

# H.R. 2202 and H.R. 3223

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## LEGISLATIVE HEARING

BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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**LEGISLATIVE HEARING ON H.R. 2202, TO CONVEY THE LOWER YELLOWSTONE IRRIGATION PROJECT, THE SAVAGE UNIT OF THE PICK-SLOAN MISSOURI BASIN PROGRAM, AND THE INTAKE IRRIGATION PROJECT TO THE PERTINENT IRRIGATION DISTRICTS; AND H.R. 3223, TO AUTHORIZE THE SECRETARY OF THE INTERIOR, THROUGH THE BUREAU OF RECLAMATION, TO CONSTRUCT THE JICARILLA APACHE NATION MUNICIPAL WATER DELIVERY AND WASTEWATER COLLECTION SYSTEMS IN THE STATE OF NEW MEXICO, AND FOR OTHER PURPOSES.**

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**Wednesday, June 5, 2002  
U.S. House of Representatives  
Subcommittee on Water and Power  
Committee on Resources  
Washington, DC**

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The Subcommittee met, pursuant to notice, at 2:06 p.m., in room 1334, Longworth House Office Building, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

**STATEMENT OF THE HON. KEN CALVERT, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. CALVERT. The Subcommittee on Water and Power will come to order again. The Subcommittee meets today to hear testimony on two bills: H.R. 2202, to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project of the pertinent irrigation districts; and H.R. 3223, to authorize the Secretary of Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes.

Under Rule 4(b) of the Committee Rules, any oral opening statements at a hearing are limited to the Chairman and the Ranking Minority Member. If other members have statements, they can be included in the hearing record under unanimous consent.

The subject of Federal facilities' title transfer has been of particular interest for this Committee and others throughout the West. Title transfer legislation not only represents a concerted effort to help shrink the Federal Government, but also transfer facilities into the hands of those who can more efficiently operate and maintain them.

In early 1995, the Department of Interior announced that the Bureau of Reclamation would transfer title to a significant number of facilities to State and local Governments. Since that time, reclamation officials have been working through a self-developed process to implement that concept. Over 10 title transfer bills have been signed into law since the commencement of this process. This program remains a high priority within the Subcommittee on Water and Power and something must be found to facilitate these transfers.

H.R. 2202 directs the Secretary of Interior to convey the Lower Yellowstone Irrigation District Nos. 1 and 2 to Dawson and Richland Counties in the State of Montana. This legislation will also convey the Savage Unit and the Intake Irrigation Project to their respective irrigation districts upon payment of the district's share of construction costs for these projects. Although ownership of the project will change under this legislation, the bill still would require the Secretary to continue to provide power at a subsidized cost for the pumping operations.

Although unrelated, the next bill we will hear today is very important, as it deals with delivering safe drinking water to people in need. While most of us take running water in our homes for granted, there are many areas in rural portions of the United States that do not have access to indoor plumbing or water supplies that meet safe drinking water standards.

One example of this is found on the Jicarilla Apache Reservation in New Mexico. The existing piecemeal municipal water system on the Jicarilla Apache Reservation, which is owned by the Bureau of Indian Affairs, has deteriorated over the years due to a lack of capital improvements and maintenance.

Mr. CALVERT. H.R. 3223 will authorize the Secretary of Interior, through the Bureau of Reclamation, to work with Jicarilla Apache Nation to modernize the water delivery and wastewater collection infrastructures within the reservation. After construction of the project is finished, the Jicarilla Apache Nation will assume the annual operation, maintenance and replacement costs of this project.

I certainly look forward to the witnesses that are here today.

[The prepared statement of Mr. Calvert follows:]

**Statement of The Honorable Ken Calvert, a Representative in Congress  
from the State of California**

The subject of Federal facilities transfer has been of particular interest for this Committee and others throughout the west. Title transfer legislation not only represents a concerted effort to help shrink the Federal Government, but it also transfers facilities into the hands of those who can more efficiently operate and maintain them. Although H.R. 2202 is the first bill of its kind in the 107th Congress, it is just one bill in a long line of title-transfer legislation that has been very successful in accomplishing its goals.

In early 1995, the Department of the Interior announced that Reclamation would transfer responsibility for a significant number of facilities to state and local government. Since that time, Reclamation officials have been working through a self-

developed process to implement that concept. Over ten title transfer bills have been signed into law since the commencement of the Department of Interior's process. This program remains a high priority within Subcommittee on Water and Power and expeditious steps must be found to facilitate these transfers.

Although unrelated, the next bill is very important as it deals with delivering safe drinking water to people in need. While most of us take running water in our homes for granted, there are many areas in rural portions of the U.S. that do not even have access to indoor plumbing or water supplies that meet safe drinking water standards. Large areas within the Jicarilla Apache reservation provide striking examples of these unsanitary conditions. The Federally-owned, piecemeal municipal water system on the Jicarilla Apache Reservation has deteriorated over the years due to lack of capital improvements and maintenance. This deterioration has led the wastewater system and sewage lagoons to operate at over 100% capacity during the summer months and over 500% capacity during the winter months releasing pollution into the groundwater and into the Amargo Creek.

H.R. 3223 will authorize the Secretary of the Interior, through the Bureau of Reclamation, to work with the Jicarilla Apache Nation to modernize the water delivery and wastewater collection infrastructures within the Reservation. After the Bureau completes the project, the Jicarilla Apache Nation will assume the annual operation, maintenance, and replacement costs of this project.

I look forward to hearing from the witnesses.

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Mr. CALVERT. Now I would recognize the Ranking Minority Member or someone in his stead for their statement. We will have some other statements here shortly, so I will leave it at that.

I would like to introduce the gentleman from Montana, Mr. Rehberg, the sponsor of H.R. 2202, and the gentleman, Mr. Udall, the sponsor of H.R. 3223.

At this time, I would like to ask unanimous consent that Congressman Rehberg and Congressman Udall be permitted to sit at the dais. Without objection, so ordered.

[The prepared statement of Mr. Rehberg follows:]

**Statement of The Honorable Dennis Rehberg, a Representative in Congress from the State of Montana**

Thank you Chairman Calvert, for holding this hearing today. I am also grateful to the witnesses for joining us today to discuss the Lower Yellowstone Irrigation Project. I look forward to hearing your testimonies.

As you will hear, the Lower Yellowstone Irrigation Projects' construction began in 1905; by 1946 over 50,000 acres of farmland were irrigated under the projects. Total construction cost was over \$4 million dollars, and by 1979 the water users had completed payments. Lower Yellowstone farms currently cover acreage exceeding 56,000 and yearly provide over \$20 million dollars of stable revenue for the area.

Over twenty years have passed since the last payment was made to the Bureau of Reclamation. Today environmental businesses streamlining is essential for success. This also holds true for irrigation projects. Currently, paperwork and overlapping bureaucracy are overwhelming the irrigation facilities. In spite of technical opposition, this title transfer has been encouraged by B.O.R.'s transfer mission statement, which reads, "Transfer should occur for projects that are efficiently and effectively managed by non-Federal entities."

For the last six years over 500 Eastern Montana and Western North Dakota farms have been working with the Bureau of Reclamation toward this title transfer. The B.O.R.'s work is complete and we have the ability to reach an agreement that is mutually beneficial to all parties. The irrigation projects will still operate under state law, but will eliminate an unnecessary level of bureaucracy, while the Bureau of Reclamation will shed the oversight responsibility of an efficiently run project.

Mr. Chairman, Jerry Nypen, Director of Lower Yellowstone, will also be submitting additional endorsements for the transfer of Lower Yellowstone Irrigation Projects. These include endorsements from: Montana Governor Judy Martz, Lower Yellowstone REA, Montana Water Resources Association, Richland County Commissioners, Richland Economic Development, Upper Missouri Water Association, and the Sidney Area Chamber of Commerce and Agriculture.

Again, Mr. Chairman, I thank you for holding this hearing today.

[The prepared statement of Mr. Tom Udall follows:]

**Statement of The Honorable Tom Udall, a Representative in Congress from the State of New Mexico**

I appreciate the opportunity to speak to the Committee on my proposal that will improve the quality of safe and reliable municipal water and wastewater system to the Jicarilla Apache Nation.

You will soon receive testimony from the President of the Jicarilla Nation who will discuss the importance of this project as well as the discussions she has had with the Bureau of Reclamation and other stakeholders involved in this very important project. I would like to thank all the members who are cosponsors and of this important legislation.

Let me begin by saying that the passage of this legislation by our Committee and eventually the House of Representatives is paramount in addressing the critical public health issues for the tribe and north central New Mexico. For over two decades the current system, the Dulce municipal water system, has deteriorated due to a lack of funds and capital improvements made by the Federal trustee.

Mr. Chairman, the Dulce municipal water system has not been in compliance with Federal safe drinking water standards. Nor compliance with the National Pollutant Discharge standards. In fact BIA has been fined for its non-compliance several times. In addition, the EPA has also listed the water system on the reservation as the third worst system in EPA Region 6. The failure by the Federal government in its trust obligation over the years has led to these terrible conditions and is the reason we are here today.

During the 106th Congress legislation was enacted (P.L. 106-243) authorizing the Bureau of Reclamation to conduct a feasibility study on rehabilitating the Federally owned water distribution and wastewater system on the Reservation. The legislation also directed the Secretary of Interior to report the findings and recommendations to the Congress within one year. President Vigil-Muniz will touch on those findings in a moment and you will see the need for action on the municipal water and wastewater systems. You will also see that the Jicarilla Nation has invested over \$14.6 million in their efforts to improve the quality of its municipal water and wastewater system. The Jicarilla's investment of over \$14.6 million is roughly 25% over the total project cost. Now is the time for the Federal government to participate.

Let me be clear when I say that the lack of investment and rehabilitation in the municipal water system constructed by the BIA in the 1920's and expanded in the 1960's has led to the delivery of inadequate water to the residents of the reservation and surrounding communities. Until this legislation is approved and project is completed the future of tribal development including additional housing, schools, medical facilities, and elderly care facilities, cannot be built.

We have a Federal obligation and responsibility to improve the deficient Federally owned water system. I appreciate your support Mr. Chairman in allowing this hearing to take place today. At the completion of today's hearing I look forward to working with you and the Committee staff to prepare this legislation for consideration by our Committee and approval by the House.

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With that, I would like to introduce our first panel of witnesses. Our first panel is the Honorable John W. Keys, Commissioner, Bureau of Reclamation, U.S. Department of Interior.

Mr. Keys, if you would like to come forward.

Let me remind the witnesses that we're under Committee Rules, and please limit your opening remarks to 5 minutes, and certainly your entire opening statement will be included in the record. It, certainly, will allow us to have some questions.

Again, we welcome our Commissioner, and you are doing a fine job, and you are recognized for your opening statement.

**STATEMENT OF JOHN W. KEYS, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.**

Mr. KEYS. Mr. Chairman, it is a pleasure to be here. Would you like me to do both statements at the same time or would you like to do one and then go to the other?

Mr. CALVERT. If there is no objection, let us do both at the same time to save some time.

Thank you.

Mr. KEYS. Mr. Chairman, it is a pleasure to be here and give the Administration's views on H.R. 2202, first, the Lower Yellowstone Reclamation Project Conveyance Act. I would ask, certainly, that my full statement be made part of the record for this hearing.

Mr. CALVERT. Without objection, so ordered.

Mr. KEYS. Mr. Chairman, H.R. 2202 directs the Secretary of the Interior to transfer title of the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the respective irrigation districts.

In October 1999 and March of 2000, Reclamation testified before Congress on proposals somewhat similar to H.R. 2202. In both cases, Reclamation strongly opposed the legislation because of issues with the delivery of Pick-Sloan Missouri Basin Power to a non-Federal project, and the fish and wildlife mitigation involved and a number of other unresolved issues.

While some progress has been made on a few of these issues significant concerns remain. As presently drafted, the Department of Interior opposes passage of H.R. 2202. I would like to discuss a few of the more important issues with you at this time.

Section 4(2) of H.R. 2202 requires that the Secretary continue to provide the districts Pick-Sloan Missouri Basin Project Use Power at rates established for districts with Federal contracts, even though the facilities would no longer be owned by the Federal Government after transfer.

Reclamation is very concerned about the action and the precedent of providing non-Federal irrigation projects with subsidized electricity intended for the use by Federal projects. While the legislation proposes to eliminate the adjustment to the rate based upon ability to pay, the rate to be paid would still be subsidized by the preference power customers, since it is significantly less than wholesale Pick-Sloan Missouri Basin Project preference customer rates.

This discrepancy is amplified when you consider wheeled cost. The 1944 Flood Control Act requires that that power for project use be delivered directly to the major pumping plants. This project use power is delivered over non-Federal transmission lines, and the Federal Government currently has to pay the wheeling cost for the deliveries.

For both the Lower Yellowstone and Savage Irrigation Districts, the cost of wheeling exceeds the cost of the energy. Payments for both of these deliveries are made by the Western Area Power Administration. The costs are then included in the Pick-Sloan Missouri Basin Project power rate which results in preference power

customers subsidizing the wheeling costs. We are extremely concerned about this use of Federal power.

There are significant fishery issues that must also be addressed in the Yellowstone River before title transfer can occur. The Lower Yellowstone River has been identified as a priority recovery area for pallid sturgeon, and the Intake Diversion Dam has been identified by the State of Montana as a barrier to the sturgeon's migration and spawning habitat. The State of Montana is also concerned about protection of the sauger, another native fish species.

Section 5 of H.R. 2202 would require Interior to provide fish protection facilities or streams to prevent fish from entering the project's main canal. It would also require the Secretary to provide a monitoring program for a minimum of 2 years after construction. We recommend that this continued Federal oversight and obligation be deleted from the legislation, since one of the benefits of title transfer is to relieve the United States of both liability and management responsibility of the facilities after the title is transferred.

One other issue of concern is the price and valuation of withdrawn lands that would be transferred. The price tag proposed, which is the "value of the remaining repayment obligation for the Savage Irrigation District," does not reflect a complete analysis of project facilities' valuation. The withdrawn lands are not included in the allocation of costs that are paid by the districts under the contracts.

Mr. Chairman, there are several other technical issues that must be addressed on the bill, and we would certainly be glad to work with staff to make the necessary corrections for those technicalities.

That concludes the statement on H.R. 2202.

[The prepared statement of Mr. Keys on H.R. 2202 follows:]

**Statement of John W. Keys, III, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 2202**

Mr. Chairman, my name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on H.R. 2202, the Lower Yellowstone Reclamation Project Conveyance Act.

*Status and Update on Title Transfer Efforts*

Before I get to our comments on H.R. 2202, I would like to give the Subcommittee an update on Reclamation's title transfer activities.

Since 1996, the Bureau of Reclamation has transferred title to twelve (12) projects or parts of projects—pursuant to various Acts of Congress. By the end of the 106th Congress, Reclamation was given authority to transfer title to ten (10) projects or parts of projects. Since each project is unique, each of the laws enacted by Congress has different terms and each requires that different actions—such as the completion of the process under the National Environmental Policy Act (NEPA), or agreements with State and local agencies over recreation or cultural resources management—be taken prior to transfer. I am pleased to say that Reclamation has been moving very diligently to implement each of these laws. Since May 2001, Reclamation has transferred five (5) projects, or parts of projects, all of which were authorized by the end of the 106th Congress.

*These are:*

- 1) Clear Creek Distribution System of the Central Valley Project (May 31, 2001)
- 2) Palmetto Bend Project in Texas (June 26, 2001)
- 3) Griffith Project in Nevada (July 3, 2001)
- 4) Nampa Meridian facilities of the Boise Project in Idaho (July 13, 2001)
- 5) Carlsbad Project lands and facilities in New Mexico (July 18, 2001).

