKOWSKI. Regardless of the due diligence?

Mr. ROBINSON. That is correct.

Senator MURKOWSKI. Okay, I thought I understood it right and I did. I do not like it, but at least I understand what your regulations provide for at this point and why it is important that we figure out a way to address this for Thomas Bay.

Thank you. If there are no further questions, we will excuse you gentlemen, appreciate your testimony this afternoon, and we will call up the second panel. Thank you.

At this time we will bring up panel two. We have Mr. Bill Long, who is the president of the Southeastern Colorado Water Conservancy District, based out of Pueblo, Colorado. We also have Mr. Marc Thalacker, manager for the Three Sisters Irrigation District, on behalf of the Oregon Water Resources Congress, based out of Salem, Oregon; and Mr. Thomas Donnelly, the executive vice president of National Water Resources Association here in Virginia.

Gentlemen, good afternoon.

Mr. LONG. Good afternoon.

Mr. DONNELLY. Good afternoon.

Senator MURKOWSKI. Let us start, for no particular reason, with you, Mr. Long, and move right down the line. Welcome and we appreciate the distances you have traveled to join us here this afternoon.

STATEMENT OF BILL LONG, PRESIDENT, SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

Mr. LONG. Thank you. Madam Chair, I am Bill Long, president of the Southeastern Colorado Water Conservancy District. I would like to thank you and the committee for the opportunity to present testimony in support of S. 1106. I would also like to take this opportunity to thank both Senator Allard and Senator Salazar for their leadership in sponsoring this legislation.

The Fryingpan-Arkansas legislation enacted in 1962 created a multi-purpose project that includes a water collection system on the west slope of Colorado that collects and delivers water to the east slope of Colorado. The project also includes three storage facilities to assist in the delivery of clean water to both municipal and agricultural users in the Arkansas River Basin of southeast Colorado.

Poor water quality and quantity concerns in the Arkansas River identified by the Bureau of Reclamation as early as 1950 were the reasons why the Arkansas Valley Conduit was included in the original Fry-Ark legislation. Although construction of the conduit was not funded, the problems it would have addressed have only gotten worse, much worse. In addition, utilizing the current raw water supply it is extremely difficult to meet the Safe Drinking Water Act standards.

In the year 2000, over 40 communities and water providers joined together to evaluate solutions to water quality and supply problems they faced. During the past 5 years, two project design engineering studies have been completed. Most recently, a third study to reconfirm the results and answer questions raised by the previous studies.

Two other questions that were a part of this most recent study were at the request of Senator Allard and Senator Salazar, and those two questions were: one, is there enough water for this project; and two, can the participants afford their share of the project?

Some of the relevant conclusions reached include: First, the cost of the project compares favorably with any no-action alternative, which would still require the communities involved to make substantial financial investments to address current water quality and safe drinking water standards. A single water plant as proposed in this project would be 60 percent less expensive than each community trying to build their own.

Second, the financial capabilities of the participating agencies are inadequate to fund the construction of the proposed Arkansas Valley Conduit under the 100 percent funding requirement. But the conduit participants could afford to pay back the 20 percent cost share as provided in S. 1106.

Third, there is more than an adequate supply of water to make the Arkansas Valley Conduit feasible. With all due respect to the Bureau's written statements, our last study did in fact indicate there was a great deal of water available for the project proposed. The Bureau study, look-back study, looked at the original GEI study—that was our first study—and in fact I believe the Bureau drew the correct conclusions based on that study.

But our most recent study, that was again at the request of Senator Salazar, there is in fact more than enough water. Although it may not be project water, we have other water and water rights in the Arkansas River available for the project.

The conduit project and this legislation are needed today to assist the communities of the Lower Arkansas River Basin. Water quality concerns are only increasing. Many of our water providers do not satisfy or only marginally satisfy current drinking water standards. In fact, one-third of the providers are currently under active enforcement orders from the State of Colorado to improve water quality.

Other providers who have previously received enforcement orders have made improvements that provide temporary compliance, but now cannot meet discharge regulations. In addition to the difficulty in meeting water quality standards, the current raw water supply also has very high concentrations of unregulated water quality constituents such as iron, manganese, and hardness. These constituents cause accelerated infrastructure decay, loss of tax base, and economic impacts associated with businesses locating elsewhere. The Federal funding authorized in S. 1106 is necessary to make this project a reality and to provide the means necessary to address water quality concerns of the Lower Arkansas Valley.

Southeastern and other project proponents are prepared for the hard work ahead and ask for your help. Madam Chair, in closing

I would request that my oral presentation be included in the permanent record and I once again thank you and the committee and would be happy to answer any questions you may have.

[The prepared statement of Mr. Long follows:]

PREPARED STATEMENT OF BILL LONG, PRESIDENT, SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT@

Madam Chair, my name is Bill Long, president of the Southeastern Colorado Water Conservancy District, and I am testifying today in support of S. 1106, a bill to provide a cost-sharing requirement for the construction of the Arkansas Valley Conduit in the State of Colorado. I would like to thank the Subcommittee for the opportunity to testify today. I also thank Senators Allard and Salazar for their leadership in introducing this legislation and the Subcommittee for holding this hearing today.

The Southeastern Colorado Water Conservancy District (Southeastern) is the local sponsor of the Fryingpan-Arkansas Project (the Fry-Ark Project), a multipurpose project constructed by the Bureau of Reclamation (Reclamation) that stores and delivers water for municipal and agricultural use within the nine-county service area of the District, Arkansas River basin, Colorado. Southeastern, through its Water Activity Enterprise, has agreed to manage and organize the efforts necessary to make this project a reality.

The Fry-Ark Project was originally authorized by Congress in 1962 and that authorization was amended in 1978. The goal of the legislation was to provide a supplemental supply of water, and storage for native agricultural and municipal water supplies. Both the 1962 and 1978 Acts contemplated the construction of the Arkansas Valley Conduit.

Like many other regions in the western United States, southeastern Colorado is growing. The need for the Arkansas Valley Conduit is driven by projected population growth, the economically-disadvantaged nature of the lower Arkansas Valley, and increasingly costly water treatment requirements being experienced by certain water providers in the basin. In addition to population growth pressures, the District's smaller communities, especially those east of Pueblo, Colorado, who rely on groundwater for their main water supply, need to develop a higher quality drinking water supply for their residents. As early as 1953, the Secretary of the Interior acknowledged that additional quantity and better quality of domestic and municipal was critically needed for the Arkansas Valley, and in particular for those towns and cities east of Pueblo. House Document 187, 83d Congress, 1st Session, and the Fryingpan-Arkansas Final Environmental Statement dated April 16, 1975 ("1975 FES"), both of which have been incorporated by reference into the Fry-Ark Project Act, recognized that the Arkansas Valley Conduit would be an effective way to address this need. The local water available from the Arkansas River alluvium has historically been high in Total Dissolved Solids (TDS), sulfates, and calcium, and has objectionable concentrations of iron and manganese. Additionally, various water suppliers have recently reported measurable concentrations of radionuclides in their water. This extremely poor groundwater quality, combined with increasingly stringent water quality regulations of the Safe Drinking Water Act, has caused several local water suppliers to invest in expensive water treatment facilities to assure a reliable water supply for their customers.

Generally, all drinking water systems in the Lower Arkansas River Basin, from St. Charles Mesa in eastern Pueblo County to Lamar in Prowers County, are concerned with the poor water quality in this region. Many of the water providers do not satisfy, or only marginally satisfy, current drinking water standards. More than 40 water providers in the Lower Arkansas River Basin could benefit from this project, if implemented.

All communities must meet the state and federal primary drinking water standards through treatment or source replacement. Less documented, however, is the potential burden placed upon communities by high raw water concentrations of various unregulated water quality constituents such as iron, manganese and hardness. These constituents can cause accelerated infrastructure decay and loss of tax base and economic impacts associated with factories and businesses locating elsewhere.

To address these issues, representatives of local and county governments, water districts and other interested citizens of the Lower Arkansas River Basin formed a committee in 2000 to consider a feasibility study of the Arkansas Valley Pipeline. These interested parties formed the Water Works! Committee and, along with Southeastern, began to review the feasibility of developing the Arkansas Valley Pipeline. Some of the relevant conclusions reached are as follows:

- The cost of the project compares favorably with any "no action alternative," which would still require the communities involved to make substantial financial investments to address current water quality and safe drinking standards.
- The financial capabilities of the participating agencies are estimated to be inadequate to fund the construction of the proposed Arkansas Valley Conduit, under a 100 percent funding requirement, but Conduit participants could afford to pay the 20 percent cost-share provided in S. 1106.
- There is an adequate water supply to make the Arkansas Valley Conduit feasible.

As mentioned above, the Arkansas Valley Conduit was included in the originally Fry-Ark reports integrated into the Fry-Ark Act. The project was not built because communities in the Lower Arkansas River Basin could not fully fund the Conduit project. A study of the Arkansas Valley Conduit was prepared for Southeastern, the Four Corners Regional Commission and the Bureau of Reclamation in 1972. The report's recommendations for construction of a water treatment plant, pumping station and conduit to serve 16 communities and 25 water associations east of Pueblo were not implemented at that time due to the lack of federal funding. Evaluations on the quantity of water needed to satisfy long-range objectives for water users in the Southeastern District area were prepared in 1998. Additionally, an update of the estimated construction costs presented in the 1972 report was prepared in 1998.

The citizens and communities of the Lower Arkansas River Basin have waited 30 to 50 years for this project that will improve their water quality and supply. The need for this project has been well established for more than 50 years. S. 1106 fulfills the promise of the Arkansas Valley Conduit nearly 45 years ago with the passage of the Fry-Ark Act by providing the one thing that has been missing for all of these years: a realistic acknowledgement of these communities' ability to pay and a partnership to allow this much-needed project to move forward.

I understand that there are some who have concerns with this legislation as it is currently written. Southeastern and the other project proponents are prepared to work with anyone who has realistic concerns and suggestions for improving this legislation. It is my hope that, to the extent there are issues regarding conflicts of funding and priorities between and among federal agencies, the Administration, with the help of our fine Senators, would quickly bring these agencies together to resolve these interagency issues.

I urge this Subcommittee to act quickly to move this legislation towards enactment. I would be happy to answer any questions the Chair or Committee members may have on this legislation.

Senator MURKOWSKI. Thank you, Mr. Long, and your full statement will be included as part of the record, as will the comments of all of our individuals giving testimony.

I have been asked as a courtesy to move next to Mr. Thalacker, if we can skip you for a second, Mr. Donnelly. Senator Smith has got to excuse himself and he wanted to make sure he was here for the testimony from Mr. Thalacker.

STATEMENT OF MARC THALACKER, MANAGER, THREE SISTERS IRRIGATION DISTRICT, ON BEHALF OF THE OREGON WATER RESOURCES CONGRESS

Mr. THALACKER. Thank you very much. Madam Chairman and members of the subcommittee: My name is Marc Thalacker and I am manager of the Three Sisters Irrigation District in Oregon, and I am here on behalf of the Oregon Water Resources Congress. OWRC is a statewide association founded in 1912 to represent local governments that supply water for irrigation, primarily irrigation districts, drainage and water control districts. These entities operate water management systems, including water supply reservoirs, canals, pipelines, and hydropower production.

OWRC strongly supports the reauthorization of the Fisheries Restoration and Irrigation Mitigation Act, along with the amendments embodied in S. 3522. We greatly appreciate the leadership efforts of Senators Wyden, Senator Smith, Senator Craig, and Sen-

ator Murray to continue this vital program for fish screening and passage in the Pacific Northwest. We are joined in this support by our sister organizations in Idaho and Washington, the Idaho Water Users Association and the Washington State Water Resources Association.