It is important to note that each of these transfers were completed on time or ahead of schedule and all within the budgets that were estimated when we started.

I am very pleased with the effort and priority that our staff has given to completing these transfers in a timely and cost effective way. I would also like to commend the hard work and cooperation we have received from the water districts and entities who have been the recipients of these facilities as well as the other stakeholders who have been involved.

In each of these successful cases above, a great deal of the work necessary to complete the transfer was begun often by the receiving entities in cooperation with Reclamation prior to the legislation's enactment into law. This gave us an important head start and allowed us to recognize and address potential problems in the legislation. In other cases where title has not yet been transferred, limited work on environmental compliance and consultation began prior to enactment. In many of those situations, some difficult and sometimes unforeseen issues arose or existed and must be worked through. We are, however, committed to doing that in a timely fashion.

While we have made a great deal of progress and have had much success with title transfer, I remain concerned that the process for completing title transfers takes too long. As such, we have begun a comprehensive review of the Framework the document that guides our title transfer efforts as well as the transfer process, to find ways to make it more efficient and cost effective. We plan to solicit the views and ideas of our own staff who have been involved in the various transfers, our water user customers and other stakeholders. We also plan to seek the views and ideas of the members and staff of this Committee and the Congress who have been involved. The goal of this effort is to help us to see what worked well, what should be changed and how things might be improved.

*H.R. 2202—Lower Yellowstone Reclamation Project Conveyance Act*

At this point Mr. Chairman, I would like to turn to H.R. 2202, the Lower Yellowstone Reclamation Project Conveyance Act which directs the Secretary of the Interior to transfer title of the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program (PSMBP), and the Intake Irrigation Project to the respective irrigation districts.

In October 1999, and again in March 2000, Reclamation testified before Congress on proposals somewhat similar to H.R. 2202. In both cases, Reclamation strongly opposed the legislation as premature since significant issues related to the delivery of Pick Sloan Missouri Basin Program power, fish and wildlife mitigation and a number of other issues remained unresolved. Since that time, Reclamation has worked closely with the districts, the State of Montana and the U.S. Fish and Wildlife Service on a number of these issues. Some progress has been made and some changes have been incorporated into the legislation to reflect that progress. Unfortunately however, significant concerns remain. Therefore, as presently drafted, the Department of the Interior opposes H.R. 2202.

I would like to address, for the Subcommittee, the issues and concerns that have been raised and to identify a number of technical issues for the Committee's consideration.

Delivery of Project Use Power After Transfer: Section 4(c) of H.R. 2202 requires that the Secretary continue to provide the districts with Pick Sloan Missouri Basin Project Use Power at rates established for entities with Federal contracts for irrigation pumping after transfer, even though the facilities are no longer owned by the Federal government. Reclamation, as well as many of the Pick Sloan system preference power customers are very concerned about the efficacy of this action as well as the precedent of providing non-Federal irrigation projects with subsidized electricity intended for use by the beneficiaries of Federal projects. While the legislation proposes to eliminate the adjustment to the rate based upon their ability-to-pay, as drafted the rate paid would still be subsidized by the preference power customers, as it is significantly less than the wholesale PSMBP preference customer rates. The discrepancy is amplified especially when wheeling costs are considered. The 1944 Flood Control Act requires that PSMBP deliver project use power directly to the major project pumping plants. This has been interpreted to mean that when Federal transmission lines are not available to the major pumping plants and the project use power is wheeled to the major pumping plants over non-Federal transmission lines, the PSMBP, through the power repayment study is responsible for these "in lieu" costs. The cost of this wheeling significantly increased with deregulation of the wholesale power market. Presently, the Federal Government is paying wheeling costs to the Lower Yellowstone Rural Electric Association, the rural electric cooperative serving the Lower Yellowstone and Savage Irrigation Districts. For both the Lower Yellowstone Irrigation District and Savage Irrigation District the cost of wheeling exceeds the cost of the energy. The minimum annual wheeling cost for Lower Yellowstone Irrigation District is \$42,600 and the minimum annual wheeling

cost for Savage Irrigation District is \$76,600. Both of these payments are made by Western Area Power Administration and the costs are then incorporated into the PSMBP Power Repayment Study. This results in the preference power customers subsidizing most of the wheeling costs. While I appreciate the districts' efforts to move this forward, serious concerns remain.

**Yellowstone Fisheries Protection:** There are significant fishery issues that need to be addressed in this basin before title transfer can occur. The lower Yellowstone River has been identified by the Fish and Wildlife Service's Recovery Plan as a priority recovery area for pallid sturgeon, and the Intake Diversion Dam has been identified as a barrier to pallid sturgeon migration and spawning habitat. In addition, the State of Montana is concerned about protection of the sauger, a native fish species.

Section 5 of H.R. 2202 would require the Secretary to provide fish protection devices to prevent fish from entering the project's main canal. It would also require the Secretary to establish a monitoring plan for a minimum of two years following construction. We recommend that this continued Federal oversight and obligation be deleted from the legislation since one of the benefits of title transfer is to relieve the United States of both liability and management responsibility for the facilities.

**Price and Valuation:** The Administration is concerned that the payment for the lands and facilities proposed in H.R. 2202 does not protect the financial interests of the taxpayers of the United States who made substantial investment in this project. The price tag proposed, which is the "value of the remaining repayment obligation for the Savage Irrigation District," does not reflect a complete analysis of the valuation for the Lower Yellowstone Project. In particular, it must consider the value of the withdrawn lands, which would be transferred under H.R. 2202, but are not included in the allocation of costs that are paid by the districts in their contracts.

#### *Technical Issues*

In addition to the items raised above, we have also identified several technical issues that should be addressed:

**Mineral Rights:** It is unclear whether the legislation, as drafted, intends for any associated mineral rights to be transferred. If mineral rights are to be transferred, an analysis of the value of that mineral right would need to be prepared and paid to protect the financial interest of the taxpayers of the United States. In most cases, especially in those situations where the acquisition of mineral rights were not included when the project lands were acquired, the mineral rights remain in Federal ownership. If that is the intent, then we suggest the following addition to Section 3(a):

"Conveyance of all lands herein described shall be subject to a reservation by the United States reserving all minerals of any nature whatsoever, excluding sand and gravel, and subject to oil, gas, and other mineral rights heretofore reserved of record by or in favor of third parties. Conveyance of the lands herein described is also subject to permits, licenses, leases, rights-of-use, or rights-of-way of record outstanding in third parties on, over, or across said lands or facilities."

**Clarify Existing Ownership in Section 3(a)(2):** This sentence needs to be clarified to make clear that it is the Federally owned project lands that are being conveyed by this subsection. We suggest the following clarification:

"...convey to the respective irrigation districts by quitclaim deed all fee ownership lands, easements, and rights-of-way the United States possess which are used in connection with the projects."

**Documents:** Section 3(c) requires that all original documents associated with the Project be provided to the districts. It is the longstanding policy of the United States that all original documents are the property of the United States and should remain so after title transfer. It is appropriate, however, that all relevant records be made available to the district to reproduce. As such, we suggest that Section 3(c) be modified to read as follows:

"The Secretary shall make available to the irrigation districts all patents, land deeds, court proceedings, water right abstracts, contracts, special use permits, licenses, permits, and any other documents of the projects executed on behalf of the Secretary. The irrigation districts may copy such records at their sole time and expense, however, all original project records will be retained by the United States."

**Withdrawal Revocation Section 3(b)(3)(B):** After the first semicolon, the word Section was omitted. The clause should read:

"and lot 7 of Sec. 28, T.152N., R.104W.;"

Payment as Condition of Transfer: Sections 3(d)(1) and 3(d)(2) need to be made clear that payments by the Savage Irrigation District and the Pick Sloan Missouri Basin Program beneficiaries are a condition of transfer. As drafted, this section requires that the Secretary accept the payment, but there is no clear linkage between the receipt of payment and transfer of these facilities. In both 3(d)(1) and 3(d)(2), the legislation should be modified to read

“As a condition of transfer, the Secretary shall receive...”

Payments To Be Made: Section 3(d)(1) and 3(d)(2) authorize that payments be made to fulfill the contractual obligations of the District and of the PSMBP power beneficiaries respectively. It is our understanding that they would repay the present value, rather than the current value, which have potentially different meanings. As such, we suggest that the term present value be substituted for the term current value in both instances.

Power Assistance Payments: The dollar amounts of the aid-to-irrigation payment obligation reflected in H.R. 2202 should be reduced from \$667,702 to \$615,693 to reflect the current amount of aid-to-irrigation scheduled for the Savage Unit.

Contract Citation: The contract identified in Section 3(d)(1) has expired and has not been renewed. Savage Irrigation District has been operating under an interim contracts. We suggest that Section 3(d)(1) be revised to read:

“As a condition of transfer, the Secretary shall receive an amount from the Savage Irrigation District equal to the present value of the remaining water supply repayment obligation of \$52,680 as full payment...”

Power Customer Payment: It is our understanding that the Savage Irrigation District has not reached agreement with Western Area Power Administration’s Firm Power customers on payment of aid-to-irrigation upon title transfer. That should probably be completed before this legislation is enacted and that agreement should be reflected in the legislation. We also suggest that H.R. 2202 be modified to more accurately reflect how the aid-to-irrigation would be repaid and that this payment reflects the full and complete aid-to-irrigation assistance for this unit. This will also make H.R. 2202 consistent with previously adopted title transfer legislation:

“Out of the receipts from the sale of power from the Pick-Sloan Missouri Basin Program collected by the Western Area Power Administration and deposited into the Reclamation Fund of the U.S. Treasury in the fiscal year in which this Act becomes law, the amount established by this Act as payment for aid-to-irrigation shall be treated as full and complete payment by the power customers of all aid to irrigation associated with the facilities of the Savage Unit.”

Conservation Easement: It is our understanding that there is agreement between the parties on the conservation easement referenced in Section 4(b). Therefore, we suggest inserting “has been” and deleting “as” in the last paragraph as follows: has been mutually agreed upon by...”

In closing, let me say that Reclamation continues to work with the districts and the states of Montana and North Dakota on this title transfer. The major issues of concern related to project power and fish screens are difficult ones. But, we are interested in continuing our work with this Committee, the districts, Congressman Rehberg and the Montana delegation to see if creative solutions can be identified.

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

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Mr. KEYS. The other proposed legislation I would like to talk about today is H.R. 3223, the Jicarilla Apache Reservation Municipal Water System Act.

The Department supports efforts to secure a safe and reliable water supply system for the Jicarilla Apache Nation. We recognize that the existing water systems on the reservation at Dulce, New Mexico, are old, in bad repair, inadequately sized for the current population and do not always meet Clean Water Act standards. The Jicarilla Apache Nation has an urgent and immediate need for additional housing, schools, elderly housing, medical and other facilities which cannot be built until adequate municipal water supply is available.

I would emphasize, and emphasize heavily, that Reclamation wants to work with the Jicarilla Apache Nation to help solve the

problem. However, we cannot support H.R. 3223, as it is currently written, for the following reasons:

H.R. 3223, as introduced, would require 100-percent Federal funding for the estimated \$45 million in remaining construction costs. We feel that a more equitable level of cost sharing with the benefiting entity is desirable. H.R. 3223 places unnecessary restraints on the Secretary of Interior's flexibility to manage the budget and would place enormous strain on the existing funding available to the Bureau of Reclamation.

The ultimate responsibility for long-term operation, maintenance and replacement of project facilities is not clear, with potentially conflicting requirements presented in various sections of the bill. The Department believes that this responsibility and that of obtaining rights of way should be clearly and explicitly defined within this bill. We believe these responsibilities should be assigned to the Jicarilla Apache Nation. This recommendation would be consistent with the expressed desire by the Nation to own, operate, and maintain the new facilities.

Mr. Chairman, the report defined in Section 3(5) of H.R. 3223 has not yet been approved by the Office of Management and Budget and should, therefore, be considered only as supporting documentation. We would be happy to work with the sponsor and the Committee to address these concerns.

Mr. Chairman, that concludes my oral statement on both of these bills, and I would certainly respond to any questions that you or your panel may have.

[The prepared statement of Mr. Keys on H.R. 3223 follows:]

**Statement of John W. Keys, III, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 3223**

Mr. Chairman and members of the Subcommittee, my name is John Keys. I am Commissioner of the Bureau of Reclamation. Thank you for the opportunity to appear today to present the Department of the Interior's views on H.R. 3223, the Jicarilla Apache Reservation Municipal Water System Act.

The Department supports efforts to secure a safe and reliable water supply system for the Jicarilla Apache Nation. We recognize that the existing water systems on the reservation at Dulce, New Mexico, are old, in bad repair, inadequately sized for the current population, and do not always meet Clean Water Act standards. The Jicarilla Apache Nation has an urgent and immediate need for additional housing, schools, elderly housing, medical and other facilities, which cannot be built until adequate municipal water systems are available. However, we cannot support H.R. 3223 as it is currently written for the following reasons:

H.R. 3223, as introduced, would require 100 percent Federal funding for the estimated \$45 million in remaining construction costs. A more equitable level of cost sharing with the non-tribal beneficiaries is necessary, in accordance with current Reclamation policy. H.R. 3223 places unnecessary restraints on the Secretary of the Interior's flexibility to manage the budget, and would place an enormous strain on the existing funding.

H.R. 3223 is unclear regarding the roles and responsibilities for the planning, design, and construction of the Project. We recommend that the Secretary be authorized to design and construct the Project by entering into agreements and contracts as requested by the Nation in accordance with the Indian Self-Determination Act (Public Law 93-638; 25 USC 450).

The ultimate responsibility for long-term operation, maintenance and replacement of project facilities is not clear, with potentially conflicting requirements presented in various sections of H.R. 3223. The Department believes that this responsibility, and that of obtaining rights-of-way, should be clearly and explicitly defined within this bill. We believe these responsibilities should be assigned to the Jicarilla Apache Nation. This recommendation would be consistent with the expressed desire by the Nation to own, operate, and maintain the new facilities.

The Administration is also concerned with language that authorizes Reclamation to participate in developing wastewater facilities, which is outside of Reclamation's normal mission and will divert resources from Reclamation's core programs.

The Administration is currently completing its review of the Report defined in Sec 3(5) of H.R. 3223, and will forward it to the sponsor and the Committee as soon as the review is complete.

Thank you again for the opportunity to comment on H.R. 3223. I would be happy to answer any questions the Subcommittee may have.

Mr. CALVERT. I thank the gentleman. I think I will start with Mr. Rehberg.

Mr. Rehberg, any questions?

Mr. REHBERG. Thank you, Mr. Chairman.

Did I mention I know John Thune, and he is a friend of mine. If I could get the same quick consideration of this bill as he got, I would move my legislation.

[Laughter.]

Mr. REHBERG. I am not going to wait for that. OK.

Thank you, Mr. Chairman, for holding this hearing today. I am also grateful to the witnesses for joining us today to discuss the Lower Yellowstone Irrigation Project. I look forward to hearing their testimony.

As you will hear, the Lower Yellowstone Irrigation Project's construction began in 1905. By 1946, over 50,000 acres of farmland were irrigated under the project. Total construction cost was over \$4 million and by 1979, the water users had completed payments. Lower Yellowstone farms currently cover acreage exceeding 56,000 acres and provide over \$20 million of stable revenue for the area.