OWRC strongly believes this has been one of the most successful programs for our members. Fish passage and fish screens have become critical to fishery protection. There are over 200 irrigation and water control districts in Oregon that provide water supplies to over one million acres of cropland in the State. Almost all of these districts are affected by either State or Federal Endangered Species Act lists of salmon, steelhead, bull trout, and other sensitive, threatened, or endangered species. This program, which is cost-shared on a 65 percent Federal and 35 percent non-Federal basis, has been overwhelmingly supported by all involved.

From a water user's standpoint it has been a success because it keeps protected fish species out of the water canals and delivery systems and power generation facilities, allows fish to be safely bypassed around reservoirs and facility structures, and provides local funding to local governments for construction of facilities to protect fish.

The FRIMA program was authorized to receive $25 million a year divided among four States. We have been disappointed that the administration through the U.S. Fish and Wildlife Service has not requested funding for the FRIMA program in any of the 5 years since it was authorized. Our members appreciate the limited funding Congress has written into the annual Interior appropriations bills these several past years for the program.

FRIMA was intended for local governmental entities to carry out the work to mitigate the impacts of irrigation diversions on fish, rather than face loss of their water if their facilities were not screened. We greatly appreciate codifying what is already in practice with respect to the use of Bonneville Power Administration funding in the Pacific Northwest. This legislation makes clear that BPA funds coming from ratepayers should be considered nonfederal share money.

One of the strengths of the FRIMA program is the return on the Federal investment. The States do a tremendous amount of work as their part of the partnership, including project review, ranking, and selection. Turning against the history—again to the history behind this legislation, there was a strong feeling that, rather than have the U.S. Fish and Wildlife Service incur administrative activity, funding would pass through to the individual States, who had a stronger understanding and responsibility for the inventories on the need and priority for projects.

Dividing the funding evenly with the States helps ensure the collective effort is never put to risk because of unforeseen circumstances at the State level and recognizes the role the States play in the FRIMA partnership.

While the report prepared by the U.S. Fish and Wildlife Service is not the report called for in the authorizing legislation, it does nevertheless provide an excellent overview to the projects built using FRIMA funding. We encourage the committee members to look at this report with regard to the accomplishments of the pro-

gram in the four respective States. I would like to submit this report for the record.*

Senator MURKOWSKI. We will include it.

Mr. LONG. Thank you very much.

A lot has been accomplished with little funding, but greater good could occur if the Service requested the funding authorized. We strongly believe that the success of the FRIMA program as evidenced by the projects that have been built and the partnerships that have been developed provide the justification for a continuation of this program through the year 2012. The report and the last page of my testimony provide a number of good examples.

We strongly support the improvements to the program as contained in S. 3522. We would also ask that, even though this is the authorizing committee, that you would let the Appropriation Committee know the importance of this program and how noncontroversial and successful the effort has been with the limited resources that have been provided.

FRIMA is an excellent example of cooperative conservation and FRIMA now and in the future will play a key role in complying with the Columbia Basin 2004 buyup remand.

I want to thank the committee for hearing my testimony and I am happy to answer any questions. Thank you.

[The prepared statement of Mr. Thalacker follows:]

PREPARED STATEMENT OF MARC THALACKER, MANAGER, THREE SISTERS IRRIGATION DISTRICT, ON BEHALF OF OREGON WATER RESOURCES CONGRESS

Madam Chairman and members of the subcommittee, my name is Marc Thalacker and I am the manager of the Three Sisters Irrigation District in Oregon and am here on behalf of the Oregon Water Resources Congress (OWRC). The OWRC is a statewide association founded in 1912 to represent local governments that supply water for irrigation, primarily irrigation districts and water control districts, and including member ports, other special districts and local governments. The association represents the entities that operate water management systems, including water supply reservoirs, canals, pipeline, and hydropower production.

OWRC strongly supports the reauthorization of the Fisheries Restoration and Irrigation Mitigation Act along with the amendments embodied in S. 3522. We greatly appreciate the leadership efforts of Senators Wyden, Smith, Craig and Murray to continue this vital program for fish screening and passage in the Pacific Northwest. We are joined in this support by our sister organizations in Idaho and Washington: the Idaho Water Users Association and the Washington State Water Resources Association.

As one of the lead organizations with Congress to help create the Fish Restoration Irrigation Mitigation Act (FRIMA) in 2000, and with five years of experience of active involvement in the implementation of the program, OWRC strongly believes this has been one of the most successful programs for our members and for similar water supply entities in Idaho, Washington and Montana.

FRIMA created a new Federal partnership fish screening and passage program in the Pacific Ocean Drainage areas of Oregon, Idaho, Washington and western Montana. The U.S. Fish and Wildlife Service administers the program in partnership with state fishery agencies.

Fish passage and fish screens have become critical to fishery protection. There are over 200 irrigation and water control districts in Oregon that provide water supplies to over one million acres of cropland in the state. Almost all of these districts are affected by either state or Federal Endangered Species Act lists of salmon and steelhead, bull trout, or other sensitive threatened or endangered species. This program, which is cost-shared on a 65% Federal/35% non-Federal basis, has been overwhelmingly supported by all involved. From a water user standpoint, it has been a success because: 1) it keeps protected fish species out of water canals and delivery systems and power generation facilities; 2) allows fish to be safely bypassed around

* The report has been retained in subcommittee files.

reservoirs and facility structures; and 3) provides funding to local governments for construction of facilities to protect fish.

The FRIMA program was authorized to receive $25 million a year, divided among the four states. We have been disappointed that the Administration, through the U.S. Fish and Wildlife Service, has not requested funding for the FRIMA program in any of the five years since it was authorized. Our members appreciate the limited funding Congress has written into the annual Interior Appropriations bills these several past years for the program. As you can see from the attachment to my testimony, projects in Oregon have provided a much larger non-federal match than required and as a result have been able to maximize the limited FRIMA resources. Further, much FRIMA's success comes from the large proportion of the federal appropriations that is used for projects rather than for federal or state administrative costs.

SPECIFIC COMMENTS ON S. 3522

We are disappointed that the U.S. Fish and Wildlife Service, the partner in this effort, never produced the report called for in section 9 of P.L. 106-502 that would have recommended changes to the program based on experience in constructing projects under the Act. In lieu of that report, OWRC surveyed its membership and talked with our fellow partners and recommended changes that are incorporated in S. 3522.

Project Eligibility

Our members' experience in defining the type of projects that provide the most cost-effective solution to needs has demonstrated that we no longer need to be concerned with the likelihood of very expensive solutions to problems. Reducing the cap on the size of the project, from $5 million to $2.5 million, is appropriate at this time.

As we understand the history of the original authorizing legislation, this program was intended for local governmental entities to carry out the work to mitigate the impacts of irrigation diversions on fish rather than face loss of their water if their facilities were not screened. With that in mind, we also believe the original intent was to have the funding passed through to the states that would, in turn, provide the funding to the local governments. It was never envisioned that the Federal government or the Tribes were to get part of the $25 million authorized per year, other than for the up to 6% of the funding to cover administrative expenses.

If it was determined that a project on Federal land or land in the Native American community is the most effective approach to addressing a fish-screening or fish passage problem in a system, the costs for those projects should be non-reimbursable. This was to provide the flexibility to use a common sense approach that would be environmentally, economically sound with regard to the facility that needed to be addressed in a watershed.

We do not believe Congress intended FRIMA be used by municipal, Federal or Tribal governments to fund their facilities. While they may all have needs for this type of funding, the need for fish protection at irrigation diversions remains high and exceeds divertors' ability to pay.

Cost Sharing

We greatly appreciate codifying what is already in practice with respect to the use of Bonneville Power Administration (BPA) funding in the Pacific Northwest part, but not all, of the time. There is a lack of consistency among federal programs with some allowing the use of BPA funding as local share to address fish and wildlife recovery, but not for FRIMA. This legislation makes clear that BPA funds, coming from ratepayers, should be considered non-federal share money.

Federal Administrative Expenses

We believe that S. 3522 takes an appropriate step in addressing administrative expenses at the Federal and state level. One of the strengths of the FRIMA program is the return on the Federal investment. Part of this success can be attributed to the limited draw of the funding for administrative costs in order to ensure that most of the funding is used to build projects to protect fish.

The states do a tremendous amount of work as their part of the partnership including project review, ranking, and selection. Turning again to the history behind this legislation, there was a strong feeling that rather than have the U.S. Fish and Wildlife Service incur an administrative activity, funding would pass through to the individual states who had a stronger understanding and responsibility for the inventories on the need and priority for projects. Dividing the funding evenly with the states helps ensure the collective effort is never put at risk because of unforeseen

circumstances at the state level and recognizes the role the states play in the FRIMA partnership.

We think the graduated levels that determine administrative costs based on Federal appropriation levels is the type of incentive-based approach that sends a signal for all to understand. This graduated administrative allocation reflects the fact that as more money is appropriated, the time required for Federal and state program administration will expand.

Technical assistance requested by a project sponsor after receiving a grant is one thing; technical assistance designed to recruit and assist potential project sponsors is quite different. That kind of recruitment and assistance is part of the administration of the program and should fall under the administrative expense provisions, not be handled outside that limitation. To do otherwise limits the funding available for actual projects.

We do agree that technical assistance provided by the U.S. Fish and Wildlife Service at the request of the local government grantee should not be part of the administrative expenses for the agency. Such technical assistance should be part of the overall project costs and be subject all the other requirements under FRIMA including local match.

Given the critical need for on-the-ground work under this program, and the history of limited funding, there is an important need for the U.S. Fish and Wildlife Service to understand the intent of the program to provide for projects that protect fish rather than cover federal administrative and staff costs.

Expansion of the FRIMA Program

While the report prepared by the U.S. Fish and Wildlife Service is not the report called for in the authorizing legislation, it does, nevertheless, provide an excellent overview to the projects built using FRIMA funding. We encourage the Committee Members to look at this report with regard to the accomplishments of the program in the four respective states.

A lot has been accomplished with little funding, but a greater good could occur if the Service requested the funding authorized. Before any thought is given of expanding the program beyond its originally authorized purpose, the total work program as identified by the state inventories needs to be completed. Those inventories indicate a need for irrigation diversion mitigation that continues to exceed the available funding.

We strongly believe that the success of the FRIMA program as evidenced by projects that have been built and the partnerships that have developed provide the justification for the continuation of this program through year 2012.

CONCLUSION

OWRC is asking Congress to continue to improve conditions for threatened and endangered fish species in Oregon and the rest of the Pacific Northwest by passing this legislation into law and reauthorizing the FRIMA program. We strongly support the improvements to the program as contained in S. 3522. We would also ask that even though this is the authorizing committee, you let the Appropriation Committees know of the importance of this program and how non-controversial and successful the effort has been with the limited resources that have been provided.

OREGON'S FRIMA PROJECT BENEFITS

The following are examples of how Oregon has used some of its FRIMA money:

Santiam Water Control District Project: fishscreen project on a large 1050 cfs multipurpose water diversion project on the Santiam River (Willamette Basin) near Stayton, Oregon. Partners are the Santiam Water Control District, Oregon Department of Fish and Wildlife, Marion Soil and Water Conservation District, and the City of Stayton.

Approved FRIMA funding of $400,000 leverages a $1,200,000 project.

Species benefited include winter steelhead, spring Chinook, rainbow trout, and cutthroat trout.

South Fork Little Butte Creek: fishscreen and fish passage project on a 65 cfs irrigation water diversion in the Rogue River Basin near Medford, Oregon. Partners are the Medford Irrigation District and Oregon Department of Fish and Wildlife.

Approved FRIMA funding is $372,000 and leverages a $580,000 total project cost.

Species benefited include listed summer and winter steelhead, Coho salmon, and cutthroat trout.

Running Y (Geary Diversion) Project: fishscreen project on a 60 cfs irrigation water diversion in the upper Klamath Basin near Klamath Falls, Oregon. Partners are the Wocus Drainage District, Oregon Department of Fish and Wildlife, and Jeld-Wen Ranches.

Approved FRIMA funding of $44,727 leveraged a total project cost of $149,000.

Species benefited included listed red-band trout and short-nosed sucker.

Lakeshore Gardens Project: fishscreen project on a 2 cfs irrigation water diversion in the upper Klamath Basin near Klamath Falls, Oregon. Partners are the Lakeshore Gardens Drainage District and Oregon Department of Fish and Wildlife.

Approved FRIMA funding is $5,691, leveraging a total project cost of $18,970.

Species benefited include red-band trout, short-nosed sucker and Lost River sucker.

Oregon Department of Fish and Wildlife Inventory Project: an inventory to be conducted by Oregon Department of Fish and Wildlife to identify FRIMA-eligible passage and screening projects within the Rogue and Klamath basins of southwestern Oregon.

Approved FRIMA funding is $76,000. Estimated total project cost is $125,000.

WHY FUND NOW

Dollar-for-dollar, providing screening and fish passage at diversions is one of the most cost—effective uses of restoration dollars, creating fishery protection at low cost, with low risk and significant benefits. That is why it is important that this program be funded now.

We urge the full authorization funding for FY 2007 and urge Congress' oversight in encouraging the Service to budget for this successful program in the future.

Senator MURKOWSKI. Thank you, Mr. Thalacker.

Now, Mr. Donnelly, we will turn to you.

STATEMENT OF THOMAS F. DONNELLY, EXECUTIVE VICE PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION

Mr. DONNELLY. Thank you, Madam Chairwoman. Our association has worked hand in hand with the Bureau of Reclamation since it first raised the prospect of transferring title of facilities to project beneficiaries in August 1995. The first several years were difficult and a learning exercise for both Reclamation and its customers. Project beneficiaries harbored some unrealistic expectations. For example, some districts wanted title to their facilities, but expected the Federal Government to retain all liability for failure and the resulting loss of property and life. Others expected the transfer of project operations would exempt them from the provisions of national environmental law. Costs were also a huge impediment for some districts. Some of Reclamation's managers were slow to embrace the concept of title transfer. In addition, many unanticipated issues and concerns developed which were difficult to resolve.

Combined, these factors contributed to bringing the whole process of title transfer to an abrupt halt. Both Reclamation and its customers persevered through these difficult efforts and ultimately we developed a framework for negotiations and a checklist for districts to follow in preparation for their initial meetings with Reclamation and the subsequent title transfer process.

In 1996 the first title transfer bills were signed into law. Since then title to 18 projects or parts thereof have been transferred to project beneficiaries. Five are authorized pending transfer and several more are currently before Congress.

Through these difficult early years we learned some valuable lessons. It is important for districts pursuing transfer of title to en-

gage Reclamation early in the process and work through the various issues and circumstances unique to each individual project. There is no such thing as a simple transfer. Even single-purpose projects present unique challenges for Reclamation and its customers.

We are in agreement that it is impractical and in some cases not in the public interest to transfer large multi-purpose projects. It is also important that Reclamation and Congress is satisfied that title transfer applicants have the financial and technical resources to adequately and efficiently operate and maintain transferred works into the future.

While we have struggled over the past 10 years to get where we are today, a process and procedures are in place that provide project beneficiaries the opportunity to accomplish the transfer of title to their facilities. It is not a perfect process. It is still too expensive for most and in many cases unnecessarily time-consuming. Regardless, we are satisfied that Reclamation is attempting to make the process more user-friendly.

I returned last night from the public meeting on Reclamation's Managing for Excellence process and if it is helpful to the committee I would provide for you an overview of their title transfer work so far.

Senator MURKOWSKI. Great. Thank you.

Mr. DONNELLY. In closing, Madam Chairman, we support S. 3832 and believe it is complementary to efforts being undertaken by the Bureau of Reclamation in their Managing for Excellence process. This legislation will codify the process and procedures of an important management tool. Thank you very much.

[The prepared statement of Mr. Donnelly follows:]

PREPARED STATEMENT OF THOMAS F. DONNELLY, EXECUTIVE VICE PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION

The National Water Resources Association (NWRA) is a nonprofit federation of state associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource—WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

BACKGROUND

The U.S. Bureau of Reclamation (Reclamation) first raised the prospect of transferring title of facilities to project beneficiaries in August of 1995. Given the contentious debate and subsequent legislation over the rules and regulations implementing the 1982 Reclamation Reform Act in the late 80's and early 90's, many of our members were looking for an opportunity to get out from under the onerous reporting requirements and resulting rules and regulations. Title transfer appeared to provide that opportunity for many irrigation districts. To give the Committee an idea of the interest that the prospect of title transfer raised in the West, NWRA held a two day conference on the subject of title transfer in June 1996 expecting approximately 50-60 project managers to attend. Over 250 project managers from throughout the West attended.

Early on project beneficiaries harbored several unrealistic expectations. Many districts wanted title to their facilities, but expected the federal government to retain all liability for failure and the resulting loss of property and life. Some expected the transfer of title project operations would exempt them from the provisions of the Endangered Species Act, the Clean Water Act and other environmental laws. Others expected the Bureau of Reclamation to bear all costs associated with the transfer including the costly requirements of the National Environmental Policy Act. Within

the agency, some of Reclamation's managers were slow to embrace the concept of title transfer. Also, many unanticipated issues and concerns developed which were difficult to resolve. Combined these factors contributed to bring the whole process of title transfer to an abrupt halt.

Frustrated with the lack of progress in working through Reclamation, some districts chose to bypass the agency altogether and appeal directly to Congress. For the most part, this resulted in a stalemate where Reclamation was forced to testify in opposition to proposed project transfer legislation.

After months of frustrating delay, then Commissioner Eluid Martinez facilitated a working session of NWRA's leadership and Reclamation's managers. We analyzed the problems associated with the existing process and procedures from both perspectives. This meeting led to the development of a framework and "road map" for districts to follow in preparation for their initial meetings with Reclamation and the subsequent title transfer process.

In 1996 the first title transfer bills were signed into law. Since then, title to eighteen projects or parts thereof have been transferred to project beneficiaries, five are authorized pending transfer and several more are currently before Congress.

LESSONS LEARNED

In the past ten years, the Bureau of Reclamation and project beneficiaries have learned several lessons related to the transfer of title to Reclamation facilities.

We have learned that little is gained by attempting to circumvent the process. It is important for districts pursuing the transfer of title to engage Reclamation early in the process and work through the various issue and circumstances unique to each individual project. It has become clear to us that there is no such thing as "low hanging fruit" when it comes to title transfer. The simplest projects present unique challenges for Reclamation and the districts.

We acknowledge that it is impractical and, in some cases, not in the public interest to transfer large multi-purpose regional projects. It is also important that Reclamation and Congress is satisfied that title transfer applicants have the financial and technical resources to adequately and efficiently operate and maintain transferred works into the future.

SUMMARY

While we have struggled over the past ten years to get where we are today, a process and procedures are in place at Reclamation that provide project beneficiaries the opportunity to accomplish the transfer of title to their facilities. It's not a perfect process. It's still too expensive for most districts and in some cases unnecessarily time consuming. Regardless, we are satisfied that Reclamation is attempting to make the process more user-friendly. Also, they are cooperatively pursuing those projects that are in the best interest of the American taxpayer to transfer to the project beneficiaries under reasonable terms and conditions.

In closing, Mr. Chairman and Senator Bingaman, we support S. 3832 and believe it is complementary to the efforts being undertaken by the Bureau of Reclamation in their "Managing for Excellence" process. Therefore it should be quite easy for the Bureau to implement the provisions of S. 3832 in a timely manner. More important, this legislation will codify the process and procedures of an important management tool.

Senator MURKOWSKI. Thank you, Mr. Donnelly.

Senator Wyden, would you care to ask some questions first?

Senator WYDEN. Madam Chair, thank you very much, and thank you on behalf of Senator Smith and myself for scheduling our witness. We appreciate your courtesy.

I think I just wanted to ask Mark Thalacker one question. We are going to try to secure the funds. That has been a priority for Senator Smith and I. I think it would be helpful if you could lay out the consequences of not having this kind of program. It seems to me in plain simple English a lot of fish are going to die. Is that pretty much it? If that is the case, why do you not lay this out in something resembling English that people can really see as being the consequences of an important Federal program.

Mr. THALACKER. Well, one of the things that makes FRIMA so important is—currently I personally serve on the Mid-Columbia

Steelhead Recovery Team, and one of the things that I have seen through this process is that screening projects tend to come to the various granting agencies one by one. What FRIMA has allowed is it has allowed basically the Columbia Basin States to target key screens that help comply with the Endangered Species Act.

I think that when we eventually get final decision on the remand from Judge Reddon, FRIMA is going to be a key tool. So if it was authorized and funded going forward—it is something that the Power Planning Council has made a specific request that it be authorized and funded because, as you can see from the list of all the projects that have been done, it has been a very successful program. And yes, if we leave all these diversions unscreened a lot of fish will perish and there will be litigation and regulation.

Senator WYDEN. Well, thank you for making the journey eastward and we appreciate all your good work. Suffice it to say, after what has happened in the Klamath, we have had one instance after another of Federal policies not being built around cost-effective ways to both balance the needs of fish and the needs of people. I think you found one. I think that is why Senator Smith and I have been such strong supporters of it.

So you continue to do the advocacy work that you are doing. We will try to back you up.

Thank you very much, Madam Chair, for your courtesy.

Mr. THALACKER. Thank you, Senator.

Senator MURKOWSKI. Absolutely.

Mr. Thalacker, let me continue with some questions for you. In your written testimony you state that you do not believe that Congress intended FRIMA to be used by municipal, Federal, or tribal governments to fund their facilities. Is this happening? Are there any cases that you are aware of where there has been an effort to use the FRIMA funding to fund facilities?

Mr. THALACKER. Not that I was aware of. There are a number of other programs, screening programs, that are available through the Corps and also BPA works with the tribes quite a bit on their screens. So this is a program that basically reached out to literally thousands of diversions, large and small, all over the Columbia Basin, as well as other States, where there were Endangered Species Act problems.

Senator MURKOWSKI. But so far as you know we do not have an issue with municipal or Federal entities?

Mr. THALACKER. We have not had a problem that I am aware of.

Senator MURKOWSKI. The other question that I have for you, the legislation would give priority to projects costing less than $2.5 million and this is down then from the current threshold of $5 million. Why do you support the decrease?

Mr. THALACKER. The decrease is, one, a lot of the larger screens, the more expensive ones, have been completed. So what this does is this spreads the resource even farther and gets more screens accomplished. Large screens tend to be on Federal projects and so, once again, there are other funding sources available for those bigger projects.

Senator MURKOWSKI. Thank you for clarifying that.