Over 20 years have passed since the last payment was made to the Bureau of Reclamation. In business today, environmental streamlining is essential for any success. This also holds true for irrigation projects. Currently, paperwork and overlapping bureaucracy are overwhelming the irrigation facilities. In spite of the apparent opposition to the Bureau of Reclamation, this title transfer has been encouraged by the Bureau of Reclamation to transfer mission statements, which reads, "Transfers should occur for projects that are efficiently and effectively managed by non-Federal entities."

For the last 6 years, over 500 Eastern Montana and Western North Dakota farms have been working with Bureau of Reclamation toward this title transfer. The Bureau of Reclamation's work is complete and they now have the ability to reach an agreement that is mutually beneficial to all parties. Irrigation projects will still operate under State law, but will eliminate an unnecessary level of bureaucracy, while the Bureau of Reclamation will shed the oversight responsibility of an efficiently run project.

Mr. Chairman, Jerry Nypen, director of the Lower Yellowstone, will be submitting additional endorsements for the transfer of the Lower Yellowstone Irrigation Projects. These include endorsements from Governor Judy Martz, Lower Yellowstone REA, Montana Water Resources Association, the Richland County commissioners, Richland Economic Development, Upper Missouri River Water Association, and the Sidney Area Chamber of Commerce.

Again, Mr. Chairman, I thank you for allowing this hearing, and I yield back the balance of my time.

Mr. CALVERT. Mr. Udall?

Mr. UDALL OF NEW MEXICO. Thank you very much, Mr. Chairman. I appreciate the opportunity to speak to the Committee on my proposal today that will improve the quality of safe and reliable municipal water and wastewater to the Jicarilla Apache Nation.

You will soon receive testimony from the President of the Jicarilla Apache Nation, who will discuss the importance of this project, as well as the discussion she has had with the Bureau of Reclamation and other stakeholders involved in this very important project.

I would like to thank all of the members of the Committee who are cosponsors of this important legislation. I know Congressman J.D. Hayworth is here and others are also cosponsors on this.

Let me begin by saying that the passage of this legislation by our Committee and eventually the House of Representatives is paramount in terms of addressing the critical public health issues for the tribe and North Central New Mexico. For over two decades, the current system, the Dolce Municipal Water System, has deteriorated due to a lack of funds and capital improvements made by the Federal trustee.

Mr. Chairman, the Dolce Municipal Water System has not been in compliance with Federal Safe Water Drinking Standards, nor in compliance with the National Pollutant Discharge Standards. In fact, BIA has been fined for its noncompliance several times.

In addition, the EPA has also listed the water system on the reservation as the third-worst system in EPA Region VI. The failure by the Federal Government in its trust obligation over the years has led to these terrible conditions and is the reason we are here today.

During the 106th Congress, legislation was enacted, Public Law 106-243, authorizing the Bureau of Reclamation to conduct a feasibility study on rehabilitating the Federally owned water distribution and wastewater system on the reservation. The legislation also directed the Secretary of Interior to report the findings and recommendations to the Congress within 1 year.

President Vigil-Muniz will touch on those findings in a moment, and you will see the need for action on the municipal water and wastewater systems. You also see that the Jicarilla Apache Nation has invested over \$14.6 million in their efforts to improve the quality of its municipal water and wastewater treatment system.

The Jicarilla's investment of over \$14.6 million is over 25 percent of the total project cost. Now is the time for the Federal Government to participate. Let me be clear when I say that the lack of investment and rehabilitation in the municipal water system constructed by the BIA in the 1920's and expanded in the 1960's has led to the delivery of inadequate water to the residents of the reservation and surrounding communities.

Until this legislation is approved and the project is completed, the future of tribal development, including additional housing, schools, medical facilities and elderly care facilities cannot be built. We have a Federal obligation and responsibility to improve the deficient Federally owned water system.

I appreciate your support, Mr. Chairman, in allowing this hearing to take place today. At the completion of today's hearing, I look

forward to working with you, and the Committee's staff, and Mr. Keys, and the Administration to prepare this legislation for consideration by our Committee and approval by the House.

Thank you very much, Mr. Chairman.

Mr. CALVERT. Thank the gentleman.

Mr. Hayworth?

Mr. HAYWORTH. Mr. Chairman, I thank you.

I join with my colleague from New Mexico in wanting to work to solve this problem on the Jicarilla Apache Reservation. My friend from New Mexico outlined the reasons why we need to get this done. Sitting here in the comfort and prosperity of Washington, D.C., I think many of us lose sight of the crippling poverty and the lack of infrastructure that exists really across the width and breadth of Indian Country, from the Dakotas down through New Mexico, my own State of Arizona and beyond.

I wanted to follow-up, and Commissioner Keys, I thank you for being here, and perhaps I misunderstood your testimony, but I just want to get this straight. As my colleague from New Mexico pointed out, and I am very happy to amplify, we understand the Jicarilla Tribe has already invested close to 25 percent of the total cost of this project, some \$14.6 million, and yet, if I am not mistaken, Commissioner Keys, in your testimony you make the statement that the project would be, the way the bill is written now, 100-percent Federal funding. That seems to be a discrepancy. Were you describing something else there?

Mr. KEYS. Mr. Chairman, Mr. Hayworth, as the bill is written, it says it is a \$45-million project, and all of it comes from Federal funds. Perhaps if it was reworded to say that the total projects was \$59 million, we could take credit for that \$14 million that has already been spent as a cost share.

Mr. HAYWORTH. Well, Commissioner, I think we point out that what we want to do here is to work this out. We welcome the fact that you support the efforts for safe drinking water and that you are willing to work here, and also in your testimony you talked about the urgency of getting something done. And if it is really more proofreading than policy at stake here, then I think that is very promising. And I don't want to leave this hearing with a misimpression. In my estimation, and in hearing my friend from New Mexico, and in visiting with my friends, the Jicarilla Apaches, this is not an insurmountable problem, and we welcome the help of the Bureau to get this ironed out so we can move forward with the legislation.

Mr. KEYS. Mr. Chairman, Mr. Hayworth, I would emphasize again one of the statements I made in the oral, and that is that we want to work with the tribe in doing this project. We think that we have the design and construction management people that can work with the tribe, either us doing it or under self-determination that allows the tribe to do it. We think that we can do that as well or better than anyone else.

The issue of cost share on the capital cost is not as onerous as the one on the operation and maintenance cost. And certainly we can work with you on the capital cost. We would prefer not to have to pay operation and maintenance cost forever. In other words, we

feel that the entity that is benefiting should pay the operation and maintenance cost.

Mr. CALVERT. Well, again, Commissioner, I appreciate your attendance today and your willingness to work with us in this matter, and I look forward to the testimony of the president of this sovereign—

Mr. UDALL OF NEW MEXICO. Would the gentleman yield?

Mr. CALVERT. I will be happy to yield, Mr. Udall, just I yield back to Mr. Hayworth who will yield to Mr. Udall.

Mr. HAYWORTH. One quick question on this bill as we move forward, some flexibility here. I notice that Mr. Keys mentioned a couple of items. One of them was funding from Reclamation, and I am sure that one of the problems that we didn't get specific on is the amount of money that Reclamation has presently in their budget to spend on projects like this. We might work on some flexible language to look at other Federal funds possibly to help in construction of this project. So I just like of put that out, and we can work together to work on some ways we can get this done.

Mr. CALVERT. I thank the gentleman, and, again, I would yield to my friend from New Mexico.

Mr. UDALL OF NEW MEXICO. Thank you, Mr. Chairman, for your statement on that, and I appreciate very much the statement of the gentleman from Arizona and his interest in this important issue.

I hope that what I hear Mr. Keys saying is that these are problems we can work through. On the issue—my understanding on the issue of the operation and maintenance, the tribe is prepared to pay operation and maintenance, and I think you will hear that from the president. So I think we should—if that is the case, then I think we should take that off the table. And then we need to sort out, as my able colleague from Arizona said, this issue of the tribe has already put \$14.6 million into this project. So it is considered by them—and I think it is very legitimate to say this is a sharing project where a significant amount is made by the tribe and then the Federal Government is picking up a share of it also.

Mr. KEYS. Mr. Chairman, Mr. Udall, certainly we are going to work with you on the thing. There is some confusion in the bill. Section 4(c)(2) and 4(e) and 6(a)(2) that clouds the issue on operation and maintenance. If the tribe is willing to testify that they would pay that, certainly that makes our job a lot easier, and that is something that we would like to see.

Mr. UDALL OF NEW MEXICO. OK. But you don't see these as insurmountable problems?

Mr. KEYS. Mr. Chairman, Mr. Udall, I do not.

Mr. UDALL OF NEW MEXICO. OK. And you also mentioned about the study that has been done and you are going to complete your review of that and let us know how soon?

Mr. KEYS. The study itself is done. The report is in the review process. I would say we could have it to you in 30 to 60 days.

Mr. UDALL OF NEW MEXICO. OK. Thank you.

Thank you, Mr. Chairman, and I thank the gentleman for yielding.

Mr. CALVERT. I thank the gentleman.

Any other questions for Mr. Keys?

[No response.]

Mr. CALVERT. Thank you, Mr. Keys, once again. Have a pleasant day.

Mr. KEYS. Thank you.

Mr. CALVERT. You are excused.

Mr. CALVERT. Our second panel on H.R. 2202 is Jerry Nypen, manager of the Lower Yellowstone Irrigation Districts No. 1 and 2 in Montana, and Liz Birnbaum, the Director of Government Affairs, American Rivers, Washington, D.C.

Please take your seats, and, again, I would remind the witnesses we are under the 5-minute rule, and please limit your testimony to 5 minutes so we can have time for questions.

Also, if Claudia Vigil-Muniz would like to come forward, too, we will just have all three of you come up to the front panel. She, of course, is the president of the Apache Nation and will be testifying in support of H.R. 3223.

With that, first I will recognize Mr. Nypen to have your opening statement.

**STATEMENT OF JERRY NYPEN, MANAGER, LOWER  
YELLOWSTONE IRRIGATION PROJECTS, SIDNEY, MONTANA**

Mr. NYPEN. Thank you, Mr. Chairman and members of the Subcommittee. My name is Jerry Nypen, and I am the manager of four irrigation districts that are being considered for facility transfer in H.R. 2202. Thank you for this opportunity to testify.

We appreciate the support that this Subcommittee has given for the transfer of Bureau of Reclamation facilities to local public irrigation districts. I would like my comments to accompany my written testimony for the record. The projects' facilities for transfer involve water rights and diversion and distribution facilities for providing irrigation water to about 500 farms. But, more importantly, it provides a significant stable economy for parts of eastern Montana and western North Dakota. Our irrigation districts have successfully cared for the projects for decades, and it is important for us to emphasize the—

Mr. CALVERT. Let me interrupt the gentleman. Is your mike on? Or hold the mike closer to you. Pull it up closer to you.

Mr. NYPEN. I don't think it was on. Mr. Chairman, I can start over. Is that necessary?

Mr. CALVERT. No, that is not necessary. You go ahead.

Mr. NYPEN. I have a voice that doesn't carry at all, so I would—

Mr. CALVERT. The entire statement will be entered into the record without objection, so go ahead.

Mr. NYPEN. Our irrigation district has successfully cared for the projects for decades, and it is important for us to emphasize that the districts are very public in nature, organized and operated under strict statutes of State law. This facility transfer should not be interpreted as "privatization" or as transfer to private hands.

Why the facility transfer? To the irrigation districts, it is consistent with the Bureau's intent to transfer projects that are effectively managed by the Federal entities, the non-Federal entities. It fulfills the original contracts between the Bureau and the districts that state that congressional approval is necessary for transfer of title. It allows for local control so that the stability and integrity of the projects will be preserved in the future. It alleviates a sense

of nervousness that is created by an unnecessary layer of Government that can implement national policy for Federal works that can cripple projects such as ours.

Finally, it will reduce costs for the Bureau of Reclamation, the irrigation districts, and, consequently, the U.S. taxpayer.

There is concern that compliance with Federal laws will not be met. However, a memorandum of understanding was executed with the Bureau spelling out various principles and compliance procedures that are to be met, and the main features of this memorandum of understanding is the compliance with environmental laws, the Environmental Protection Act, the Historical Preservation Act, the Endangered Species Act, and the act of Congress that protects the safety from the standpoint of hazardous waste issue. We recognize these authorities and have worked closely with the various agencies to meet those requirements.

The most involved compliance issue is a Section ESA consultation process. This process is ongoing and parallel with the facility transfer process. Plans for fish protection devices, including fish passage and the fish screen device, are near complete. The districts are willing to operate and maintain these features, and we are working very closely with the Corps of Engineers and the Bureau of Reclamation. In fact, next month we have a value engineering study that will be held in conjunction with these structures.

There is concern for protection of species not listed or threatened at this time. It is interesting that the State and the Federal Government found healthy populations of many native species, 25 or more, as a matter of fact, in our irrigation area in spite of the fact that we have operated for 90 years. It would not be appropriate to deny the facility transfer because of the concern to protect these fish that are not endangered or not threatened.

The continuation of Federal power necessary to lift water to the projects has created complications. The Lower Yellowstone irrigation projects were constructed and are maintained because of pumping power delivery from another project, another Federal project, the Pick-Sloan Missouri Basin program. Our irrigation districts are an integral part of the program. The way it works is that affordable power is delivered to the community irrigation development with financial assistance from the sale of power to preferred customers. There are no provisions in reclamation law allowing the power arrangements to continue in a facility transfer situation.

The Bureau and preference customers argue that this bill sets a precedent, but Congress has already authorized two facility transfers where similar Federal power contracts were specifically extended. The Bureau and the power customers agreed more specifically that it is unfair to continue wielding of the power of local non-Federal power utilities. However, delivery to our community pumping plants is clearly the responsibility of the Federal power program.

Reclamation's unique relationship between power projects and irrigation exists throughout the Western States, and it seems inappropriate to authorize the continuance of power contracts to irrigation districts on the Colorado and the Snake River systems and not on the Missouri River system. The continuation of Federal contracts is absolutely necessary to transfer Lower Yellowstone

facilities. Without it the Savage Irrigation District water users have experienced an increase in their community irrigation fees from \$30 an acre to \$70 an acre, making the facility's transfer financially impossible for the water user.

The customers are concerned that the bill will set another precedent that would allow a flood of irrigation in a non-Federal manner to become eligible for Federal project use power. They contend that preference customer rates would go up. The irrigation component of the Pick-Sloan program is fixed. An established irrigation sub-allocation of 15 percent of the program's capacity is the limit. Also, Congress must authorize every application.

Over-appropriated waters, especially in the western part of the basin instream-flow designations for fish and in general our country's social attitudes the Tribunal discourage large-scale irrigation development will certainly not allow any future runaway community-style irrigation development to take place.

I have been in the business and working with irrigation districts for 30 years, and I know what it takes to develop a project. Getting Federal assistance and accomplishing the first lift of water to an arable area is only a small part of the process. We believe that the preference power rate of about one-half cent per kilowatt hour is based on the fact that the planned irrigation development of the Pick-Sloan program will take place. Therefore, additional fear of development will not be, in fact, an increase in the power rate. It is worthy to note that in regard to the power customer's concern that a significant benefit to the power customers by utilizing irrigation component of Pick-Sloan exists. The unused portion, about 360 megawatts, is an uncapitalized interest-free Federal investment.

Mr. CALVERT. Excuse me. Please summarize your statement.

Mr. NYPEN. It is important that the facility transfer—excuse me. I will do that. Thank you. It is important that the Lower Yellowstone facility transfer be authorized at this time. We believe that the transfer activities to be well over 50 percent complete and is now at a standstill except for the parallel activity.

Mr. Chairman, transferring the facility of the Lower Yellowstone project is very beneficial to the United States and to the local communities. The Lower Yellowstone business communities, the producers, the laborers who depend on the welfare of the irrigation district, and others support the passage of H.R. 2202.

Thank you for the opportunity to testify. I will do my best in answering any questions that you may have.

[The prepared statement of Mr. Nypen follows:]

**Statement of Jerry Nypen, Manager, Lower Yellowstone Irrigation Projects, Sidney, Montana**

Mr. Chairman and members of the Subcommittee, my name is Jerry Nypen. I am the Manager of the Lower Yellowstone Irrigation Districts One and Two, the Savage Irrigation District, and the Intake Irrigation District. Thank you for the opportunity to provide testimony on H.R. 2202, Lower Yellowstone Reclamation Projects Conveyance Act. We appreciate this Subcommittee's support for the transfer of Bureau of Reclamation features to local public entities.

The three Federal irrigation projects involved in this legislation are located along a 72-mile section of the Yellowstone River near the borders of the states of North Dakota and Montana. The Projects' facilities for transfer involve public water rights and diversion and distribution facilities for providing irrigation water to about 500 farms. There are about 56,000 acres being irrigated within the Projects resulting in crop values that exceed \$20 million in most years. The Projects provide for a special

economy within an area sparsely populated. In fact, the only industry providing stability in the area is irrigated agriculture.

The Bureau of Reclamation constructed the Savage and Intake project features, 55 years ago, and the Lower Yellowstone Project about 90 years ago. The operation and maintenance as well as replacements and repayment responsibilities were transferred to our locally formed Irrigation Districts following the construction. We have successfully cared for the Projects for decades. It is important to emphasize that the Districts are very public in nature, organized and operating under State laws. This transfer of title should not be construed as "privatization".

It is important to understand why the transfer of title is being pursued. This transfer is consistent with the Bureau of Reclamation's mission of transferring projects that are "efficiently and effectively managed by non-Federal entities". We have certainly fulfilled the terms of the original contracts that were executed with the Bureau of Reclamation. Since these contracts state that transfer of title will take place with Congressional approval, we expect that the Bureau will abide by these terms as well.

Transfer is also being pursued to acquire and maintain local control. Local businesses and industry believe that acquiring title is important now to preserve the stability and integrity of the Projects. Without transfer, the community can only consider themselves caretakers or custodians of the Projects even though they have had almost 100% of the responsibility for decades. Transfer will alleviate a sense of nervousness that is created by implementing national policy for Federal works that can cripple projects of our nature.

The transfer will reduce costs for the Bureau and the Districts. For example, the Bureau is required to renew a 50-year old Water Supply Contract for the Savage District. The Bureau's water supply is defined as a pumping plant that the Bureau constructed in 1949. The Savage Irrigation District has operated the pumps and long discharge lines for 53 years and has replaced them at their cost. However, the Bureau is still required to renew a 20-year contract at an estimated cost to the District of \$60,000. This irrigation development involves only 2,300 acres. Routine review and reporting exercises and other compliances cost all the Districts an estimated \$60,000 per year. We are not aware of the savings to the United States for administrating and maintaining their assets, but it is no doubt significant.

It is important to understand that the Projects will operate the same as they have in the past. The Districts will carry out their work regardless of ownership of the physical features. The Districts have met their obligations, and it seems only fair that ownership is transferred to them at this time.

Fiscal management will be the same. The irrigation works are paid for except \$68,280 is to be paid by the Savage Irrigation District, and \$667,702 is to be paid out of Pick-Sloan Program power sales. Both of these amounts are itemized in the Bill. There is no Federal money involved in the operation and maintenance of the Projects.

The Districts have worked diligently with the Bureau of Reclamation for five years setting up the conditions for transfer. We have worked together in organizing public meetings, various fisheries studies, real estate reviews, recreational agreements with the State of Montana, cultural resources and hazardous waste surveys, and development of fish protection devices.

A 'Memorandum of Understanding' was executed with the Bureau spelling out various principles and compliances that are to be met, the responsibilities for each phase of the process, and the division of cost. The main feature of this agreement is the compliances with environmental laws: NEPA, NHPA, ESA and CERCLA. We recognize these authorities and have worked closely with the various agencies to meet the requirements.

The most involved compliance activity is a Section 7 ESA process for fish protection. Protection devices will include a fish passage structure and a fish screen that will be in place before transfer takes place. The Bureau will be responsible for the installation, and our Districts will be responsible for future operation and maintenance.

There seems to be a misunderstanding by some over the continuation of the Federal power to lift water to the Projects' community water conveyance systems. Part of the Lower Yellowstone Irrigation Districts' lands, and all of the Savage and Intake Irrigation Districts' lands are at elevations requiring the pumping of water. These elevated areas were developed and are sustained only because affordable electrical power is delivered from the Pick-Sloan Missouri Basin Program's irrigation program.

We are an integral part of the Pick-Sloan Program's "ultimate development plan", a unique plan whereby irrigation developments are created and maintained for public benefit within the Missouri River Basin. This Bill maintains the primary purpose

of the Pick-Sloan Missouri Basin Program, which is to maintain a stable economy through irrigation development. That definitely does not change.

The Pick-Sloan Program provides pumping power delivered to the Projects' pumps at a rate known as the "project-use-rate". This rate, now 1.1 cents per kWh, has been adjusted downward in the past by the Bureau of Reclamation to 0.25 cents per kWh to match the districts' ability-to-pay. This Bill provides for the continuation of project-use-power under the existing contract conditions except that the ability-to-pay adjustment will no longer be applicable. We are foregoing this condition because we recognize that title transfer savings can offset the adjustment. The Districts obligation to pay full value of the irrigation pumping rate should be recognized as a direct benefit to the U.S. taxpayer.

Parties concerned about continuing the contracts for project-use-power are the Bureau of Reclamation and the Pick-Sloan Program's power customers. The Bureau administers the irrigation component of Pick-Sloan, and the power customers pay for the balance of costs not paid by the irrigation community. This is a unique program that has provided great economic benefits throughout the Western States.

The Bureau and the power customers are concerned that the Bill will set a precedence that would allow a flood of non-Federal irrigation entities to become eligible for project-use-power causing power rates to go up. But the irrigation-pumping component of Pick-Sloan is fixed. An established irrigation suballocation of 15% of the Program's capacity is the limit. Also, Congress must approve every application.

Over-appropriated water in the West, instream-flow designations, and in general our country's social attitudes that discourage large-scale irrigation development will certainly not allow any future runaway community-style irrigation development to take place.

The States recognize that the intended Pick-Sloan irrigation development will not happen. Congress passed legislation in the 106th Congress (Dakota Water Resources Act of 2000) that reduced North Dakota's potential irrigation to under 60,000 acres, a mere 5% of that state's allotment of project-use-power. Montana is intending to introduce legislation for irrigation programs for about 70,000 acres that will drastically deflate the use of Pick-Sloan pumping also. Federal development for non-Indian projects is no longer being considered in these states. Developments by Local or State Governments are possible avenues being pursued, but as you would expect, it would be on a very small scale.

There is no credence to the objectors' precedence issue. The Bureau's latest requirement is that the Projects receiving Pick-Sloan project-use-power must be authorized as "units" of the P-SMBP and that the recipients sign a 25-year contract to pay an appropriate share of costs for construction of P-SMBP power facilities. But many projects receive project-use-power that does not fit this policy. In Montana and North Dakota; Buffalo Rapids, Buford Trenton, Dodson, Intake, Lower Yellowstone 1&2, Kinsey, Sidney Water Users, Haidle, and Hammond are all public irrigation entities that have been authorized by Congress to receive project-use-power. Various Acts of Congress including Acts of 1939 and 1944 authorized them. They are not "units" of Pick-Sloan, nor do they participate in contracts to share costs for construction of power facilities. In fact four of them are non-Federal irrigation developments. All of these entities are enrolled in the Pick-Sloan Program only for receiving the project-use-power. They are all satisfying the purpose of the Pick-Sloan Program; they foster public benefit.

More importantly, precedence has also been clearly set in previous title transfer processes to leave long-term power contracts alone. Congress recently authorized two facility transfers where Federal power contracts were specifically extended. They are Public Law 105-351, "to convey certain facilities of the Minidoka Project to the Burley Irrigation District": In Section 1. (d). 'PROJECT RESERVED POWER. The Secretary shall continue to provide Burley (irrigation project) with project reserved power from the Minidoka Reclamation Power Plant, in accordance with terms of the existing contracts, including renewals thereof as provided in such contracts.'; and Public Law 106-221: the "Wellton-Mohawk Transfer Act", in Section 3: 'WATER AND POWER CONTRACTS. Notwithstanding the transfer, the Secretary and the Secretary of Energy shall provide for and deliver Colorado River water and Parker-Davis Project Priority Use Power to the District in accordance with the terms of the existing contracts with the District, including any amendments or supplements thereto or extensions thereof and as provided under section 2 of the agreement'.

There are numerous irrigation project/power project arrangements around the 17 Western States; however, whether it is the Parker Davis Project in Arizona or the Pick-Sloan Program in Montana, the intentions of the Reclamation Program are the same to provide project power to main pumping facilities for creating and sustaining irrigation development for public benefit.

It is important to know that our Projects have had project-use-power contracts for over 50 years, and have provided without fail the intended public benefits. This would not change with title transfer. It would seem very appropriate to consider title transfer as a condition that would allow the projects to continue to function as they have.

The removal of the Projects from the irrigation component of the Pick-Sloan Missouri Basin Program will not allow the transfer of irrigation features to take place! The power rates would increase from 0.25 cents to 8.0 cents per kilowatt-hour for 3 of the Irrigation Districts, and from 0.25 cents to 3.0 cents for the other District. The cost of operating and maintaining the public irrigation features to convey water to the irrigated area for the Savage Irrigation District would increase from \$30 per acre to \$70 per acre. Please understand that this is the cost of getting water from the river to the boundaries of the farms. The true cost of water to the farmers would be this community cost plus their costs of distribution on their property. This total cost far exceeds their capability.

We hope that Reclamation's title transfer was never intended to tear apart the fabric of an irrigation development by denying access to historically utilized Federal project power.

Mr. Chairman, transferring the title of Federal irrigation works of the Lower Yellowstone, Savage, and Intake Projects in Eastern Montana and Western North Dakota is very beneficial to the United States Government and to the local farms and businesses. The Government's work has clearly been completed and the irrigation districts are very capable of continuing the public benefits for which the Projects were built.

The Lower Yellowstone business communities, the producers, the laborers who depend on the welfare of the irrigation system, and others support the passage of H.R. 2202.

Thank you for the opportunity to testify. I would be pleased to answer any questions you may have.

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[Attachments to Mr. Nypen's statement follow:]



P.O. Box 4827 • Helena, Montana 59604-4827 • (406) 236-8555

July 23, 2001

Honorable Senator Max Baucus,  
U.S. Capitol Building  
Washington, D.C. 20510

Dear Senator Baucus:

Montana Water Resources Association requests your support for HR 2202 and S 1148. The legislation introduced by Congressman Dennis Rehberg and Senator Conrad Burns transfers ownership and water rights from Montana Irrigation Project (LIP) and LIP water districts to the Bureau of Reclamation. The project has been in the hands of private water districts who paid for and maintained the project for many years.

These bills are consistent with Bureau of Reclamation intent to transfer title to LIP retention of Pick-Sloan power and to conduct diligence throughout lengthy review and study phases of this effort and compromised on satisfying numerous environmental concerns. The Project has cooperated fully with the Bureau and Congress in the past and we are confident that the project will be protected devices etc., in advance of final title transfer.

MWA firmly believes that LIP retention of Pick-Sloan power and the proposed transfer of ownership of both HR 2202 and S 1148. MWA supports efforts to make such a transfer to Montana irrigators as per Congressional commitments and intent. We are pleased to see strong support for Pick-Sloan power availability by our Congressional delegation.

Similar bills transferring title to Reclamation Projects in other states have already been approved by Congress. Your support for HR 2202 and S 1148 will help solidify title transfer efforts for LIP and facilitate efforts to afford local control.

Please don't hesitate to call if you have questions or concerns. Thank you.

*Michael E. Murphy*

Michael E. Murphy  
Executive Director

cc: Senator Conrad Burns  
Congressman Dennis Rehberg  
Governor Judy Martz  
Jerry Nypen, LIP Manager

"Montana's Voice for Montana's Water"



1830 North 11th Street  
P.O. Box 2599  
Bismarck, ND 58502  
701-223-4232, 701-223-4645 (fax)  
ndwater@mlgwa.com

Dedicated to protect, manage and develop Upper Missouri water

October 10, 2001

Richard Cayko, Chairman  
Lower Yellowstone Irrigation Projects  
Rt. 1, Box 2064  
Sidney, MT 59270

We have reviewed recent title transfer legislation for the Lower Yellowstone Irrigation District and support your efforts in taking steps to improve government and the efficiency of water resources in eastern Montana and western North Dakota.

Your irrigation project is a shining example of the success of the Bureau of Reclamation's role in establishing successful, economical in the Upper Missouri Basin. At this time, since all obligations of the Lower Yellowstone Irrigation District have been met, and you are willing to acquire title and keep the projects operating in a fashion benefiting the public and at a savings to the Federal Government, we strongly support the proposed transfer.

We are aware of the concern over the continuance of Pick-Sloan power required for the projects. Four projects are some of the earliest applications of the Pick-Sloan Plan. We support the continued inclusion of your irrigation project within the hydropower component of Pick-Sloan, after the proposed title transfer would take place. If you need any assistance in your efforts to secure title transfer of the Lower Yellowstone Irrigation Project, please let us know.

Sincerely,

*Jerry Schaack*

Jerry Schaack  
President

*Michael Dwyer*

Michael Dwyer  
Executive Director



**Lower Yellowstone  
Rural Electric Assn., Inc.**

A Touchstone Energy Cooperative  
The Power of Rural Montana

PO Box 1047  
Sidney, MT 59270  
Phone: (406) 488-1602  
Fax: (406) 488-6234

July 27, 2000

Jerry Nysen, Manager  
Lower Yellowstone Irrigation  
Rt. 1 Box 2084  
Sidney, MT 59270

Dear Mr. Nysen:

On behalf of the board of trustees of Lower Yellowstone, I would like to thank you for the opportunity to visit with you concerning your efforts to transfer title from Federal to private ownership.

We would like to reiterate to you that Lower Yellowstone's concern during this process has been who would be responsible for our winding costs.

However, upon reading copies of letters received from Mary Ann Bush, Region Director, and Susan Kelly, Area Manager of the Bureau of Reclamation, we feel confident in your decision to include these costs in their rate to you and that the Bureau of Reclamation through Western Area Power Administration will negotiate wheeling contracts with Lower Yellowstone.

Lower Yellowstone does support your legislation before congress, which allows for the privatization and the continuation of Pick-Sloan Missouri Basin Irrigation pumping power for Lower Yellowstone Irrigation Project, Savage Irrigation District, and Intake Project. It is our hope that the same service is extended to the survival of our farms throughout the Yellowstone Valley.

Sincerely,

*John Keama*  
John Keama, Secretary  
Lower Yellowstone NRA



**COUNTY OF RICHLAND**

Office of  
**COUNTY COMMISSIONERS**

201 West Main, Sidney, Montana 59270  
406-433-1705 FAX 406-433-3731

Mark Peterson

Don D. Steppeler

Henry T. Johnson

October 10, 2001

Richard Cayko, Chairman  
RIP Board of Control  
Richland County  
Sidney, MT 59270

Dear Richard:

Richland County supports the Lower Yellowstone Irrigation District's attempts to acquire title to the public irrigation features of the Lower Yellowstone Project. We recognize the project as the backbone for the agricultural industry in Richland County and we view the transfer of title as an activity that preserves and protects its integrity.