Mr. Donnelly, you mentioned the Reclamation's Managing for Excellence process. I do appreciate you bringing the Powerpoint there

and we will include that as part of the record. But it sounds from your testimony that you are optimistic that there is a process that is being set forward, that initially when it came to title transfer things were slow, you mentioned that they were expensive, but it sounds from your testimony that there is an increasing satisfaction with the process and that the efforts to improve the title transfer process is really proceeding in a positive vein.

Mr. DONNELLY. I believe that is accurate. I think what the Bureau is now doing under Managing for Excellence is very much in keeping with the legislation that has been introduced.

Senator MURKOWSKI. Good. Well, we will look forward to reading that that you will submit in the written record.

Mr. Long, in talking about the Arkansas Valley Conduit project, what progress have you made toward securing a water right for that project?

Mr. LONG. There currently exists project water that is allocated to the lower valley. That water is adequate to meet the current request that we now have. So we actually have the water necessary to meet today's need.

Senator MURKOWSKI. What about tomorrow's need?

Mr. LONG. Tomorrow's need. There is more than adequate supply. Many of our cities and communities actually own water rights in the Arkansas River Basin. To meet the first initial need we will use the project water that has been allocated to the valley.

Senator MURKOWSKI. All right.

I have got a piece of legislation. I am a cosponsor on a Rural Water Supply Act which would authorize a loan guarantee program within the Reclamation loans. It allows that the loans be repaid over a 40-year period. Do you think that the communities in your region could benefit from this type of a loan guarantee program? This is something that would work out there?

Mr. DONNELLY. Absolutely. We are actually working too with the State of Colorado with a similar program that they have. We still could not afford the full 100 percent funding of the project. But we can handle the 20 percent. And yes, a program like that would be beneficial.

Senator MURKOWSKI. Good. You also mentioned in your comments here this afternoon, you spoke to some of the water quality issues. Would the water then that is to be supplied under the Arkansas Valley Conduit—is this going to require treatment?

Mr. DONNELLY. Minimal treatment. Currently the city of Pueblo, Colorado, is using basically the same water that we would use. They just filter it and treat it with disinfectant.

Senator MURKOWSKI. So even though you have got some solids and some other things in there that you would rather not have, it is a pretty minimal treatment?

Mr. DONNELLY. Absolutely. In relation to that, in the lower valley to meet water standards today we need to build reverse osmosis plants, which are very expensive to build, very expensive to operate, and cause a secondary problem in what to do with the reject from reverse osmosis plants. So we are faced with a new problem when we do build reverse osmosis plants.

So providing a better quality raw water is absolutely by far the best way for us to proceed to meet our needs.

Senator MURKOWSKI. Good.

Well, that is all the questions I have. I appreciate again the opportunity to have you all in front of us, appreciate your willingness to come this far and help us out with this legislation. I appreciate it.

With that, we stand adjourned.

[Whereupon, at 4:02 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF MARC THALACKER TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. In your written testimony you state that you "do not believe Congress intended FRIMA be used by municipal, Federal or Tribal governments to fund their facilities."

Are you aware of any cases where this has been occurred?

Answer. As OWRC has reviewed the respective Congressional Committee reports that accompanied the legislation that became Public Law 106-502 and as we have spoken with the parties involved who developed the ideas and concepts and worked on the language that became that Public Law, and further as we participated in the process that implemented the program once funding was provided, it is clear to our members that the intent of the program was to mitigate the diversions of irrigation systems of local governmental entities, of which water districts are defined as stipulated in the preface of the Act

Furthermore, municipal governments do not irrigate agricultural lands; Tribal governments are sovereign governments and thus not local government entities; and the Federal government is not a local governmental entity. There was to be a "commonsense" approach to these facilities if it made sense to have a fish screen, fish passage device or related feature placed on a water diversion that passed through Federal, Tribal, or municipal lands. The intent was to allow for such placement and provide authorization so someone couldn't say "the law doesn't allow that'. The whole idea was to do what made the most sense for the fish resource that was in need of mitigation assistance. Examples of this appear in the USFWS Fisheries Restoration and Irrigation Mitigation Program FY 2002-2004 report

Question 2. Why do you believe it is necessary to specify that BPA funds be considered non-federal share money? Has any entity been prohibited from accepting BPA funds as part of the non-federal share?

Answer. It is OWRC's understanding that the Bonneville Power Administration (BPA) believes that its funds can be used as the non-Federal match for Federal grants. We would like to submit along with this answer, two letters from BPA stating its position the ratepayer funds are non-federal funds and a guidance statement from USFWS concerning FRIMA/BPA funds. Unfortunately USFWS has taken the position that BPA funds are not allowed to be used for non-federal cost sharing purposes. This provision would make it clear that BPA funds may be used for non-Federal cost share purposes.

RESPONSES OF MARC THALACKER TO QUESTIONS FROM SENATOR JOHNSON

Question 1. According to the Fish & Wildlife Service's 2002-2004 Report, $8.8 million was appropriated to support the Fisheries Restoration and Irrigation Mitigation Program. Of that, $675,000 was used for Administrative purposes—about 7.8%.

Have the Administrative costs been excessive in your view?

Answer. It is our understanding that when discussions were taking place for the concepts resulting in Public Law 106-502 that 3 percent was seriously considered as an administrative cap figure. The six percent figure was arrived at in recognition of the need to ramp up for a new Federal program with the expectation that this was to be a pass through program of funding to the local governments to carry out the work. Further, it was expected that the states, not the Federal government, would play a strong role in this program because they had the best understanding of the work that needed to take place and were to do the inventories.

It was also expected that the full $25 million a year would be appropriated and 6 percent of that funding for "administration" was a significant amount of money. Unfortunately the Administration has never requested any money in the Budget submission to Congress.

Question 2. Do you know how much was appropriated for the program in fiscal years 2005, and 2006?

Answer. $2.0 in funding was provided in FY05. The FY 06 appropriation of $2.0 million was subject to budget rescissions. We do not have information about rescissions for other years' appropriations. Because USFWS has never requested funding for the program, it is difficult to understand their budgeting/accounting for the money since it is to be allocated among the four states and not more than 6% is available for administrative costs.

We are concerned that the funding that Congress has provided in FY07 is at risk because of the authorization lapse.

Question 3. Your testimony seems to indicate that you would like to exclude tribal irrigation projects from participating in the FRIMA program. Is that the case, and if so, why?

Answer. It is not a question of exclusion, but more of clarification as we stated in our response to question 1 from Senator Murkowski. There are other Federal programs available to the tribes for this work. Currently the tribes seek funding for screening projects through BPA's capital fund and BPA's fish and wildlife program.

Further, it is unclear what work needs to be done, if any, because the inventories conducted by the states do not cover Federal and Tribal lands.

As an example of the partnerships using FRIMA funding, tribes have provided funding to Soil and Water Conservation Districts and Watershed Councils who in turn work on smaller screening projects that use FRIMA funds.

R1 FRIMA Program Policy Guidance:

Use of BPA funds as the Non-federal Cost-share of a FRIMA Project.

The DOI Regional Solicitor's Office was consulted on this issue and has indicated the following.

BPA dollars cannot be used as non-federal match. The letter from the BPA legal advisor clearly states that BPA funds are federal funds. BPA has no specific legislation regarding this issue. FRIMA has specific legislation regarding this issue, hence the FRIMA legislation takes precedence. The FRIMA language is prohibitive, not permissive, regarding the use of federal funds as non-federal matching funds. Hence, BPA dollars cannot be used as the non-federal cost-share of a project. The BPA legal advisor agreed with the Solicitor's view.

J. Van Meter
Fish Passage Program Manager
September 17, 2004

RESPONSES OF BILL LONG TO QUESTIONS FROM SENATOR JOHNSON

Question 1. What do you expect to be the source of water that will supply the communities participating in the Arkansas Valley Conduit?

Answer. Initially, an allocation of Fryingpan-Arkansas Project water, including reuse of return flows, will adequately address water needs for the participating communities. Over the longer life of the Conduit, additional non-Project water supplies may be necessary to fully address water needs. These additional supplies may be acquired by interruptible supply agreements, rotational crop management leasing programs, adaptive management of existing community water supplies or by purchasing water from willing sellers.

Question 2. Is Reclamation's suggested minimum 35% cost-share for construction costs beyond the ability-to-pay of the participating communities?

Answer. We have not made an analysis of a 35% cost-share, since S. 1106 proposes to use a 20% cost-share. Prior to the hearing, Reclamation consistently stated its position that the participating communities must repay 100% of construction costs. Because the average household incomes in the counties served by the conduit are significantly lower than the state average (approximately 55% of the state average), we are concerned that a cost-share significantly higher than the one provided in S. 1106 may be beyond the ability-to-pay of the participating communities.

Question 3. What are the estimated OM&R costs for the Conduit project? Have the participating communities worked out a cost-allocation arrangement to ensure that they can pay those annual costs?

Answer. Based on project cost estimates, annual debt service and O&M costs range between $2.5 and $4.8 million. The estimated annual O&M cost alone ranges

from $775,000 to $1.9 million. To assist the participating communities in working out a cost-allocation arrangement, consultants to the Southeastern Colorado Water Activity Enterprise, a water enterprise created by the Southeastern Colorado Water Conservancy District, developed two approaches to establish cost allocations: a cost of service approach and an all-equal approach. The participating communities are still discussing these approaches, with assistance from state funding agencies.

RESPONSES OF BILL LONG TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. How much water would be conveyed by the Conduit?

Answer. The Arkansas Valley Conduit is designed to convey about 22,100 acre-feet of water in one year. The flow rate will be 30.94 cfs or about 20 million gallons per day.

Question 2. Do you believe the communities that would receive water from the proposed project could use this loan guarantee program [contained in the Rural Water Supply Act of 2005]?

Answer. The participating communities intend to use all of the financial resources available for which they appropriately qualify. Because the Rural Water Supply Act of 2005 loan guarantee program requires the Secretary of the Interior to develop eligibility criteria following passage of the Act, it is unclear whether the participating communities will be able to effectively utilize this program.

Question 3. Is there also a concern that the aquifer on which the lower Arkansas Valley currently relies is being depleted at an unsustainable rate?

Answer. No, the primary water supplies utilized by the communities that would benefit from the Arkansas Valley Conduit are surface water supplies or tributary ground water. As discussed in my testimony, water quality of those surface and tributary ground water supplies, is the primary concern. Other communities in Colorado, not proposed to be served by the Arkansas Valley Conduit, including some in other areas of southeastern Colorado, may face problems with aquifer over-draft.

[Responses to the following questions were not received at the time the hearing went to press:]

QUESTIONS FOR J. MARK ROBINSON FROM SENATOR MURKOWSKI

S. 2070, MOHAWK RIVER HYDROELECTRIC PROJECTS LICENSING ACT

I understand that the licensee, the federal and state resource agencies, and other significant stakeholders in the School Street Project relicensing proceeding have reached a settlement.

Question 1. Is it correct that the only procedural hurdle to FERC issuing the license is a delay caused by the green Island Power Authority's appeal of New York's water quality certification for the Project?

Question 2. Are you aware of any other case in which Congress has required FERC to issue a license that contemplates the destruction of the licensed project in the foreseeable future?

S. 3851, THOMAS BAY HYDROELECTRIC PROJECT

Question 1. It is my understanding that all three of these proposed hydropower projects depend upon the applicant securing a power purchase agreement. The applicant will likely spend several millions of dollars during the preliminary permit period but is concerned that the money will "go down the drain" when those preliminary permits expire. One permit expires about a year from now.