Our economic tax base is very dependent on the project. Irrigation land in Richland County accounts for only 4% of the total acreage and 15% of the total cropped acreage. However, the district provides a significant amount of the county's principle crop production: 25% of all small grains, 60% of all alfalfa hay, and 100% of sugar beets. A very significant amount of our population of 8,700 and a significant amount of our tax revenue is generated from the irrigation projects. Just for example, Holly Sugar, our largest taxpayer, employs 800 people.

The irrigation projects offer this county the ultimate in economic stability. Because of the water in a county that is arid and, consistent crop success has occurred here since 1910. It is very important that the project continue to operate as it has the past.

We, the people of Richland County, believe it is very important to establish local control of its resources—the valley's water rights and public irrigation features. Title transfer will allow the irrigation districts to continue performing this function in the interest of its members. We strongly support Congressional approval of the title transfer.

Richland County Commissioners

*Henry T. Johnson*  
Henry T. Johnson, Chairman

*Mark Peterson*  
Mark Peterson, Vice-Chairman

*Don Steppeler*  
Don Steppeler, Member

OFFICE OF THE GOVERNOR

STATE OF MONTANA



STATE CAPITAL  
PO BOX 20484  
HELENA, MONTANA 59620-0048

JUDY MARTZ  
GOVERNOR

October 19, 2001

The Honorable Dennis Rehberg  
516 Cannon House Office Building  
Washington, D.C. 20515-2601

Re: State of Montana Support for H.R. 2202

Dear Dennis:

I am writing to let you know the State of Montana strongly supports H.R. 2202, a bill that you introduced in the House of Representatives in the first week of this year to convey the Lower Yellowstone Irrigation Project to the local irrigation districts. I am writing you regarding this proposal at the Federal level as an important step in assisting Montana's overall effort to provide for economic stability in the agricultural economy of the state.

An important element contained in your legislation that will aid in our efforts in the state is continued access to low cost Federal power. Section 4(c) of H.R. 2202 stipulates that:

*...The Secretary shall sustain the irrigation developments established by the projects as components of the irrigation plan under the Pick-Sloan Missouri Conservation Act and shall continue to provide irrigation districts with Pick-Sloan Missouri Conservation Act Power at the irrigation districts' pumping plants (subject to section 5(f)), except that there shall be no ability-to-pay adjustment for the power rate.*

Local and state efforts have been initiated to identify new irrigation opportunities and to secure and maintain existing low cost power allocations to Montana. The promise of the past to provide low cost power for irrigation in Montana is as critical today as it was in 1944.

I strongly support the transfer of ownership of the projects covered by your legislation from the Bureau of Reclamation to local ownership. The local debt on the Lower Yellowstone The

TELEPHONE (406) 552-3111 FAX (406) 444-3251

Honorable Dennis Rehberg

October 19, 2001

Page 2

projects has been satisfied. As with the project transfer bills passed by the last Congress, I believe that your legislation will have an equal chance for success. I also believe you have taken an important step in Section 5 of your legislation to address fisheries protection. In cooperation with the irrigation districts for the Yellowstone River.

In closing, I want to thank you and the House of Representatives Committee on Resources Subcommittee on Water and Power for holding this hearing, and look forward to reports of the legislation moving through the legislative process as soon as possible.

Sincerely,

JUDY MARTZ  
Governor

cc: Jerry Nypen, Manager  
Lower Yellowstone Irrigation Districts



Leslie Messer, Executive Director  
 Mary Hamburg, Project Assistant  
 1080 S. Central Avenue  
 Sidney, Montana 59720  
 Phone: (408) 482-4570  
 Fax: (408) 482-5552  
 E-mail: [rdeds@midrivers.com](mailto:rdeds@midrivers.com)

A Non-Profit Countywide Economic Development Corporation

October 15, 2001

LYP Board of Control  
 Rt 1, Box 2064  
 Sidney, MT 59270

The Board of Directors of Richland Economic Development encourages and supports the steps taken by the Lower Yellowstone Irrigation Districts to obtain the title to the Lower Yellowstone Irrigation Project's water rights, public irrigation features, and lands utilized in the operations of these Districts.

One aspect of the Mission of Richland Economic Development is to take action or encourage action by others to foster and secure a stable economy for the citizens of Richland County. The 91-year history of the Lower Yellowstone Irrigation Project has certainly nurtured and offered our communities' security and stability. In fact, today this irrigation project is at the heart of many of our economic development ideas and projects. We are proud to have been instrumental in creating the Lower Yellowstone Irrigation Project and we are confident that the local irrigation districts should now have the opportunity to receive full ownership of the project, work that they have successfully operated for over 75 years and have paid all debts owed to the Federal Government many years ago.

Often times, Federal rules and regulations are applied nation-wide without regard to individual local conditions. We believe the Lower Yellowstone Irrigation Project has been successfully operated for the good of all individuals in its service area. Therefore, we believe it would be prudent of Congress to grant title ownership to the irrigation districts over the regulatory layer of government, which has been inactive and is no longer necessary in our economic community.

Sincerely,

Gary C. Schoepf, President  
 Richland Economic Development



909 South Central Avenue • Sidney, Montana 59270 • Phone: 406-482-9116 • Fax: 406-482-1127  
 Sharon Rau - Executive Director • Email: [chamber@sidneymt.com](mailto:chamber@sidneymt.com) • [www.sidneymt.com](http://www.sidneymt.com)

October 17, 2001

Jerry Nypom, Manager  
 Lower Yellowstone Irrigation Project  
 Rt. 1, Box 2064  
 Sidney, MT 59270

Dear Jerry:

Thank you for informing us today about your progress in acquiring title to the irrigation features of the irrigation project. We support this venture.

As you know, our entire community depends on the success of the project. The irrigated farms in the valley support our 200 Chamber businesses and are the reason for the fine retail center we have established for Eastern Montana.

We also believe in less government, and the opportunity for the local irrigation districts to secure title and have more influence in managing the resources should not be passed by. We would not survive a disaster, like the one that occurred in the Klamath Basin, a Federally owned project, last summer.

Good luck in securing the Congressional authorization for transfer.

Sincerely,

Sharon L. Rau  
 Executive Director



MISSION STATEMENT  
 To provide leadership by fostering a progressive economic environment  
 in support and promotion of the business and agriculture community.

Mr. CALVERT. I thank the gentleman.  
 Ms. Birnbaum, you are recognized for 5 minutes.

**STATEMENT OF S. ELIZABETH BIRNBAUM, DIRECTOR OF GOVERNMENT AFFAIRS, AMERICAN RIVERS, WASHINGTON, D.C.**

Ms. BIRNBAUM. Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Liz Birnbaum. I am the Director of Government Affairs for American Rivers. I want to thank you for the opportunity to testify today. American Rivers is a national river conservation organization with over 30,000 members and field offices across the country, including one in Great Falls, Montana.

We strongly oppose H.R. 2202 as currently drafted. I will confine my comments to the language found in Section 5.

Unfortunately, Section 5 is wholly inadequate for the stated purpose of protecting the native fishes of the Yellowstone River. As currently written, this section virtually assures that no meaningful process will be made on fish passage and entrainment issues at Intake Diversion Dam. Specifically, the provision fails to identify a time horizon for completing the much needed fish protection and passage devices or to designate responsibility with regard to funding and construction of the devices.

Addressing the effects of the operation of the Lower Yellowstone Reclamation Projects on endangered species and other native species in the Basin is the linchpin in recovering and maintaining these native fishes. Failure to deal with the projects' impacts at this time will only result in further species listing and more onerous burdens for irrigators in these districts and throughout the basin. Allowing this legislation to move forward with these omissions would be a disservice to the people of Montana, the irrigation districts involved, State and Federal agencies, and all those who care about the native fishers and the Yellowstone River.

Intake Diversion Dam was constructed by the Reclamation Service around 1908 and supplies the water for the four irrigation districts previously discussed. The dam is the lowermost of six low-head irrigation diversion dams on the Yellowstone River between Billings, Montana, and its confluence with the Missouri River near the North Dakota border.

Fish passage and protection is a concern of all of the dams, but it is especially important at Intake. As discussed previously by Commissioner Keys, the lower reaches of the Yellowstone contain the best remaining habitat for species like the Federally endangered pallid sturgeon, the sicklefine chub and sturgeon chub, which are both candidates for listing, and several species of concern for the State of Montana, such as the paddlefish and sauger. This dam's impediment to spawning migrations for these and other native species is pushing the pallid sturgeon toward extirpation and will likely lead to the listing of other species.

Fish passage at Intake would reopen nearly 140 miles of historic spawning areas for the pallid sturgeon. That improvement, combined with efforts underway at upstream dams on the Yellowstone and important tributaries, could allow this ancient species to access nearly all of its historic range in the Yellowstone Basin.

In addition to fish passage facilities, installation of fish screens to prevent entrainment of adult and juvenile fish is equally impor-

tant to the recovery of pallids and stopping the decline of the other native fishes. Again, as discussed by Commissioner Keys, studies by the Bureau of Reclamation estimate that 70,000 sturgeon chub per year are killed by entrainment in the main canal, and 100,000 sauger were destroyed in the canal in 1998. In total, their studies show that be 500,000 and 1 million fish per year are pulled into the irrigation canal under current conditions, affecting recruitment of many native species in addition to those already listed.

Section 5 of H.R. 2202 requires that the Secretary of the Interior “shall provide” fish protection devices, with the proviso that the “The Secretary and irrigation districts shall work cooperatively in planning, engineering, and construction the fish protection devices.” The provision does not state when the devices should be constructed or whether fish passage must precede project transfer. In addition, this language does not specify a funding source for the necessary devices, authorize appropriations, or address the question of reimbursability. One might infer from this language that funding for the projects will be the responsibility of the Federal Government, yet the question of reimbursability has been a key issue in the failed negotiations over this project transfer. If the issue is not resolved in this legislation, this problem, combined with the bill’s failure to state a deadline or divide responsibilities between the Secretary and the districts, may well lead to an indefinite delay in construction.

This issue is too important to be left to the vagaries of future appropriations processes after the facilities have been transferred into private hands. After transfer, Reclamation would have little incentive to fund this \$5 to \$10 million obligation out of its declining budgets. Other Federally owned projects would likely receive priority and the problems at Lower Yellowstone might well go unaddressed.

The importance of these matters to the economic and ecologic well-being of the Yellowstone Basin can’t be overemphasized. It is imperative that fish passage and protection devices be installed and proven to work, and an accepted plan for operation, maintenance and necessary future modifications of the devices be in place before transferring these facilities. Although this would be consistent with the testimony of Commissioner Keys, we suggest that the Reclamation should not have continuing responsibility after transfer. In fact, this is an issue that should be dealt with before transfer. To do anything less is to set up the citizens of the basin for increased future conflict and diminished natural values. The problem will only get worse if it is not resolved now.

We urge the Subcommittee to amend H.R. 2202 to ensure that fish passage devices be constructed amendment tested before the projects are transferred to the local beneficiaries. Without such assurances, we will continue to oppose the bill.

Thank you.

[The prepared statement of Ms. Birnbaum follows:]

**Statement of S. Elizabeth Birnbaum, Director of Government Affairs,  
American Rivers**

Good afternoon Mr. Chairman and Members of the Subcommittee, my name is Liz Birnbaum. I am the Director of Government Affairs for American Rivers. I want to thank you for the opportunity to testify here today. American Rivers, a national

river conservation organization with over 30,000 members, strongly opposes H.R. 2202, the Lower Yellowstone Reclamation Projects Conveyance Act, as currently drafted.

Our organization has concerns about several aspects of this and other Reclamation title transfer initiatives, a concern dating from at least 1996, when we endorsed the statement of principles for Reclamation project transfers developed by several environmental organizations, which is attached to my testimony. Today I will confine my comments to language found under the heading Yellowstone River Fisheries Protection, Section 5 of H.R. 2202.

Unfortunately, Section 5 is wholly inadequate for the stated purpose of protecting the native fishes of the Yellowstone River. As currently written, this section virtually assures that no meaningful progress will be made on fish passage and entrainment issues at Intake Diversion Dam. Specifically, the failure to identify a time horizon for completing the much needed fish protection and passage devices, and the lack of clearly delineated responsibilities with regard to funding and construction of the devices render the provision toothless and futile.

Addressing the effects of the operation of the Lower Yellowstone Reclamation Projects on endangered species other native species in the basin is the linchpin in recovering and maintaining these species. Failure to deal with the projects' impacts at this time will only result in further species listings and more onerous burdens for irrigators in these districts and throughout the Yellowstone Basin. Allowing this legislation to move forward with these omissions would be an egregious disservice to the people of Montana, the irrigation districts involved, State and Federal agencies and all those who care about native fishes and the Yellowstone River.

#### *Geographic and Ecologic Background*

Intake Diversion Dam, constructed by the Reclamation Service around 1908, supplies the water for the four irrigation districts involved in this transfer. The dam is the lowermost of six low-head irrigation diversion dams on the Yellowstone River between Billings, Montana and its confluence with the Missouri River near the North Dakota border.

Fish passage and protection is a concern at all of the dams, but it is especially important at Intake. The lower reaches of the Yellowstone contain the best remaining habitat for species such as the Federally endangered pallid sturgeon, sicklefin chub and sturgeon chub, both candidates for listing, and several species of concern for the State of Montana such as the paddlefish and sauger. The impediment this dam presents to spawning migrations for these and other native species is inexorably pushing the pallid sturgeon toward extirpation and will likely lead to the listing of other species.

Fish passage at Intake would reopen nearly 140 miles of historic spawning areas for the pallid sturgeon. That improvement, combined with efforts underway at upstream dams on the Yellowstone and important tributaries, could allow this ancient species to access nearly all of its historic range in the Yellowstone.

In addition to fish passage facilities, installation of fish screens to prevent entrainment of adult and juvenile fish is equally important to the recovery of pallids and stopping the decline of other native fishes. Studies by the Bureau of Reclamation estimate that 70,000 sturgeon chub per year are killed by entrainment in the main canal, and 100,000 sauger were destroyed in the canal in 1998. In total, their studies show that between 500,000 and 1,000,000 fish per year are pulled into the irrigation canal under current conditions, affecting recruitment of many native species in addition to those already listed.

Improvements at Intake Diversion Dam, in concert with other fish passage and protection initiatives in the basin, are by far the best chance we have to recover listed species and preclude the listing of more species.

#### *Problems with H.R. 2202*

Section 5 requires that the Secretary of the Interior "shall provide" fish protection devices, with the proviso that "The Secretary and irrigation districts shall work cooperatively in planning, engineering, and constructing the fish protection devices." The provision does not state when the devices should be constructed, or whether fish passage must precede project transfer. In addition, this language does not specify a funding source for the necessary devices, authorize appropriations, or address the question of reimbursability. One might infer from this language that funding for the projects will be the responsibility of the Federal Government, yet the question of reimbursability has been a key issue in the failed negotiations over this project transfer. If the issue is not resolved in this legislation, this problem, combined with the bill's failure to state a deadline or divide responsibilities between the

Secretary and the districts, may well lead to an indefinite delay in construction of the necessary facilities.

This issue is too important to be left to the vagaries of future appropriations processes after the facilities have been transferred into private hands. After transfer, Reclamation would have little incentive to fund this \$5–10 million obligation out of its declining budgets. Other Federally owned projects would likely receive priority and the problems at Lower Yellowstone would go unaddressed.

The importance of these matters to the economic and ecologic well being of the Yellowstone Basin cannot be overemphasized. It is imperative that fish passage and protection devices be installed and proven to work, and an accepted plan for operation, maintenance and necessary future modifications of the devices be in place before transferring these facilities. To do anything less is to set up the citizens of the basin for increased future conflict and diminished natural values. The problem will only get worse if it is not resolved now.

*Conclusion*

We urge that the Subcommittee amend H.R. 2202 to ensure that fish passage devices be constructed and tested before the projects are transferred to the local beneficiaries. Without such assurances, we will continue to oppose this legislation.

Mr. CALVERT. I thank the gentle lady.

Mr. Rehberg?

Mr. REHBERG. Thank you, Mr. Chairman.

Mr. Nypen, I'm going to ask you an essentially two-pronged question to address both Mr. Keys and Ms. Birnbaum. As far as the costs, under the transfer of title to this project, what conceivably would change in the management of the project that you could foresee changing who pays for what? Why shouldn't the irrigator still get the preferred price because there's nothing that anyone is being asked to do in addition to what they're already doing? The rest of the ratepayers are not going to be doing anything any differently, and the project doesn't change, the consumption of power doesn't change, so why should the charge be any other cost? And then the second part of my questions is: Again, under the transfer of the title, what would change environmentally? You are still going to be responsible for endangered species under the Endangered Species Act. You are still going to be responsible for NEPA. You still have to fulfill all those requirements of the Federal Government.

So I guess I don't understand the opposition to this bill. What changed in your mind that wouldn't dictate or necessitate just going ahead and moving this bill forward, because you are still going to have the same energy cost and you are still going to have the same requirement to fulfill environmental policy in this country?

Mr. NYPEN. Mr. Chairman, Mr. Rehberg, nothing changes. Our irrigation districts have been operating for—some as long as 70 years. There is no change in the operations at all. The real issue is such that the costs are the same, except this bill does, in fact, for the cost of power exclude the ability-to-pay clause, which actually raises our payment to the United States for the power. That is for the power itself.

The ruling is now part of the Pick-Sloan program. That is the intent of the Federal Pick-Sloan program, is to move power to irrigation districts, move it in such a way as to promote the public benefit that this program fulfills.

The Endangered Species Act question that you have, we fully intend to see that this consultation process is carried out. At the present time we have fish protection devices that are being de-

signed, and we have no objection at all to installing—having these facilities installed for the protection of fish. We know these facilities are needed and that they will be done prior to the signing of the transfer.

It is not fully understood, I guess, why we want to extend beyond that.

Mr. REHBERG. Mr. Chairman, if I could have a follow-up question. What do you anticipate the Federal Government's financial obligation if this bill does not pass will be on an annual basis? What does this cost the Department or the Bureau of Reclamation annually?

Mr. NYPEN. I am not certain what it costs, and they are incurring the funds that are common to take care of their assets. And they don't supply any funds to our project. They review our operations periodically at our cost. They certainly have a lot of accountability to do and associated moneys that they spend to, like I say, take care of their assets. And I—

Mr. REHBERG. Is it safe to say, then, that the savings of the title transfer will be equivalent or more than what they are spending; that the title transfer would, in fact, be, even if the unit costs would be at the level that they are unless they are indirect savings? Would the title transfer, in fact, be a net gain for them to oppose this legislation rather than the fact as opposed to a net cost?

Mr. NYPEN. Mr. Chairman, Mr. Rehberg, yes. I believe that would be that, at least that analysis would be correct.

Mr. REHBERG. So there would be no reason for the Bureau of Rec. to oppose this legislation, other than the fact that I haven't, since I have been in Congress, found a bill they support yet.

Mr. NYPEN. Not with that point, no.

Mr. REHBERG. Thank you.

Mr. CALVERT. Any additional questions for these two witnesses? Mrs. Napolitano?

Mrs. NAPOLITANO. Yes.

Mr. CALVERT. Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

There are a couple of questions, and I am sure you may have covered part in some of them, but I am concerned about the water rights, and being able to just transfer the lands and the water rights, and is there any provision to make sure that those water rights are not sold to somebody else in the future?

Mr. NYPEN. Mr. Chairman, Mrs. Napolitano, the water rights in the State of Montana are handled through the prior Appropriations. They are state water rights. The United States appropriated water through the State of Montana 90 some years ago to get the project going, because that right is held in the name of the United States and preserved for the constituents of the project. They cannot be sold or changed in any way without going to the State and applying for change authorization. They are definite for irrigation purposes and for the domestic water purposes of the project.

Mrs. NAPOLITANO. Who pays for reeling cost?

Mr. NYPEN. The reeling cost providing the power to the irrigation projects is paid for by the United States. It is part of the Pick-Sloan Program. The Pick-Sloan Program, when the thing was initi-

ated in 1994, the irrigation development was the major part of the program. That program, it took top priority, and of course the irrigation didn't develop, and we have additional power that has been generated twice or two-and-a-half times what was intended. The plan is that the reeling was always meant to be or intended to be a part of the program, and it has just recently been reconfirmed by the Bureau, that it is the Bureau of Reclamation's responsibility. The repairs are the power customers of the Pick-Sloan Program. The program, of course, is administered by the Bureau of Reclamation.

Mrs. NAPOLITANO. And the mitigation of the cost for endangered species or the cost of the mitigation rather. Who pays for it now, and who would pay for it if H.R. 2202 goes through?

Mr. NYPEN. We anticipate that the costs of putting new structures in, which may be 5 to 6 million dollars, would be the cost of the United States. This is a venture mainly to recover an endangered species on a river system where there is no complete evidence that the endangered species, the pallid sturgeon, existed in numbers in the first place, and we anticipate that to be an obligation to the Federal Government. Once they are installed, the irrigation district has vowed to take the responsibility to operate and maintain those futures, so that they work in the way that they were installed.

Mrs. NAPOLITANO. You indicated there was precedence. If there was such a thing done before, will the districts be willing to consider facing these costs?

Mr. NYPEN. Mr. Chairman, Mrs. Napolitano. The districts can't participate in any of the costs from a financial standpoint. We have a limit as far as what we are capable of paying for the community to use for irrigation, to get water to the farms, and we are to that limit. Plus, you are referring to the reeling cost, and going from a \$30 an acre operation and maintenance fee to get public water to the borders of a farm, from having that go from \$30 an acre to \$70 an acre is not financially possible to keep—and also about \$20,000 for a 400-acre farm, and it is something that is financially infeasible, and if that was done the irrigation project there would collapse.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. CALVERT. Any other questions?

[No response.]

Mr. CALVERT. If not, the two witnesses in regards to 2022 are excused, and we will move to our next witness.

Mr. CALVERT. Next I would like to introduce President Vigil-Muniz, the President of the Jicarilla ApacheNation. You are recognized for your opening statement.

**STATEMENT OF CLAUDIA J. VIGIL-MUNIZ, PRESIDENT,  
JICARILLA APACHE NATION; ON BEHALF OF THE JICARILLA  
APACHE RESERVATION RURAL WATER SYSTEM ACT**

Ms. VIGIL-MUNIZ. Thank you. Good afternoon Chairman Calvert, Ranking Member Smith and distinguished members of the Committee. My name is Claudia Vigil-Muniz, President of the Jicarilla ApacheNation.

Right now we have a picture of our community, that is an area photo that we brought to help along with a visual to give you an idea of what we are talking about. My cameraman is our water administrator, so he will be pointing out certain things as it go through this.

Thank you for holding this hearing today on H.R. 3223, a bill to authorize the Bureau of Reclamation to modernize the Federally owned and managed public water system on the Jicarilla Apache Reservation. This hearing and this bill are extremely important to the health and welfare of the Jicarilla Apache Nation because we are facing a health crisis.

The Department of Interior, acting through the Bureau of Indian Affairs, initially built the system with materials that we now know to be hazardous, such as asbestos and lead. Over the years the BIA expanded the public water system in an ad hoc and haphazard way, and have never adequately been maintained or upgraded.

In the area served by the original main water line clusters of our people have suffered from different forms of cancer. My own father lived in that area and he succumbed to cancer in 1994. Many others have suffered similar deaths, including three other people who lived on the same street. The wastewater system is a relic of the past consisting of open sewage lagoons. These unlined ponds are well over capacity, causing seepage into the ground and spilling raw sewage into waterways that ultimately leave the reservation. The sewage ponds are located on the west part of town. When the winds blow the stench is unbearable.

In addition to the public health and safety hazards the inadequate infrastructure has created a host of other problems on the reservation. There is an increased use of individual septic systems which are now failing due to incompatible soil conditions. 200 of these must be pumped out monthly to prevent standing waste where our children play. The lack of adequate housing results in overcrowding with many extended families living under one roof. The existing infrastructure cannot support new housing. The infrastructure problem threatens the completion of many projects such as a new public school system or new public school, a school dormitory and a new judicial complex, which all have been authorized and funded.

In 1996 BIA asked us to take ownership and assume operation and maintenance responsibilities. The Tribal Council commissioned studies to determine the viability of this request and ultimately decided against it, given the extent of the deterioration. The problems escalated in October 1998 when the division system on the Navajo River failed, leaving the entire community of Dulce without drinking water for 6 days. We had to spend \$5 million on an emergency basis to restore water to the community and to begin making other needed improvements. We quickly found out that the BIA could not deal with this problem. We were also turned away by other Federal agencies. They told us that they could not use their funds on another Federal Agency.

We turned to Congress for help, and in July of 2000, Public Law 106-243 was enacted, authorizing a feasibility report to determine how to address these problems. The completed report makes the following conclusions. We have a reliable and sufficient source of

high-quality water. The water distribution delivery and wastewater collection components must be replaced. The wastewater sewage lagoons must be replaced with a modern facility that can meet Federal standards. Construction of these new facilities will have no significant impact on affected environment and in fact will be environmentally beneficial on all levels. No action is not an option.

H.R. 3223 would implement the recommendations of the report and authorize a project amount of 45 million. The bill also provides that the Nation would only operate and maintain the facilities upon the completion of the project, which will save the Department of Interior money in the long run. We also have a second diagram that gives you an idea of where we are located. We are right on the Colorado border.

To date we have spent nearly \$8 million on improvements and have committed an additional 6 million to begin work on a new wastewater plant as this is a very urgent matter that cannot be delayed. Last year Senator Domenici was successful in securing 2.5 million for final design work and to prepare for constructions. We are in the process of putting this money to use as well.

In closing the Jicarilla Apache Nation calls upon this Committee and Congress as a whole to put a stop to the health hazards caused by the Federal Government's irresponsibility and neglect of its water system. We have done everything that has been asked of us in pursuit of this project, and we have invested a significant amount of tribal funds to correct a Federal responsibility. For my tribe to be self sufficient the Federal Government must own up to its responsibilities and make sure that the Jicarilla Apache people have safe drinking water and adequate wastewater facilities. Please help us move forward with economic development, improved health conditions and safe housing for our people. We urge immediate and favorable action on H.R. 3223.

That concludes my remarks. I will be happy to respond to any questions, and my staff is available to work with the Committee staff to move this project forward. Thank you.

[The prepared statement of Ms. Vigil-Muniz follows:]

**Statement of Claudia J. Vigil-Muniz, President, Jicarilla Apache Nation**

Chairman Calvert, Ranking Member Smith and distinguished members of the House Resources Subcommittee on Water and Power, I am pleased to submit this statement in support of H.R. 3223, the Jicarilla Apache Reservation Rural Water System Act.

I would first like to thank Chairman Calvert for scheduling this hearing and thank the members of the Committee for attending today to learn more about the Jicarilla Apache Nation and this very important project. I also want to commend our Congressman, Tom Udall for introducing the bill along with our other New Mexico representatives: Congressman Joe Skeen and Congresswoman Heather Wilson. The Jicarilla Apache Nation is honored to have the support of additional cosponsors: Congressman J.D. Hayworth, Congressman Dale Kildee, Congressman George Miller, Congressman Patrick Kennedy, Congressman Dave Camp, Congressman Bob Ney, Congressman Scott McInnis, Congressman Mike Thompson, and Congressman Robert Ehrlich. I want to especially thank another cosponsor, a long time friend of the Jicarilla Apache Nation, Congressman Don Young who for many years has provided tremendous understanding and support on this project and other matters affecting our Tribe.

This hearing is vitally important to the health and welfare of the Jicarilla Apache Nation. Our people are facing a crisis: the U.S. Department of the Interior owns and operates the public water system on our Reservation and the water system is a shambles. When the Department of the Interior's Bureau of Indian Affairs built the

water system, it was built in a linear fashion so a single break in the line causes systemic failure. The Department of the Interior never adequately maintained or upgraded the water system, so it is simply inadequate to support modern residential life and is a negative barrier to our community growth and economic development. The Department of the Interior also constructed the public water system with materials which constitute health hazards, such as asbestos. As a result, our people suffer with no safe drinking water. In community areas served by original water system equipment, we have clusters of deaths from stomach cancer. Even as we speak, tribal members are forced to drink from this unsafe system. As a tribal government, we have planned a new school for our children, and though the location for the new facility lacks water infrastructure, we were forced to break ground to meet funding requirements of the mill bond. Our complex of government services is at a standstill. Housing and economic development are on hold because you cannot start new business activity without drinking water.

H.R. 3223 would provide the necessary authorization for the Jicarilla Apache Nation to work in cooperation with our trustee, the United States Department of the Interior, acting through the Bureau of Reclamation, to replace the existing, Federally-owned water delivery and wastewater systems on the Jicarilla Apache Reservation. The current infrastructure is deficient, inadequately sized, and out of compliance with Federal standards thereby subjecting the people both on and off the Reservation to serious health and public safety risks. Constructing new water delivery and wastewater infrastructure will provide a safe and adequate supply of drinking water to our Reservation. Authorization of this project is consistent with the United States Federal trust responsibility owed to the Jicarilla Apache Nation, the mission of the Bureau of Reclamation, and will allow us to move forward with desperately needed housing, health care, law enforcement, education and other facilities to meet our governmental responsibilities to our citizens. The passage of this bill is the top priority of the Jicarilla Apache Nation and will be the cornerstone for building a future for my Tribe. I urge the Committee to act favorably on this bill.

This statement provides a history of the Jicarilla Apache people and background on the governance of the Jicarilla Apache Nation, including a general overview of our relationship with the United States. The statement provides a discussion of the Federal Government's development of the water delivery and wastewater infrastructure on the Jicarilla Apache Reservation as well as the deterioration of these systems and the corrective measures that have been undertaken to address these problems.

This statement addresses the relevant sequence of events and discussion of issues relating to the enactment of Public Law 106-243 on July 10, 2000, which authorized the Secretary of the Interior to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Jicarilla Apache Reservation. This study, entitled "Municipal Water and Wastewater Systems Improvement, Jicarilla Apache Nation, Dulce, New Mexico, Planning Report/Environmental Assessment" was conducted by the Bureau of Reclamation in cooperation with the Jicarilla Apache Nation, and was completed in September 2001. This statement discusses this report, the Jicarilla Apache Nation's objective to implement the recommendations of the report, and the current progress of the work now being conducted by the Nation to improve these systems.