Pursuant to the Federal Power Act, FERC has the authority to grant a new preliminary permit once the original permit expires—as long as the applicant has acted in good faith. However, if a municipal entity also applies for that new preliminary permit, FERC is obligated to give preference to that municipal entity—regardless of how much work and money the original permit holder invested. Is that correct?

QUESTIONS FOR J. MARK ROBINSON FROM SENATOR JOHNSON

S. 2070, MOHAWK RIVER HYDROELECTRIC PROJECTS LICENSING ACT

Question 1. It sounds like the only thing holding up the issuance of a license for the School Street project is the water quality certification by New York.

Do you have any estimate on when the certification might be issued? Once that occurs, has the applicant met all the other licensing requirements pursuant to FERC's regulations?

Question 2. There is a provision in S. 2070 that would require in any license the inclusion of Articles 32 & 33 of the Millville Project license issued by FERC.

What applicability would these articles have in this situation? Has the Corps of Engineers developed a comprehensive water resource plan for the Mohawk River?

QUESTIONS FOR SECRETARY KEMPTHORNE FROM SENATOR MURKOWSKI

S. 1106, ARKANSAS VALLEY CONDUIT

Question 1. In your testimony, you mention that the re-evaluation statement of the Conduit included an assessment of the sponsor's ability to pay.

In that study, what was Reclamation's determination?

S. 1811, ARTHUR V. WATKINS DAM ENLARGEMENT

Question 1. It is my understanding that the dam was raised in 1990.

Based on this experience, do you believe that raising the Dam an additional one to two feet is technically feasible?

S. 3798, FOLSOM SOUTH CANAL DEFERMENT

You state in your testimony that you have concerns with deferring the repayment of the costs associated with a Reclamation facility based on the amount of capacity in use.

Question 1. Please explain more fully to the Subcommittee your concerns with the precedent this would establish.

Question 2. Are there any other parties who could benefit from the unused Canal capacity?

S. 3832, RECLAMATION FACILITY TITLE TRANSFER

Question 1. What types of Reclamation projects do you believe should not be transferred?

Question 2. What changes, if any, would you make to S. 3832?

Question 3. As you mention in your testimony, Reclamation is currently investigating opportunities for the transfer of title to Reclamation facilities as part of its Managing for Excellence Plan.

How is this progressing? When do you anticipate it will be completed?

H.R. 2563, SNAKE, BOISE, PAYETTE RIVER SYSTEMS STUDY

Question 1. If H.R. 2563 is enacted, does Reclamation plan to solicit stakeholder comment as it did for the Boise and Payette Basin studies?

Question 2. H.R. 2563 authorized $3 million to be appropriated for the feasibility studies.

Do you believe that this amount is adequate?

H.R. 3897, MADERA WATER SUPPLY ENHANCEMENT PROJECT

Question 1. What do you believe the total cost of a feasibility study would be for the proposed project?

Question 2. How long would the feasibility study take to complete?

Question 3. You state in your testimony that Reclamation is undertaking an appraisal level study of the proposed project.

What involvement have the stakeholders had in this process?

QUESTIONS FOR SECRETARY KEMPTHORNE FROM SENATOR JOHNSON

S. 1106, ARKANSAS VALLEY CONDUIT

Your testimony indicates that the water supply for the Arkansas Valley Conduit is not identified.

Question 1. How much water is needed for the project on an annual basis?

Question 2. Won't the water come from the existing Fry-Ark project? If not, what are the potential sources for the water rights needed for the project?

The Re-evaluation statement mentioned in your testimony contains updated construction and annual O&M costs as well as an assessment of the sponsors' ability to pay.

Question 3. Will you please provide a copy of the Re-evaluation statement for the Subcommittee?

Question 4. What additional work is necessary to go beyond the Statement to provide Reclamation with the information necessary to determine whether or not the Project should go forward?

S. 1811, ARTHUR V. WATKINS DAM ENLARGEMENT

You mention that the feasibility study for raising the height of the Arthur V. Watkins Dam would cost approximately $2.0 million.

Question 1. How long would the study take?

Question 2. Does the Project have sufficient water rights under state law to store additional water if the Dam height is raised?

S. 3798, FOLSOM SOUTH CANAL DEFERMENT

The construction of the Folsom-South Canal sounds like it was a significant error in judgment based on its under-utilization.

Question 1. Why does Reclamation think it's fair that the CVP contractors pay for the construction of a canal that benefits hardly anyone?

Question 2. What are the overall construction costs of the Folsom-South Canal? How much has been repaid to date?

Question 3. Is there any potential use for this canal in the future? Will it simply go on with only 2% of its capacity used?

S. 3832, RECLAMATION FACILITY TITLE TRANSFER

Your testimony indicates that Reclamation has an existing framework for title transfer, and is currently working on improving that framework.

Question 1. Does the existing framework address the transfer of complex multipurpose projects?

Question 2. Does Reclamation think that Congress should hold off on considering S. 3832 until it has completed its Managing for Excellence review?

H.R. 3897, MADERA WATER SUPPLY ENHANCEMENT PROJECT

Question 1. Is the appraisal-level work for the Madera water supply enhancement project sufficiently far along to provide some type of cost estimate for the project as currently configured?

Question 2. What are the type of project features being looked at in the appraisal-report?

Question 3. What is your estimate of the cost to complete a feasibility study of the project?

QUESTIONS FOR SECRETARY KEMPTHORNE FROM SENATOR SALAZAR

I have a list of 13 community public water systems in Southeastern Colorado that are under an active enforcement order from the Colorado Department of Public Health and Environment for failure to comply with drinking water standards. These are all small towns and rural water associations that simply cannot cover the costs of upgrading their water treatment facilities on their own. They, along with many other communities in the region, will need to seek federal assistance to upgrade their water treatment systems, at an estimated cost of $640 million, most of which will be born by the federal government.

Question 1. Given that the Conduit is estimated to cost approximately $300 million, of which 20% will be provided by the local communities, and upgrading individual water systems in southeastern Colorado is estimated to cost $640 million, most of which would be born by the federal government through grants and other funding mechanisms, isn't it true that, from a financial standpoint, the Conduit will end up costing the federal government less than it would spend if it had to help upgrade all of these water treatment systems?

In your testimony you raise a concern with the 80-20 cost share provision in this bill. But as you noted in your testimony before the House Resources Committee in July, since the early 1980s, Congress has authorized thirteen separate single purpose Reclamation projects for municipal and industrial water supply in rural communities in Reclamation States, at a total federal budget authorization for of over $2.3 billion.

Question 2. Isn't it true that the non-Federal cost shares for each of the currently authorized rural water projects range from zero for the Indian portion of the Mni Wiconi Project in South Dakota to 25 percent for the non-Indian Dry Prairie Rural Water System connected to the Fort Peck Reservation Rural Water System in Montana.?

Question 3. Do you stand by your statement that these types of water supply projects, like the Arkansas Valley Conduit, should be based on a community's "capability to pay?"

QUESTIONS FOR THOMAS F. DONNELLY FROM SENATOR MURKOWSKI

Question 1. From your perspective, what are greatest problems with Reclamation's existing title transfer process and what improvements would you make?

Question 2. What are some of the benefits to project beneficiaries associated with receiving title to Reclamation projects?

QUESTION FOR THOMAS F. DONNELLY FROM SENATOR JOHNSON

Question 1. In your view, is Reclamation's process to review its title transfer procedures sufficient to warrant holding off on any legislation until that process is complete?

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF HON. MICHAEL R. MCNULTY, U.S. REPRESENTATIVE FROM NEW YORK

Madam Chairwoman, thank you for this opportunity to address an issue that has been a cause of concern for many of my constituents: the relicensing of a hydro project known as the School Street Project (FERC Project No. 2539).

The license for this project, which is located on the Mohawk River near Albany, New York, expired in 1993 and only the Federal Energy Regulatory Commission (FERC) can issue a new license.

The School Street Project, in place since the early 1930's, is an antiquated, sub-optimal hydro facility that has robbed my community of a wonderful, natural waterfall, the Cohoes Falls. The School Street Project also diverts water from amile of the Mohawk River so that this mile of the river is mostly dry during the summer, is fish unfriendly, and produces less than half the power that could be generated by a modern hydroelectric power plant.

The Green Island Power Authority (GIPA), a publicly owned municipal power authority created under the laws of the State of New York, would like to file an alternative proposal with FERC for consideration prior to the Commission issuing another 30 to 50 year exclusive license to an existing hydroelectric project.

GIPA's proposal would address four important generation, environmental, and community concerns. It would:

- replace the antiquated existing hydro project with a state of the art facility that will produce more hydropower;
- restore what the School Street project took away, the visual beauty of a continuously flowing waterfall;
- save fish, which have been dying due to the setbacks of the current hydroelectric project;
- give a real boost to the economic health of the community.

Under current Federal law, competing applications must be submitted two years prior to the School Street Project's license expiring. The School Street project license expired 14 years ago. As a result, despite the existence of a more energy efficient project that would better serve the public interest, FERC has mandated that GIPA's Cohoes Falls Project cannot even be considered.

I support S. 2070, one of the bills being reviewed today. This legislation, proposed by Senator Schumer, is simple but effective. It requires FERC to allow the introduction of new evidence about a better project into the record in the School Street case. It does not disturb the right of FERC to make the final decision, but it does require FERC to make a fair record. It makes FERC accountable to the courts if they don't apply the law the way Congress intended.

This legislation is badly needed now in a community that is losing confidence in the ability of its national government to understand or even permit fair play when it comes to giving out exclusive licenses to private entities for the valuable natural resources belonging to the public.

For the people in my district and the region, the restoration of the Cohoes Falls, the rewatering of the Mohawk River, and the beauty and value they could bring to our local communities in the future are profound issues. It is not simply another case to be dealt with in the large pile of casework.

Because of my community's great interest in the new license, I have been personally involved in this effort since 2001. To date, I have failed to persuade FERC to make even the most simple changes:

- Update a stale record to accept current information;
- consider a superior alternative project to the status quo;
- permit participation by local community organizations;

• actively protect the public interest.

Thus far, I have been unable to persuade this federal agency to allow my constituents and local organizations and communities to participate in any meaningful way in the School Street relicensing process. Instead, the community has been excluded from the hearing process and denied party status, so they cannot appeal any decision issued by FERC in court.

When the public is prevented from making its case before a federal agency, citizens and local officials alike have wonder what's going on. For whom was this agency created and what did Congress intend it to do?

The applicable law is clear: Congress intended in 1920 when it enacted the Federal Power Act, that the agency it created, now the Federal Energy Regulatory Commission, should pick the "best project" to comprehensively develop our Nation's rivers, in the public interest.

When the Commission strayed from its original mission, the courts stepped in to remind the Commission that its duty was to see that "the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts." *Scenic Hudson Preservation Conference v. FPC,* 354 F. 2d 508 (1965), at 620. The Court said this in a case involving the location of a huge pumped storage project on the Hudson River, proposed by Consolidated Edison Company, just south of the Capital Region of New York. Moreover, the Court noted that the agency's refusal to receive the testimony about alternative sources of power and information about fish protection devices and underground transmission facilities, even in some cases offered by a non-party to the case, was inappropriate and "exhibits a disregard of the statute and of judicial mandates instructing the Commission to probe all feasible alternatives." That quote comes from the same case and the same page.