#### *HISTORY OF THE JICARILLA APACHE*

For five centuries or more, the mountains and high desert of northern New Mexico have been home to the Jicarilla Apache people, one of six Athapascan groups which migrated from the North sometime between 1300 and 1500 A.D. The traditional homeland of the Jicarilla Apache people covered more than 50 million acres bound by four major rivers across what is now the central and eastern region of northern New Mexico, and adjacent portions of southern Colorado and western Oklahoma. The variety of terrain and ecosystems provided game, agricultural lands, water, fish, wildlife and opportunities for intertribal trade. Our traditional lifestyle included a wide variety of hunting, gathering plants for food and medicine and raising corn and other crops. Jicarilla people lived in clusters of extended family groups and maintained semi-permanent living areas at preferred locations for hunting and gathering moving from site to site with the seasons. Undoubtedly, our people lived through both dry and wet years in this region known for its large-scale climatic changes, and mastered wise use and management of the land and resources in harmony with the demanding environment. Our resilience and resourcefulness proved to be the key to our survival and preservation of our culture during the subsequent tumultuous years following the arrival of European settlers and the American westward expansion.

Beginning in the late 1600's, the Jicarilla aboriginal land base shifted in location and was reduced in geographic spread as the Comanches migrated out of the Great

Basin toward the Texas Gulf Coast and other Apache people were pushed out of southwest Kansas merging with the Jicarilla. Trade and French exploration of the region enabled the Comanches to obtain guns though the Apaches were blocked from obtaining guns. The lack of access to weapons required the Apaches to remain close to the foothills year round thus making them more vulnerable and further disrupting traditional patterns of subsistence. After European contact, lands and resources of the Jicarilla people were appropriated by others but we maintained our core areas.

In the 1800's, the Mexican government awarded numerous land grants to Americans and occasionally to Indians to recognize our prior rights. By 1841, the Jicarilla people were acknowledged to have the ownership and right to use of the largest land grant, consisting of 1.7 million acres east of the Taos Pueblo in northern New Mexico. Following the 1846 annexation of this territory by the United States, this land grant was purchased by an American in 1847 without our consent. Pressure for lands and resources among settlers and the Jicarilla people caused increasingly strained relations and the Jicarilla people were further dispossessed from traditional, sacred homelands.

By 1850, most of the Jicarilla Apache people were located in New Mexico practicing small scale agriculture and grazing. In 1851, a treaty was signed between the United States and the Jicarilla Apache and plans were developed to move the Jicarillas away from the non-Indian settlement in northern New Mexico. Our treaty, however, was not ratified. The Jicarillas made many attempts to establish small farms on the newly-reserved tribal territory though these efforts were continuously hampered by non-Indian settlement pressures. These settlers not only forcibly appropriated the Tribe's fertile lands, including extensive forest reserves, and water resources, but also pressured local governing officials to ignore efforts to secure a firm tribal land base for the Jicarilla Apache people.

To address these problems, a number of Executive Orders reservation were issued to establish a reservation land base for the Jicarilla Apache people. Executive Orders of President Ulysses S. Grant in 1874 and Rutherford B. Hayes in 1880 were issued establishing a reservation land base for the Jicarilla Apache people. However, primarily due to pressure from non-Indian settlers, these orders were rescinded and around 1883, and the Federal Government relocated the Jicarilla Apache people to the south to live with the Mescalero Apaches. This move proved unwise because the land at Mescalero was being irrigated by the Mescaleros or non-Indian settlers, and the Jicarilla people returned home to northern New Mexico and continued efforts to secure a permanent homeland of its own.

Finally on February 11, 1887, President Grover Cleveland issued an Executive Order which established the Jicarilla Apache Reservation on part of our original homeland in north-central New Mexico bordering Colorado. In 1907, President Theodore Roosevelt issued another Executive Order establishing the southern portion of the Reservation. These Executive Order reservation orders were ratified by Congress in 1919. These laws finally ended the forced dispossession and removal that our people endured for nearly 200 years. With adequate water, timber, wildlife and agricultural lands coupled with a seemingly more supportive Federal Government trustee, our Tribe was poised to undertake sustained development of the Reservation lands and resources as our permanent home.

The Jicarilla Apaches began the 20th Century fighting epidemic outbreaks of Tuberculosis, trachoma, measles, and influenza. These epidemics resulted in a devastating loss of our population. Over 90% of the Jicarilla children were infected with Tuberculosis. Our people persevered and steadily continued to develop our resources and planned to use the revenue from our timber harvesting to purchase sheep and cattle for grazing. However, the United States controlled and managed our timber resources, but failed to properly manage revenue derived from the sale of our timber. By 1912, 130 million board feet of timber were sold but funds were not delivered threatening the Tribe's wealth and economic security at a critical time of our development. In 1917, Congress recognized that the Department of the Interior's mismanagement was causing the Tribe unnecessary suffering while our funds were encumbered. The Department of the Interior also failed to develop our water resources causing overgrazing and extensive damage to the Reservation resources. In 1919, livestock was finally delivered to the Reservation which diversified the Jicarilla Apache way of life from bare subsistence to a ranching economy. Yet, tribal revenue derived from resources uses and sales, primarily timber, continued to be mismanaged by the Federal Government as documented in several Senate field hearing which confirmed that the Tribe was not receiving the benefits from tribal resources development.

On August 3, 1937, our Tribe accepted the provisions of the Indian Reorganization Act (IRA), and adopted a Constitution, bylaws and corporate charter enabling quick

and efficient governmental organization. The Constitution vested authority in the Tribal Council to regulate use of land in conformity with land and resources protection. The Tribe made “sustained yield” the guiding principal governing resources development. Acceptance of the IRA reinforced specific duties of the Department of the Interior to protect and enhance our land and resources.

During the middle part of the century, our livestock and resources management continued to grow. At this time, the prevailing Federal Policy of terminating the legal status of Indian tribes did not affect our Tribe as we were deemed traditional and not “eligible for termination.” In the 1950’s, mineral exploration started on the southern part of the Reservation, and soon development of our oil and gas began to generate revenue for the Tribe. At the same time, our livestock economy began to decline due to the lack of water development and drought conditions.

By 1960, 90% of the tribal population resided in or near the community of Dulce demonstrating another major shift in our economy. Both the Tribe and the Federal Government, acting through the Department of the Interior’s Bureau of Indian Affairs, had to reconstruct the tribal economy based on centralized governmental services, natural resources management, and commercial enterprise development. In particular, timber and oil and gas development provided a steady and reliable source of revenue and employment opportunities. Increased major infrastructure, including schools, public health facilities, tribal offices, and housing accompanied the Tribe’s increased economic development. Tribal government revenue from natural resources extraction and revenue from the settlement of the land claims settlement coupled with a good relationship with and infrastructure support from the Congress and the Department of the Interior provided a strong framework for the economic growth of the tribe.

The modern era also represented another major development as the Tribe became more active in its exercise of tribal government authority and which often required the Tribe to challenge the Department of the Interior’s policy decision-making. In 1976, the Tribal Council enacted a tribal severance tax ordinance on oil and gas tax to raise additional governmental revenue. The Tribe successfully defended its authority in the landmark 1982 Supreme Court decision *Merrion v. Jicarilla Apache Tribe*, which upheld the right of the Tribe to impose these taxes to fund tribal government services. Our Tribe continued to assert its rights and move forward with protecting our water resources.

During the 1970’s, the Tribe asserted its authority to protect its water resources because the Department of the Interior failed to do so when erecting major Federal water projects diverting our water resources to serve communities off the Reservation. The Tribe sued the Department of the Interior and the Federal Government to defend our water resources and our efforts ultimately resulted in the congressional enactment of P.L. 102–441, the Jicarilla Apache Tribe Water Rights Settlement Act in 1992. This settlement statutorily guaranteed our Tribe perpetual water rights for commercial, municipal and domestic use as well as the ability to market or lease water to third parties for use off the Reservation.

During this period, the Tribe similarly prevailed in suing the Department of the Interior for its failure to properly value tribal oil and gas and account for royalties as required by the applicable leases, statutes and regulations. In 1989, however, the Supreme Court issued an unfavorable decision in *Cotton Petroleum v. New Mexico* allowing the state to impose severance taxes on non-Indian producers who worked with the tribal government to develop tribal trust resources on the Jicarilla Apache Reservation. We strongly disagree with the Court’s rationale for this decision because it places discriminatory and unfair impediments on our economy with no requirement that the state return any revenue or services back to the Reservation. The resulting dual taxation burden caused by this decision continues to plague Indian economies nationwide and is a matter that we have been working to address through Federal legislation. With the exception of the case, the Jicarilla Apache Nation has been extremely successful in asserting its rights and holding the Federal Government accountable for its responsibilities owed to the Tribe.

In the 21st Century, the Jicarilla Apache Nation continues to assert its rights, protect its resources and hold the Department of the Interior and the United States accountable for obligations guaranteed by Federal law and for its failure to uphold these obligations. When the Department of the Interior, acting through the BIA, allowed the Federally-owned water delivery and wastewater systems to deteriorate to the point of threatening the public safety and welfare of our people and nearby residents, the Jicarilla Apache Nation, in keeping with our long tradition of resilience and resourcefulness, immediately undertook action to address this problem.

*PROFILE OF THE JICARILLA APACHE NATION*

The Jicarilla Apache Nation is a Federally recognized Indian tribe organized under the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq. In addition land set aside by the 1887 and 1907 Executive Orders that established the Jicarilla Apache Reservation, the Jicarilla Apache Nation reacquired approximately 137,150 acres of additional land taken into trust by the United States, resulting in a total Reservation land base of 879,917 acres. The Jicarilla Apache Reservation is geographically located in the resource-rich San Juan Basin, a geologic basin containing large amounts of oil, gas, coal, uranium, and geothermal reserves.

The Jicarilla Apache Nation has approximately 4,000 members with nearly 85% of our members (3,300) living on the Reservation. The town of Dulce in the north-eastern part of the Reservation serves as the headquarters and tribal government seat and is the location of most of the social and economic activity of the Reservation. Most of the residents are concentrated in Dulce.

In accordance with the Jicarilla Apache Revised Constitution, the Jicarilla Apache Legislative Council, an eight member body elected by members living on the Reservation, is the governing body of the Jicarilla Apache Nation. A President and Vice President are elected by the on-Reservation tribal membership establishing the head executive branch of government which directs all of the various tribal departments. The Constitution provides for a third branch of government, the Jicarilla Apache Tribal Court.

The Jicarilla Apache Nation is the largest employer in the region with employing about 750 people, and provides law enforcement and detention, fire protection and rescue, health care, education, natural resources development and management, elderly care, road maintenance, environmental protection, fitness and wellness services to the citizens on the Reservation. The Jicarilla Apache Nation raises governmental revenue through development and regulation of our oil and natural gas to fund over 90% of its operating budget. The Nation also formed the Jicarilla Energy Company (JECO) to develop, produce and market our oil and gas reserves. The Nation offers world class big game hunting and fishing that attracts visitors worldwide.

We have also instituted a land acquisition program to purchase and recover some of our original homelands in order to expand our agricultural resource base and create additional opportunities for tribal social and economic growth. The high elevation and mountainous terrain of the Reservation has proven to be inadequate to accommodate the Nation's increasing agricultural and ranching activities. In addition, 99% of the Nation's population is located in the town of Dulce on the extreme northeastern edge of the Reservation. These circumstances have necessitated the purchase of land east of Dulce, known as the Mundo Ranch recently reacquired and taken into trust status, to provide for additional housing and governmental services facilities.

*DEVELOPMENT OF WATER INFRASTRUCTURE*

The existing water and wastewater facilities that use the Tribe's water rights are held in trust by the United States Department of the Interior and operated by the Bureau of Indian Affairs (BIA) Jicarilla Agency (Agency) staff. The initial water supply system was erected in the early 1900's in the community of Dulce primarily to serve the BIA operations and facilities. The source of the community's water supply is the Navajo River located about a mile from Dulce. Water is diverted from the Navajo River and pumped up hill to the water treatment plant before being released into the community for public consumption.

Upon settlement by tribal members into the town of Dulce, the BIA provided a couple of outdoor spigots or faucets along the main water line from which member could draw water. In the early 1960's the Tribal Council requested the BIA to extend its water delivery services to tribal members with homes located along the main water line. The BIA granted this request, and for the first time, some of the tribal members began to experience the convenience and health benefits of indoor plumbing.

As the needs of the community expanded over the years, the Dulce water system also grew from a small BIA-contained system to one that provides water delivery and wastewater services to the entire town of Dulce. However, with no overall comprehensive planning for capacity, public health and safety considerations, the water system developed on an ad hoc basis whereby water line extensions branched out from the original main line to serve tribal buildings, individual commercial development, housing subdivisions, additional BIA facilities, and other public facilities. Because the Dulce water system developed in a linear fashion with only one source of water to the point of delivery, a single water main break results in water delivery failure to a significant number of people. The linear nature of the system also cre-

ates stagnant zones which causes water to become stale thereby creating a serious health threat to the community.

During the late 1980s and the 1990s the BIA-operated water treatment plant had several drinking water quality citations as the existing plant was under sized and outdated unable to meet new drinking water standards. Public health officials suspected that the water supply could be contributing to a marked rise in stomach and intestinal related diseases in the community.

The unlined sewage treatment lagoons were constructed with BIA and Indian Health Service funding. This outdated wastewater disposal system is not only obsolete but is also overcapacity, spilling poorly treated effluent into Amargo Creek that is tributary to the San Juan River. This system is on the verge of failure, and is currently operating without the proper National Pollutant Discharge Elimination System permit, which expired in 1995. This system cannot qualify for a permit renewal under present circumstances, and under Federal law, exposes the BIA to fines of up to \$25,000 per day. The sewage lagoons are operating at 100% over capacity during the summer and at 500% over capacity in the winter as a result of lower evaporation rates. This overcapacity as well as seepage from the unlined lagoons has resulted in wastewater spilling into the Amargo Creek, which feeds back into the Navajo River, and eventually into the Colorado River. The community also suffers from unbearable odors from the sewage lagoons. Given the density of the local housing, the current system not only threatens the Dulce community but also poses significant public health, welfare and safety threats to communities off the Reservation.

The inadequacy of the existing facilities has also given rise to an additional public health and safety concern. The demand for and proliferation of additional housing has occurred without access to community water and wastewater facilities, and have resulted in increased private wells and septic tanks. More than 200 septic systems have been identified and are not functioning properly because the marine shale-derived soils in the area have limited absorptive characteristics and are unsuitable for drain field application. There are documented cases of standing septic waste in open areas and near children playing in the streets.

All of these documented deficiencies and public health dangers demand that the only solution is to completely replace and rehabilitate both the water delivery and wastewater collection and treatment systems. Yet, for more than twenty years, these systems have been steadily deteriorating due to inadequate Federal funding for regular maintenance and improvements. However, the Jicarilla BIA Agency has continued to exercise Federal responsibility and control over these systems by allocating funds from its budget to cover salaries for the operators, electrical power and chemicals to operate the treatment plant. In addition, the Agency has submitted budget information for a number of years documenting the shortfall in funding to operate and maintain the existing systems.

Despite these efforts, the Federal Government has consistently under funded the operations, maintenance and replacement program for the systems and has reluctantly continued to manage the town's drinking water and wastewater systems. This has led to significant degradation of existing systems and replacement in conformance with new standards is virtually non-existent.

In 1996, the BIA inquired whether the Jicarilla Apache Nation would assume ownership and operation of the systems. To evaluate the feasibility of this request, the Nation commissioned studies in 1997 with PNM, the largest public utility in the state of New Mexico, to assess the condition of the water and wastewater facilities in Dulce. A field investigation and engineering analyses were performed by PNM Water Services and the findings indicated serious degradation of existing water and wastewater pipelines and related facilities. It also indicated that there was a substantial capacity problem for this size of community with little opportunity for expansion given the condition and capacity of existing systems. The most serious findings were the poor condition and capacities of the existing water treatment plant and sewage treatment system, a series of evaporative lagoons. The study illustrated that both systems were operating at or above design capacity and were not meeting Federal standards for public health and stream discharge standards. Discharge of poorly treated effluent into a tributary of the Navajo River in the San Juan basin was occurring routinely under an expired National Pollutant Discharge Elimination System (NPDES) permit. The findings indicated that for the systems to be brought up to current operating standards and meet Federal water quality standards it would cost in excess of \$25 million. This investment would not, however, provide for long-term community expansion.

These dire conditions escalated in October of 1998, when the drinking water diversion system on the Navajo River failed leaving the community without water for 6 days. This required emergency funding from the Tribe to repair the diversion il-

lustrating the vulnerability of the Tribe's diversion and pumping plant system. The Nation, unable to get necessary funding from BIA or other Federal programs, was compelled to expend \$5 million on an emergency basis to replace the water treatment plant and associated facilities in 1999.

The magnitude of the infrastructure issues couple with the BIA's inability to comprehensively address the scope of the problems associated with their systems left the tribal leadership with no alternative but to take the lead to resolve these issues. With the PNM information in hand, the Nation approached a number of agencies, in addition to the BIA, such as the Indian Health Service, EPA and USDA to see if any programmatic funding existed to assist the Nation with this serious set of problems. Given that these systems are titled with the BIA, most Federal programs had limited resources to deal with these problems. To deal with this magnitude of funding needs, the Nation was advised to seek specific legislation to have appropriations designated for a specific agency to manage in cooperation with the Nation.

The Nation then approached the Bureau of Reclamation to see if their agency would be willing to work on this issue. The Nation was advised to seek authorization for a Feasibility Study so a report to Congress concerning the problem could be prepared to assist in developing authorizing legislation for this project. The Nation worked closely with the New Mexico Congressional delegation to develop legislation that would authorize the Bureau of Reclamation to prepare the Feasibility Report to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Jicarilla Apache Reservation. P.L. 106-243 was signed into law on July 10, 2000 and directed the Secretary of the Interior to work in cooperation with the Jicarilla Apache Nation in conducting this study. The statute also authorized \$200,000 for the completion of the study and required the Secretary to report back to Congress on the status of the work within one year from the time funding was appropriated.

#### *FEASIBILITY STUDY AND REPORT AUTHORIZED BY PUBLIC LAW 106-243*

In September 2001, the Bureau of Reclamation, in cooperation with the Jicarilla Apache Nation completed the feasibility study and report authorized by P.L. 106-243, entitled "Municipal Water and Wastewater Systems Improvement, Jicarilla Apache Nation, Dulce, New Mexico, Planning Report/Environmental Assessment." The findings of this report were similar to the PNM report regarding the condition and capacity of existing systems but suggested that none of the older existing pipelines be salvaged due to age and size. This resulted in a \$35 million estimate to adequately replace existing deteriorated facilities and to build a new conventional wastewater treatment plant to treat water to Federal discharge standards, eliminate the serious odor problem permeating the community, and have a new water supply source for stream enhancement, construction and irrigation purposes that was previously being evaporated.

The report goes on to say that to adequately solve both immediate environmental and public health concerns and meet long-term growth and economic development needs of the Jicarilla Apache Nation, an additional \$10 million will be needed resulting in a recommendation to Congress to authorize construction of water and wastewater facilities at a cost of \$45 million.

#### *THE NATION'S CONTRIBUTIONS TO THE SYSTEMS*

After discovering the Federal programs and funding sources were limited to solve even the immediate capacity problems and public health concerns, the Nation was compelled to fund several projects beginning in 1998.

<u>Projects:</u>	<u>Tribal Funding:</u>
Studies and Engineering	\$ 450,000
Water Treatment Plant	2,730,000
Water Storage and Distribution	2,240,000
Mundo Development Infrastructure (completed by 2003)	2,250,000
Wastewater design and initial construction	6,000,000
<b>TOTAL TRIBAL INVESTMENT</b>	<b>\$ 14,670,000</b>

On a percentage basis, this investment would amount to more than 20% of total project costs if what the nation has already funded is added to the Federal portion being requested. The Nation recently committed an addition \$6 million to begin con-

struction on the new wastewater treatment plant because the current situation is so extreme and required immediate action. The total project cost is broken listed below:

Replace existing water system facilities	\$ 18,500,000
Replace existing waste water system facilities	\$ 18,640,000
<i>(Total to replace existing water and wastewater systems</i>	<i>\$ 35,140,000)</i>
Provide wastewater facilities to areas that currently have serve but no wastewater service	\$ 2,800,000
Water system facilities to the Mundo ranch	\$ 3,550,000
Wastewater system facilities to the Mundo ranch	\$ 3,550,000
<i>(Total for water and wastewater facilities for Mundo ranch</i>	<i>\$ 7,100,000)</i>
<b>TOTAL PROPOSED PROJECT COST</b>	<b>\$ 45,040,000</b>

In addition, theNation is making the commitment to assume title to the facilities and to operate these facilities in perpetuity once constructed to Federal standards. This is a significant Federal benefit as it alleviates the Federal liability in the operation of a substandard system and shifts the costs of operations, maintenance and replacement of these facilities to theNation. It is estimated by the O,M & R portion of the report, that it will cost approximately \$750,000 per year to adequately operate and maintain these facilities. The Federal investment would be protected under tribal management as BIA funding for this purpose has been significantly cut over the years resulting in the current conditions that exist today. The present value of this cost over a 50-year project life at a 6% financing rate is \$ 12 million.

By authorizing this project, Congress will provide for the United States to meet its trust responsibility to theNation by providing adequate water and wastewater infrastructure to protect and advance the health, safety and welfare of the Jicarilla people. TheNation has fulfilled all that was asked of us to demonstrate the extensive need our people have for adequate infrastructure that a majority of Americans currently enjoy. TheNation, in cooperation with Reclamation and with the assistance of Congress, has demonstrated the poor condition that these facilities are in and have exposed the risk facing the Bureau of Indian Affairs as it continues to operate these facilities in their current condition. TheNation has also demonstrated its resolve in improving conditions for our people by investing nearly \$14 million in infrastructure of its own financial resources even though we believe strongly that the United States has failed in providing these services as part of its trust responsibility to theNation.

#### CONGRESSIONAL LEGISLATION

This discussion provides a section-by-section analysis of H.R. 3223.

Section 1. Short Title—Jicarilla Apache Reservation Rural Water System Act.

Section 2. Purposes of the Act

- to ensure a safe and adequate rural, municipal, and water supply and wastewater system on the Jicarilla Apache Reservation;
- to authorize BOR to plan, design, and construct the water supply, delivery, and wastewater collection systems on the Jicarilla Apache Reservation;
- to require, at the election of the Jicarilla ApacheNation, that BOR contract with theNation under the Indian Self-Determination Act for the planning, design, and construction of the project; and
- to establish a process for theNation to eventually assume ownership and responsibility for the system upon the completion of the project.

Section 3. Definitions. Self-explanatory.

Section 4. Jicarilla Apache Reservation Rural Water System.

(a) & (b) authorizes construction and scope of the project to rehabilitate and replace the water delivery and wastewater collection systems on the Jicarilla Apache Reservation.

(c) construction cost of the project will be borne by the Federal Government, and the existing amount of operation and maintenance funding currently incurred by the

Federal Government shall continue to be available to the Nation through contracting under the Indian Self-Determination Act.

(d) the Nation is given recognition of the fact that it has expended \$7.3 million on the Federal systems and that this amount shall be deemed to have satisfied any project beneficiary share that the authorizing committees may require.

(e) after the project is completed and the water system is rehabilitated, the Nation will assume responsibility and liability under the relevant plans.

Section 5. General Authority authorizes the Secretary to enter into agreements and to promulgate regulations relevant to the project.

Section 6. Project Requirements -

(a) Secretary has to prepare a project plan within 60 days of enactment of the statute;

(b) Secretary shall designate a project manager;

(c) Secretary and Tribe shall commit to a transition plan regarding operation and maintenance of the system during and after construction;

(d) Secretary shall have oversight responsibility and shall incorporate "value engineering analysis" an engineering term of art;

(f) Service area shall be within the boundaries of the Reservation;

(g) Nation shall develop an operation, maintenance and replacement plan;

(h) Project shall be subject the Indian Self-Determination Act;

(i) Secretary shall issue an annual report on the progress of the project; and

(j) Title shall be held in trust by the United States and will be transferred only by another act of Congress.

Section 7. Authorization of Appropriations -

(a) \$45 million, subject to necessary price and cost adjustments, is authorized to be expended on the project;

(b) Funds may only be appropriated after an appraisal and feasibility study have been completed, and an operation, maintenance replacement has been completed by the Nation.

(c) NEPA requirements must be satisfied.

(d) Amounts authorized and appropriated to be expended may not be subject to agency financing reductions.

Section 8. Prohibition on use of funds for irrigation purposes.

Section 9. Water Rights the Nation has sufficient water rights in the basin for this project and the project will have no adverse Endangered Species Act related issues.

#### CONCLUSION

In sum, the Jicarilla Apache Nation is suffering premature deaths, community members are subject to continuing health hazards, and community development is blocked by the Department of the Interior's failure to maintain and modernize the public water system that it established and undertook to operate on the Reservation. Interior has asked the Jicarilla Apache Nation to take over the operation of the public water system, and as a tribal government we are willing to take over the operation of a safe and sound public water system. But before we will take over the operation, Interior must fix the health hazard that it has created.

Mr. CALVERT. Thank you.

Mr. Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman.

Madam President, again, thank you for coming, and we thank you for your testimony and also the explanation of just what your community faces. And I am pleased to join my colleague from New Mexico to move this legislation. I believe we received some encouraging signs from the Bureau of Reclamation, and I am just interested in your evaluation as you sat and listened to the preceding testimony. Do you feel comfortable that we can move forward in a constructive fashion, in a bipartisan way, and with the Bureau as well as with your tribe to solve this problem, using this bill as a starting point and understanding that we have some things to iron out here?

Ms. VIGIL-MUNIZ. I believe so.

Mr. HAYWORTH. Well, again, I think that those who join us here today, when they hear what you are confronting, the health haz-

ards, the environmental hazards and the frustration and indignity of trying to solve a problem and trying to reach out and get this done is something that underscores the urgency of the action.

And, Mr. Chairman, I again thank you for having his hearing and then moving forward in this direction.

And, Madam President, again, as we visited earlier today before coming in the hearing room, I stand ready to work with you and your tribe, and my colleague from New Mexico and other colleagues on the Committee, to find a legislative solution of this, and I thank you for your attendance.

I yield back.

Mr. CALVERT. I thank the gentleman.

Mr. Udall.

Mr. UDALL OF NEW MEXICO. Thank you, Mr. Chairman, and I yield to the gentlelady from California, Ms. Solis.

Ms. SOLIS. Thank you, Mr. Udall.

I also want to associate my comments with Mr. Hayworth's, surprisingly. On this one we agree. This in fact I view as an environmental justice issue. This community has done as much as they can feasibly do through their own efforts and creative uses, by putting money together to begin a project to address these egregious issues that face your particular reservation. I commend you and hope that we can work with you. This Committee will work with you to see how we can look at any other mitigation issues that were raised during the year, but I had an opportunity to meet with some of the members and was very interested in hearing of some of the challenges that they have, not only the fact that they are faced with many water cleanup, contaminated water cleanup challenges, but also the fact that this also where I believe nuclear testing occurred in prior years, so that also has some definite impacts in the surrounding area that I know at this time we can't begin to address. But we can certainly start looking at something that adds more of a challenge to what it is you all are trying to do.

So I just wanted to associate myself with support of this bill, bipartisan effort here. And thank you for coming here and testifying this afternoon before our Committee. Thank you.

Mr. UDALL OF NEW MEXICO. Yield.

Ms. SOLIS. Yield back the balance of my time.

Mr. UDALL OF NEW MEXICO. Thank you very much for those eloquent words on this issue.

Madam President, let me first of all thank you for your leadership on this issue. I think you have shown a great deal of initiative since you have been president. I think you have pulled together a good team to work on this, and I think we are making significant progress, and on my part, I just want to commit to you that I will work with the rest of the Committee members and the Chairman to do whatever we can to expedite this.

I think you brought one of your counselors with you also today, if you would like to introduce him to the Committee, Carson Vicente; is that correct?

Ms. VIGIL-MUNIZ. Yes, that's correct.

Mr. Chairman, may I introduce him?

Mr. CALVERT. Yes. Certainly, you go ahead and introduce your guest.

Ms. VIGIL-MUNIZ. Carson Vicente, the legislative counsel; also have Mike Hammond, who is our water administrator; and Shana Nancity who is our lobbyist here in D.C.

Mr. UDALL OF NEW MEXICO. Thank you. Good to have you here.

You heard the testimony of Commissioner Keys. On the issue of operation and maintenance after the project is complete, could you tell us what the position of the Jicarilla Nation is on that?

Ms. VIGIL-MUNIZ. Mr. Chairman, Mr. Udall, we plan to take over the title at that point in time when the project is completed, and we will take over the responsibility of the operation and maintenance at our cost.

Mr. UDALL OF NEW MEXICO. That was my understanding all along, and I think that the three sections of the bill that the Commissioner mentioned, those sections specifically referred to in the language, "The tribe shall assume responsibility for and liability related to the annual operation, maintenance and replacement cost of the project in accordance with this act." That was one of the sections, and I believe that was very clear. I think you referred also to Section 4(c) here, 4(c)(2). In the purposes it talks about "To establish in which the Apache Nation shall assume title and responsibility for ownership, operation, maintenance and replacement of the system." So we are once again in the legislation being clear there.

And in 4(c)(2), which is one that the Commissioner mentioned, it says, "The Federal share of cost of operation and maintenance of the rural water supply project shall continue to be available for operation and maintenance in according with the Indian Self-Determination Act." So that may be the area where we need to work a little bit with the Commissioner on, but he, I think, showed his support and willingness to work with us. And I don't know if you have any other comments based on what he said in terms of stating the position of the Nation.

Ms. VIGIL-MUNIZ. Mr. Chairman, Mr. Udall, if I understand correctly on the 638 issues, they are referring to BIA dollars that are currently being applied to the operation and maintenance, which is approximately 100,000, and those dollars are what we plan to take over and use toward contributing toward the operation and maintenance cost.

But, yes, we can work with Commissioner Keys and try to resolve the language issue and try to get that much clearer so that they understand where we are coming from.

Mr. UDALL OF NEW MEXICO. And what you talk about 638 dollars, you are talking about the program that if a tribe takes over a function and operates it itself, they are then entitled to have money to do that, and that is the \$100,000 you are referring to?

Ms. VIGIL-MUNIZ. That is correct.

Mr. UDALL OF NEW MEXICO. Yes, OK.

Thank you very much, Mr. Chairman.

Mr. CALVERT. I thank the gentleman.

I think that we can work out the differences with the Commissioner, the three of us, Mr. Hayworth, Mr. Udall and myself and our Committee staff, and try to, one work out the operations maintenance language in the bill, and also I think we need to get some flexibility in the bill for additional funding from different Federal

agencies potentially, and I think we can do that, and hopefully we can get together a bill that we can bring up here and mark up and send out.

And so with that positive news, unless there are any other comments from the Committee, we stand adjourned.

I thank Madam President for your attendance today, and we appreciate your flying all the way out here. With that, we are adjourned.

[Whereupon, at 3:09 p.m., the Subcommittee was adjourned.]