In *Scenic Hudson,* the Court noted that the agency had denied participation to some of the interests, thereby depriving the record of their evidence; in other words, the same kind of activity that has been occurring in the present *School Street* case. Quoting from another case, the Scenic Hudson Court found persuasive a holding that "it is not fair play for it (i. e., the agency) to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible . . ." *Scenic Hudson* at 621. I note that Scenic Hudson occurred in the mid-1960s and it seems as if the current FERC is suffering the same problems that afflicted the agency back then.

Unlike the existing School Street Project, the new Cohoes Falls Project would double the renewable energy available from the waters of the Mohawk. It would restore the historic Cohoes Falls to the way they used to be. It would rewater a mile of the Mohawk River where it now runs dry. GIPA proposes to dedicate a portion of the additional power input to create jobs in the community, and we could use those jobs. Another portion of the hydro power would be earmarked for public institutions, to help those communities with their budgets and maintain our local institutions. Recreation and public access to the river and to the falls would be enhanced, after consulting with the Tribal groups that have a special religious interest in preserving certain aspects of the falls and site. How to meet these objectives is the information being excluded by FERC.

This is why my community needs S. 2070. I thought the Federal Power Act was clear, as did the courts. In 1965 however, the courts had to remind the agency administering the Federal Power Act of its duty, despite the clarity of the law. It seems that the time is here again. But rather than burdening the court system with this case and delaying the resolution for another three to five years, Congress should act to pass S. 2070. Otherwise, the bottom line is that delay only benefits the current Licensee, who has taken an old Project that should be costing the consumers less than a penny per kwh and instead is selling it to them at 5-10 cents/kwh, under the new rules of the electricity market. That's taking a lot of money out of the community and the pockets of my constituents, and preventing us from using our own region's resources to ensure our own future.

Delay also means that the current Licensee, a Canadian corporation, will be able to take those profits and invest them elsewhere and not in the surrounding community. I submit this testimony today because my community has been waiting for 15 years for FERC to take an affirmative step to improve the conditions at the School Street site, and FERC is choosing to ignore an opportunity to do just that.

I am attaching two letters I have written to the Commission in the past, including one signed by Senators Schumer and Clinton.* The results are the same: FERC continues to reject the community's efforts and gives every intention of closing down the case and issuing a license for pretty much the same antiquated project that pro-

*The letters have been retained in subcommittee files.

vides little benefit to the surrounding community. And this is at a time when prompt development of an alternative would give us double the energy!

The development of a new Project and the restoration of the Cohoes Falls and the Mohawk River flows will do much to restore pride and beauty to my community and it will bring economic benefits to a community that has already been abandoned by the large corporations who found it more efficient to move than to invest money for modernization and new industries in the same communities.

Madame Chairwoman, thank you for including S. 2070 within the scope of today's hearing. I look forward to further discussions on how we might proceed in enacting legislation that would level the playing field so that the people in my district might have a fair chance to obtain and develop their own natural resources.

STATEMENT OF BROOKFIELD POWER

Clarification on Matters Raised at the 9/21 Hearing on S. 2070

It was suggested at the hearing that the existing owner (Brookfield Power) does not want to do anything to improve the (School Street) facility, the environment, or its surrounding community and that the surrounding community supports the GIPA proposal over the Brookfield proposal.

In fact, Brookfield has negotiated an extensive settlement agreement—years in the making and supported by hydropower experts, resource agencies, environmental advocates and the surrounding community—to make facility improvements benefiting the community and the environment. Brookfield's settlement agreement for School Street provides for continuous flows over historic Cohoes Falls; new recreational amenities including two viewing areas and a new footbridge; new foot trails; new fish protection and passage systems that have been approved by the U.S. Fish and Wildlife Service; an Historic Properties Management Plan; and ongoing work with indigenous peoples to ensure they have continued access to the falls for cultural purposes. This agreement is supported by the New York State Department of Environmental Conservation (NYS DEC), the NY Power Authority, NOAA Fisheries, U.S. Fish and Wildlife Service, the Mayor of the City of Cohoes NY, the NYS Conservation Council, and NY Rivers United.

School Street is also seeking to become one of only two locations in the nation to install and test cutting edge fish-friendly turbine technology developed with the United States Department of Energy. Brookfield will enhance School Street to 50 MW capacity which should generate more than 200,000 MWh of energy annually. FERC Director of the Office of Energy, Mark Robinson, called this capacity addition "well-sized" for the area.

It was suggested that GIPA's proposal would enhance the environment and give New Yorkers better access to clean energy than would the Brookfield School Street proposal.

GIPA's claims have not been tested or verified by the major resource agencies, environmental advocates, or a range of hydropower experts as Brookfield's proposal has. In order to achieve its claimed energy output, GIPA will have to build a new, larger dam on top of the falls and blast a section of the face to insert a massive powerhouse. This new dam would mean the certain inundation of one of the last stretches of natural flow and habitat left on the Mohawk River, but it is uncertain whether GIPA's energy claims can ever be realized.

It was suggested that the amount of time Brookfield has been operating on an annual license is unduly long.

Brookfield's School Street facility was one of nine of its project licenses in NY that expired in 1993. Through an agreement with FERC and stakeholders, those licenses were settled one at a time, with School Street designated as last in that settlement agreement process. Therefore, while waiting its turn, the School Street facility was given annual licenses. Additionally, once the licensing process began at School Street, time was put into negotiating a thorough settlement agreement, one which would ensure proper upgrades and the benefit of the surrounding community. The fact is, that but for GIPA's intervention and repeated appeals, the licensing process would be over.

It was suggested that FERC has rejected GIPA's request to apply for a license at School Street because of technicalities.

In fact, FERC has refused to permit GIPA to apply for a license at the School Street facility because the Federal Power Act and its rules prohibit a new license application from being filed on an "untimely" basis—in this case, more than thirteen years after the deadline for such applications. It is the law that FERC follow clear timelines for licensing set forth in the Federal Power Act. It is important not only

for Brookfield, but for licensees across the nation, that the law governing relicensing has certainty and integrity and is not subject to undue political interference.

It was suggested that GIPA was somehow precluded from competing for the School Street license when the window of opportunity lawfully existed in the early 1990's.

GIPA, like any other prospective applicant, was free to file a competing application for the School Street project during the window of opportunity that existed in the early 1990's. The fact that Niagara Mohawk, the owner at that time, operated as a regulated monopoly in New York has no bearing, and that business structure in no way precluded GIPA from competing. GIPA simply chose not to compete when the lawful opportunity existed.

SOUTHEASTERN COLORADO WATER ACTIVITY ENTERPRISE,
Pueblo, CO, June 13, 2006.

Senator KEN SALAZAR,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SALAZAR: At last summer's July 16 Arkansas Valley Conduit Forum in La Junta, Colorado, Senator Wayne Allard, Representative Marilyn Musgrave, and yourself agreed that key information was needed before legislation would be moved through Congress. Additionally, Representative John Salazar agreed with the request from the Forum. Specifically, it was requested the District verify that enough water is available for the conduit, and the participants can afford their portion of the cost of the conduit.

In November of 2005, Black & Veatch Engineering was hired to perform an Investigation Study to obtain answers to these questions. As part of this Investigation, all the water-providing entities were contacted and information was gathered. Black & Veatch has completed that Investigation and we are excited to provide you with the Investigation results. Enclosed is a copy of the Executive Summary for your perusal, and the complete study can be made available should you wish to see more detail.

The Investigation found that there is an adequate water supply for the conduit. Project water is available to meet the current demands of the participants. Regarding the funding question, cost ranges were determined by the minimal size of the conduit as the lower bookend, and the largest size with some water filtration included in the upper bookend. To assure that each entity was on board and understood the costs, Letters of Intent were obtained from each entity. Attached is the list of the Letters of Intent in hand to date, representing all but a few very small providers who have not yet completed the letter process.

Additionally, the District will be submitting a loan application in August to the Colorado Water Conservation Board. In discussions with them, we have learned that they have money available to loan for this project at rates between 3.0% and 3.5%. The final rate would be determined by the per capita income of the participating entities versus the state average.

Now that the Investigation has been completed and the findings enclosed, it is the hope of the participants that our congressional delegation will undertake the effort necessary for Congress to act upon the authorizing legislation for this critical project, and seek the subsequent funding needed to build it. The District's staff, legal counsel, and consulting firm Kogovsek & Associates, look forward to meeting with you at your earliest convenience in an effort to finalize the language in the legislation.

Thank you for your support.

Respectfully,

BILL LONG, *President,*
Chairman, Conduit Committee.

AMERICAN RIVERS,
Washington, DC, September 21, 2006.

Senator PETE DOMENICI, Chairman,
Senator JEFF BINGAMAN, Ranking Member
Senate Energy and Natural Resources Committee, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR BINGAMAN: American Rivers is a national nonprofit conservation organization dedicated to protecting and restoring healthy natural rivers and the variety of life they sustain for people, fish, and wildlife. American Rivers has a membership of more than 45,000, with members in each of the fifty states.

We have significant concerns about S. 2070. Our concerns are not based on the relative merits of the competing hydropower projects that are the subject of this legislation, but rather a policy principle: *Congress should not legislate the results of individual hydropower licensing proceedings or the terms of a hydropower license. Instead, Congress should allow FERC and appropriate state and federal agencies to implement the Federal Power Act and other applicable laws.* The hydropower licensing process must operate in a consistent, pre-defined manner in every hydropower project. Any legislation that creates case-by-case exceptions to these rules sets a dangerous precedent that creates uncertainty and could severely undermine the confidence of participants in this lengthy and complex process.

Because we only just became aware of the September 21st hearing and consideration of S. 2070, we have not yet had time to discuss our concerns with Senator Schumer or his staff. We look forward to discussing our concerns with them in the near future.

BACKGROUND

Erie Boulevard Hydropower (Erie) owns the School Street hydropower project on the Mohawk River in New York. When its license for the project expired in 1993, Erie engaged in settlement talks with state and federal agencies, environmental and recreation groups, and other stakeholders to negotiate a new license. Based upon those settlement talks, Erie has a license application pending before FERC. In January 2005, Green Island Power Authority (GIPA) filed a preliminary application with FERC to construct the Cohoes Falls hydropower project, which would require usurpation of the site of the School Street Project. In rejecting GIPA's application, the Commission concluded that the Federal Power Act barred it from considering a competing license application filed more than 13 years after the statutorily-defined deadline for such applications. FERC also determined that it could not issue a license that would require that another existing licensed project be decommissioned over the objection of its licensee (in this case, by issuing a license that would allow a new, larger dam to bury an older dam under water).

We do not wish to take sides in the debate over which project would be a better use of the Mohawk River. GIPA claims that its proposed hydropower project will offer even more significant improvements that would benefit the environment and other public values than the negotiated deal arrived in the School Street settlement. If they are right, then it is unfortunate that they did not act at the appropriate time during the licensing process. Many stakeholders come in late to hydropower licensing proceedings with ideas or proposals that they believe to better represent the public interest, but they are not considered because to do so would invite a process with no end. And before anyone can accept GIPA's assertion that its application is more in the public interest than Erie's, the project would have to undergo the same level of scrutiny and evaluation as the School Street Project settlement agreement. But allowing this process to drag on any further would set a very dangerous precedent and throw licenses and settlement agreements into an environment of great uncertainty.

CONGRESS SHOULD NOT ENGAGE IN HYDROPOWER LICENSING BY LEGISLATION

When Congress created the Federal Power Commission with the passage of the Federal Power Act in 1920, it delegated the responsibility for making decisions about individual projects to an independent regulatory agency with the high level of expertise necessary to make informed decisions about how best to allocate the nation's limited number of sites with hydropower potential. As a result, federal hydropower licensing is governed by a set of rules that are generally consistent. These rules provide utilities and other stakeholders with a process that guarantees a reasonable amount of stability and certainty.

We are worried by the idea of direct Congressional involvement in licensing decisions. When a piece of legislation attempts to circumvent FERC's rules and delegated authority—especially to benefit a single utility on a single hydropower project—the very stability of the licensing process is threatened. Once individual license applicants or other licensing stakeholders with political connections believe that they can skirt this process by asking Congress to legislate the terms of a hydropower license, we will be on a very slippery slope. Each exception further erodes the underlying stability and fairness of the regulatory environment.

In order to maintain the integrity of the licensing process, American Rivers must object just as strongly where Congress is intervening in a case that may result in greater environmental protection as we must in a case where Congress is allowing a licensee to avoid those protections. As a matter of principle, American Rivers has opposed even minor attempts by Congress to bend or make exceptions to the rules

of hydropower licensing. One fairly common exception takes the form of a preliminary permit extension,[1] which requires that FERC grant a licensee additional time to commence construction of a project when it has missed the deadlines specified in its license. Our opposition is based on a simple principle: If Congress begins to arbitrarily extend license terms, then it might go further, requiring the Commission to issue a license in a case where issuing a license may not be justified. Or it might choose to dictate specific conditions in a license, even if the Commission has determined that those conditions are not in the public interest. Neither situation is acceptable.

American Rivers has had many quarrels with both the hydropower industry and FERC and we remain strong advocates for reforms of both, but we cannot support the kind of piecemeal approach suggested in S. 2070. While extraordinary circumstances may some day arise when American Rivers may believe that Congressional involvement at this level is necessary, this case does not meet that threshold.

EXTRAORDINARY CIRCUMSTANCES DO NOT EXIST

Proponents of this legislation have argued that extraordinary circumstances do exist that warrant Congressional involvement in the Mohawk River cases. They claim that much has happened between the deadline for filing a license application (which was in 1991)—an alternative use of the hydropower site has been conceived, community attitudes have changed, and economic and other conditions warrant a reexamination of what is in the public interest. While we can empathize with their perception of the situation, it does not represent an extraordinary circumstance worthy of Congressional intervention.

When the Commission is unable to issue a new license for an existing project before its license expires, FERC issues an "annual license," that allows the utility to operate the project under the terms of its original license. In many cases, an annual license gives utilities an opportunity to delay. If the *status quo* conditions are cheaper than the terms of a new license, then some utilities will do what they can to delay and maintain those original, cheaper conditions. This behavior is a clear abuse of the provisions of the Federal Power Act that guide hydropower licensing, and we encourage Congress to consider ways in which it might curb this practice. However, there are instances when annual licenses are valuable tools that give stakeholders the necessary time and freedom to work out differences and settle disputes outside of the traditional FERC licensing process that can then feed back into the establishment of a new license. It is this very set of circumstances that we find on the Mohawk River.

The School Street project is one of dozens of licenses in New York that all expired in 1993. To deal with the glut of licensings, stakeholders reached an agreement in which the New York State Department of Environmental Conservation would address each of the relicensing applications sequentially. The School Street project was at the bottom of this list, and has therefore been issued annual licenses for the past 13 years. However, we believe that the owners of the School Street Project acted in good faith during those 13 years to work towards obtaining a license from FERC and other necessary permits from other federal and state agencies. If FERC had issued Erie a license for the School Street Project back in 1993, GIPA would find itself in almost the same position as it is today—unable to develop the site until the current license expires. They can and perhaps should argue to FERC that within its legal discretion, it issue a shorter license term since Erie benefited from 13 years of annual licenses. This would at least give GIPA the opportunity to compete for the contested site sooner.

If Congress intends to do something about the abuse of annual licenses, it should look to a broader and more equitable solution.

S. 2070 DICTATES UNREASONABLE LICENSE TERMS

The most troubling aspect of this bill is that it dictates specific conditions which FERC must include in any hydropower license issued on the Mohawk River. Subsection (d) of the bill requires that FERC "shall include the same license conditions relating to the use of affected waters provided in articles 32 and 33 of the license included in Potomac Light & Power Company, Project No. 2343, 32 F.P.C. 584, 588 (1964)." Those articles read as follows:

> Article 32. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the

[1] For example, see S. 3851, a bill which is also currently pending before this Committee (and to which we are opposed for the reasons described here).

construction, operation and maintenance of hydroelectric project which will more completely utilize the water resources of the reach of the Shenandoah River in which the project is located.

Article 33. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such more complete water resource project or his or their successors and assigns that said Licensee, its successors or assigns, shall surrender its license at such time as the project becomes inoperative by reason of inundation by such more complete hydroelectric project; provided, that Licensee shall be paid the net investment in Project No. 2343 upon surrender of its license; and provided further that Licensee shall not be entitled to any compensation for severance damages sustained by reason of inundation or destruction of the project or project works of Project No. 2343.

By legislating the specific conditions of a license, this bill would set a very dangerous precedent. If Congress begins to insert line-item provisions into licenses, then a member of Congress could conceivably strip—or add—environmental protections from a license allowing a license to never expire or require it be decommissioned. The result would be undermine the public's and the industry's confidence in the integrity of the hydropower licensing process.

S. 2070 WILL DISRUPT A SETTLED HYDROPOWER LICENSING AND CAUSE FURTHER DELAYS

Stakeholders (State and federal agencies, NGOs, and others) have already invested significant time and resources into the relicensing of the School Street project, and have reached a settlement. This bill would throw the licensing process and settlement into chaos, despite years of work. By requiring FERC to consider a competing application at the end of the process, it would extend the period that the School Street project may operate under an annual license, further delaying the implementation of environmental improvements.

In conclusion, we thank you for considering our perspective, and strongly urge you to oppose this bill at this time. If you or your staff have any questions or concerns regarding this testimony, I would be happy to discuss them.

Sincerely,

ANDREW FAHLUND,
Vice-President for Conservation.

NATIONAL HYDROPOWER ASSOCIATION,
Washington, DC, October 2, 2006.

Senator PETE DOMENICI, *Chairman,*
Senator JEFF BINGAMAN, *Ranking Member,*
Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

Re: Statement for the Record of the National Hydropower Association (NHA) on S. 2070

Dear Senators Domenici and Bingaman: The National Hydropower Association[1] writes to express its concerns regarding S. 2070, the Mohawk River Hydroelectric Projects Licensing Act of 2005. On September 21st, the Committee's Water and Power Subcommittee held a hearing on the bill.

S. 2070 would prohibit the Federal Energy Regulatory Commission (FERC) from issuing a new license for a hydroelectric project on the Mohawk River in New York if the project has been operating under annual licenses for 10 or more years, unless FERC issues a public notice that it will accept other valid license applications to develop the project works or the water resource, and FERC approves a license application with terms consistent with the legislation.

Under the Federal Power Act, FERC is given the authority over the licensing of hydropower projects. The FERC regulatory regime provides a comprehensive process to determine necessary license terms and includes procedures governing competing license applications. S. 2070 would usurp FERC's authority in this one case, insert-

[1] NHA is a non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower industry. The association represents 61 percent of domestic, non-federal hydroelectric capacity. Its membership consists of more than 140 organizations including public utilities, investor-owned utilities, independent power producers, equipment manufacturers, environmental and engineering consultants, and attorneys.

ing the Congress into the middle of an ongoing licensing proceeding. Simply put, this is bad public policy.

While NHA does not intervene in proceedings regarding individual licensees, the Association is concerned that S. 2070 sets a precedent for the licensing of hydropower projects that is disconcerting and should be carefully and deliberatively reviewed prior to Congress taking such a dramatic departure from practice.

NHA believes it is inadvisable for the Congress to dictate by legislation hydropower licensing outcomes. FERC is the appropriate decision maker with the necessary expertise and experience to fully analyze and equitably resolve licensing issues. FERC should be allowed to conduct its work free from legislative intrusion. This arbitrary involvement would create instability and uncertainty in the licensing of hydropower projects.

Over the years, NHA has advocated for regulatory and legislative improvements to the licensing process aimed to bring transparency, accountability, and equitable treatment for licensees and stakeholders. Responding to this call, FERC, in 2003, adopted the new integrated licensing process (ILP) and Congress enacted several licensing reform procedures in the Energy Policy Act of 2005.

S. 2070 appears to be a step backward from these advancements and NHA encourages the Committee to consider the effects this intervention could cause. Also, American Rivers, a non-profit conservation organization that regularly participates in hydropower licensing proceedings has urged the Committee to oppose S. 2070. NBA agrees and respectfully urges the Committee to do the same.

NHA appreciates this opportunity to share its views on S. 2070 and its potential effect on the hydropower licensing process. Please feel free to contact me if there are any additional questions regarding S. 2070 or NHA's position on the bill.

Sincerely,

LINDA CHURCH CIOCCI,
Executive Director.

STATEMENT OF THOMAS P. GRAVES, EXECUTIVE DIRECTOR, MID-WEST ELECTRIC CONSUMERS ASSOCIATION

The Mid-West Electric Consumers Association appreciates the opportunity to submit testimony on S. 3832, the "Reclamation Facility Title Transfer Act of 2006."

The Mid-West Electric Consumers Association was founded in 1958 as the regional coalition of consumer-owned utilities (rural electric cooperatives, public power districts, and municipal electric utilities) that purchase hydropower generated at federal multi-purpose projects in the Missouri River basin under the Pick-Sloan Missouri Basin Program. In Pick-Sloan, power generated at Bureau multi-purpose projects is marketed by the Western Area Power Administration and is under long term contracts.

The legislation before the committee, S. 3832, the "Reclamation Title Transfer Act of 2006," directs the Bureau of Reclamation to establish criteria for the title transfer to irrigation districts and to recommend facilities appropriate for such transfer. In his remarks introducing the legislation, Senator Domenici noted that he intended to broaden the Bureau's current efforts, which have heretofore focused on single-purpose projects, to address title transfer of Bureau of Reclamation multi-purpose facilities as well.

Mid-West has supported title transfer of single-purpose Bureau facilities in the past and will continue to do so where the proposed transfer is fair to federal power users. Mid-West has concerns about the process outlined in the legislation as it might apply to the Bureau's multi-purpose facilities.

Title transfer of federal assets to the private sector is a complicated business. Mid-West has worked with the Bureau of Reclamation and irrigation projects in Pick-Sloan where there has been an interest in title transfer of these single-purpose projects. Single-purpose projects have dams and reservoir storage, along with all the appurtenant irrigation facilities to serve the project (canals, etc.). There are no existing hydropower generation facilities in the project nor are any authorized for federal development. Recreation may or may not have developed around a project's reservoir.

Nonetheless, federal power is still involved in those projects, at least those projects that are in the Pick-Sloan Missouri Basin Program (Pick-Sloan). Whatever power that may be needed to provide "first-lift" of irrigation water is sold to irrigators during the irrigation season at the "project use" rate, currently calculated at 10 mills/kWh. That rate is significantly below the firm power rate of 18.74 mills/kWh, which is already scheduled to increase to 19. mills/kWh in January 2007. Where the Bureau project is not directly served by federal transmission, federal firm

power customers also pay the transmission costs of the transmission to deliver that power.

In addition, Pick-Sloan firm power customers subsidize the construction costs of the project through "aid-to-irrigation." In practical terms, that means that Pick-Sloan federal firm power customers are responsible for repayment to the U.S. Treasury of roughly 80% (on average) of an irrigation project's construction costs.

These can be thorny issues, but they are not insurmountable so long as all parties are treated equitably.

Mid-West not only supported but also lobbied for the title transfer of the Middle Loup irrigation project in Nebraska. Mid-West supported transfer of that project because the terms of the legislation were fair to all parties—both water and power users. The terms of the settlement called for the irrigation district to repay the U.S. Treasury the net remaining present value of their federal debt. Power users repaid the aid-to-irrigation at the net present value of that debt as determined by the rate-setting Power Repayment Study of the Western Area Power Administration. Since the transfer of the project removed ownership from the federal government, the irrigation district gave up the project-use power rate. The irrigation district was deemed eligible to receive seasonal Pick-Sloan power at the firm power rate. Mid-West supported that allocation. For Pick-Sloan firm power customers the critical elements to the settlement were:

- proper application of net present value to the remaining federal obligations of water and power users; and
- title transfer to the irrigation project beneficiaries without continued federal subsidies, including withdrawal of subsidized federal power rates and transmission costs.

Negotiations have failed in other instances where Bureau project beneficiaries in Pick-Sloan were attempting to transfer title while retaining federal benefits of the project use power rate and power delivery.

Transfer of multi-purpose Bureau projects is far more complicated.

The legislation before the committee (S. 3832) directs the Bureau to include four criteria that require: (1) project beneficiaries or an entity that the project beneficiaries approve of be willing to take title to the project; (2) project beneficiaries be capable of assuming operation, maintenance and rehabilitation of the facility if they have not already done so; (3) where there are multiple project beneficiaries they be in agreement on taking title; and (4) project beneficiaries be willing to assume any liability associated with the reclamation facility. § 3(b)(A)(B)(C)(D). These are the only directions given to the Bureau.

The rest of the legislation calls for:

- assessments of a variety of issues associated with a title transfer, including an assessment whether stakeholders would be adversely affected. § 3(b)(2)(E); and an assessment of any legal considerations associated with title transfer § 3(b)(2)(G);
- procedures for "soliciting stakeholder involvement in the transfer of title to a reclamation facility" § 3(b)(3)(A), and "involving appropriate Federal, State, and local entities in evaluating and carrying out the transfer of title to a reclamation facility" § 3(b)(3)(B); and
- a comprehensive list of actions that must be accomplished prior to transfer and procedures to allow the Secretary to address real property, cultural and historic preservation issues "in a more efficient manner" § 3(b)(4)(5).

Mid-West believes that the legislation does not provide sufficient direction to the Bureau on issues relating to federal hydropower facilities. Assessments and procedures are certainly needed and important, but the legislation does not provide Congressional guidance on what to do with the results of those assessments.

For example, the legislation is silent as to the treatment of federal power facilities, requiring no criteria and providing no guidance to the Bureau relating to treatment of power generation at Bureau facilities.

Neither the Western Area Power Administration nor its federal power customers—who are, in large part, the financial engine of these projects—is included in the process. Instead, power interests are relegated to stakeholder status, where the only requirement is that stakeholders have been involved in the "transfer of title to a reclamation facility." (Project beneficiaries are also included as stakeholders, in addition to their status as project beneficiaries.)

The hydropower generation at the Bureau's multi-purpose projects is an important part of the resource mix of Pick-Sloan firm power customers. The rural electric cooperatives, municipal electric utilities, and public power districts in the region

chose not to develop electric generation development but rather joined with the federal government in a partnership under the Flood Control Act of 1944.

Transfer of the Bureau's hydropower generation could seriously threaten the financial and operational viability of the federal power program. Federal firm power customers would be stunned to find that, after paying for 100% of the hydropower costs of a project (construction and operations and maintenance), and after paying hydropower's allocated share of joint costs, and after paying roughly 80% of the construction costs of Bureau irrigation projects, and after subsidizing power rates to Bureau irrigation projects that the hydropower generation is to be transferred to a third party. In fact, under the terms of the legislation, federal firm power customers would not even be eligible to purchase those assets, unless the project beneficiaries, i.e. the irrigation project, agreed.

Mid-West believes that Congress should provide specific direction to the Bureau to involve the Power Marketing Administration and their affected power customers as fully participating parties in any negotiations relating to federal hydropower facilities and operations at Bureau multi-purpose projects. Further, Mid-West suggests that the Power Marketing Administrations and their customers should be consulted while criteria that provide a clear road map on how to treat an enormously complicated and sensitive issue are developed.

Thank you for the opportunity to provide written testimony to the Committee on these important issues. We stand ready to respond to any questions.

STATEMENT OF WALTER J. BISHOP, GENERAL MANAGER, CONTRA COSTA WATER DISTRICT

The Contra Costa Water District (CCWD) appreciates the opportunity to submit testimony in support of S. 3798 introduced by Senator Dianne Feinstein with a request that it be amended to include an additional provision to address an issue associated with O&M costs for the Folsom South Canal, the Freeport Project and related Central Valley Project (CVP) facilities. The language of S. 3798 regarding the deferral of capital costs on the Folsom South Canal addresses only part of the inequitable allocation of costs associated with the operation of this facility. While the bill appropriately deals with relieving East Bay Municipal Utility District (EBMUD), Sacramento Municipal Utility District (SMUD) and Santa Clara Valley Water District (SCVWD) of capital costs for the Folsom South Canal, it does not deal with the allocation of annual Operations and Maintenance (O&M) costs for EBMUD, which are now being paid by other Central Valley Project Municipal & Industrial (M&I) contractors.

This was an important issue in the CCWD/EBMUD Freeport Settlement Agreement. Specifically, the settlement agreement between the Freeport partners and CCWD in Paragraph 18 states the following:

> "18. The parties will work together immediately after execution of this Settlement Agreement on Federal Legislation to:
>
> A. Increase Folsom South Canal Deferred Use to reflect actual municipal and industrial (M&I) use and capacity needs (similar to Sly Park and Sugar Pine). Revise M&I conveyance cost pool to realign cost to reflect repayment obligation for contractors on the basis of percentage of individual facility use.
>
> B. Revise M&I conveyance cost pool to realign cost to reflect repayment obligation for contractors on the basis of percentage of individual facility use.
>
> C. Include the concept of a "stand-by" charge in the current evaluation and update of the Interim M&I Rate Policy."

We are disappointed that all three of the agreed to cost allocation issues associated with the Freeport Agreement are not addressed by this legislation. It has been estimated that without the implementation of an O&M stand-by charge assessed to the sponsors of the Freeport Project, over the term of the current contract other CVP M&I contractors will be unfairly assessed over $25 million in Folsom South Canal and related CVP facilities O&M charges.

In an effort to constructively address CCWD's concerns consistent with the settlement agreement and enable our District to actively support the bill, we respectfully provide the following specific amendment language and request that it be considered for inclusion in the bill at markup:

> The Secretary of the Interior shall establish a "stand-by" charge for the East Bay Municipal Utility District consistent with the Settlement and General Release Agreement between Contra Costa Water District and Free-

port Regional Water Authority, East Bay Municipal Utility District, Sacramento County Water Agency executed in January 2004. The "stand-by" charge shall contribute toward the annual operations and maintenance expenditures of the Central Valley Project allocated to the Central Valley Project municipal and industrial water contractors for repayment. The "stand-by" charge shall be implemented in the 2008 Central Valley Project rate year beginning March 1, 2008.

We believe that the inclusion of this language in federal legislation will bring to a conclusion the successful implementation of the Freeport settlement agreement. We have reviewed the Freeport settlement agreement and have been unable to identify any term or condition that is either not already completed, or near completed, except for the assurances described in Paragraph 18 (A-C). In fact, after the history of more than six years of conflict on negotiating resolution to the litigation on the water supply and water quality impacts of the Freeport Project, implementing the settlement agreement to date has been a model of interagency cooperation. Our respective Districts have completed the design of the Mokelumne pipeline and Los Vaqueros Pipeline Intertie Project and awarded the construction contract to complete that connection. The property rights necessary for the Intertie Project have been exchanged, the operations and maintenance agreement has been developed and is near completion. With the passage of legislation which addresses all three of the outstanding cost allocation issues raised in the Freeport Settlement Agreement, all components of the agreement will have been successfully accomplished.

Thank you.

STATEMENT OF TAGE I. FLINT, GENERAL MANAGER AND CEO, WEBER BASIN WATER CONSERVANCY DISTRICT

The Weber Basin Water Conservancy District (District) appreciates this opportunity to present written testimony in support of S. 1811 to authorize a feasibility study to enlarge the Arthur V. Watkins dam. The District was created in 1950 to serve as the local sponsor to operate, maintain and repay the U.S. Bureau of Reclamation's (USBR) Weber Basin Project (Project). The District is a regional water-supply agency, which develops and supplies both urban and agriculture water to lands and municipalities within Weber Davis, Morgan, Summit and part of Box Elder Counties. These areas are experiencing explosive growth rates. Utah as a whole grew nearly 30 percent in the last decade. Some urban areas are growing at a rate of double digits per year. Utah, being the second driest state in the nation, with an average annual precipitation of only 13 inches per year, faces unique challenges with inadequate existing water supplies compounded with high growth rates and widely varying annual precipitation.

The USBR has prepared an assessment of where existing water supplies are likely to be inadequate to meet water demands for farms, ranches, cities, recreation and the environment over the next 25 years. The greater Wasatch Front areas (including Davis, Summit and Weber Counties) were identified by the USBR as to where the next crisis over water may occur. This conflict potential was identified as "highly likely", the highest potential on the scale.

The Arthur V. Watkins Dam, Willard Bay Reservoir, (Willard Bay) a major Project feature, was constructed in four planned phases. The first three phases were constructed between 1957 and 1964 and the fourth phase occurred between 1989 and 1990. Willard Bay is a vital water source for the Project. It stores and regulates winter power releases, surplus high flows originating below the upstream reservoirs, upstream spills, fish releases, and return flow from higher diversions. These flows are diverted at the Slaterville Diversion Dam built on the Weber River, and travel through the Willard gravity canal to Willard Bay.

Willard Bay is a multiple use reservoir providing water for: a) irrigation of approximately 190,000 acres of project lands, b) municipal and industrial water for a growing population of over 500,000 people, c) recreation; Willard Bay has one of the very highest use rates for recreation in the state of Utah, and d) fish and wildlife including the Harold S. Crane and Ogden Bay Water Fowl Management Areas.

Currently, the Willard Bay water rights (Utah Water Right Number 35-831) are approved at 250,000 Acre Feet per year. However, Willard Bay was constructed to capture and store only 215,000 Acre Feet. The difference of 35,000 Acre Feet could be stored and utilized in an enlarged Willard Bay. Additional storage capacity is needed to utilize the full Willard Bay water right. In addition, since the Weber Basin Project has already received Warren Act Authority to store non project water in an enlarged Willard Bay facility to better manage and coordinate water deliv-

eries. Because of the large surface area of the reservoir, the additional storage capacity can be achieved by adding just a few feet to the height of the dam.

The most recent drought cycle demonstrated the absolute reliance the District has on Willard Bay water to bridge between prolonged drought cycles. In each of the last five drought years, Willard Bay levels were lowered and used. In 2004, the water level was so low that extensive dredging was required to access and pump practically all the stored water. The reservoir was drawn down to only 10 percent of its capacity.

In order to continue serving water to the growing population of the District and to help bridge the certain reality of future droughts, additional stored water in Willard Bay is vital. A study is recommended to investigate the feasibility of enlarging Willard Bay, Utah to provide additional water for the Project to fulfill the purposes for which the Project was authorized.

○