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# MISCELLANEOUS WATER PROJECTS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED SEVENTH CONGRESS  
SECOND SESSION

ON

<b>S. 1310</b>	<b>S. 2475</b>
<b>S. 1385</b>	<b>H.R. 706</b>
<b>S. 1824</b>	<b>H.R. 1870</b>
<b>S. 1883</b>	<b>H.R. 2115</b>
<b>S. 1999</b>	<b>H.R. 2828</b>

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## MISCELLANEOUS WATER PROJECTS

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THURSDAY, JUNE 7, 2002

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

The subcommittee met, pursuant to notice, at 2:35 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Tim Johnson presiding.

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

Senator JOHNSON. The Committee on Energy and Natural Resources, Subcommittee on Water and Power, will come to order. Senator Dorgan—Chairman Dorgan is unavailable temporarily and has asked that I chair this hearing at the outset. Obviously, when Senator Dorgan is able to return, we'll turn to the gavel over to him.

Welcome to the hearing of the Subcommittee on Water and Power. Today the subcommittee will receive testimony on several pending bills involving various water projects throughout the West. I'm pleased to be able to learn more about these bills, which are authored by several of my colleagues and which I know are important to the residents of their States. We all can appreciate how crucial water is in the West.

The bills that we will hear about today are S. 1310 and H.R. 1870 providing for the sale of certain real estate in the Newlands Project located in Nevada; S. 1385 and H.R. 2115, authorizing the Secretary of the Interior to participate in the Lakehaven Water Reclamation Project in Washington State; S. 1824 and H.R. 2828, authorizing certain repayments relating to the Klamath Project in Oregon; S. 1883, to authorize the Bureau of Reclamation to participate in rehabilitation of the Wallowa Dam in Oregon; S. 1999, to reauthorize the Mni Wiconi Rural Water Supply Project in South Dakota; S. 2475, to amend the Central Utah Project Completion Act; H.R. 706, to direct the Secretary of the Interior to convey certain properties near the Elephant Butte Reservoir and the Caballo Reservoir in New Mexico.

And I'm pleased to see my colleague, Senator Bennett, here today. I also appreciate Assistant Secretary of the Interior Bennett Raley being here to testify. In addition, I know that several of the witnesses have traveled long distances in order to provide testimony to us, and we all appreciate your presence today.

I will, at the outset, begin with a brief opening statement on S. 1999 of my own, the prerogative of the chair, it seems—

[Laughter.]

Senator JOHNSON [continuing]. And then turn to my colleagues for opening statements, and then, of course, to Senator Bennett. I want to thank Senator Dorgan for holding this hearing today on S. 1999, legislation I've introduced along with my good friend and colleague, Senator Tom Daschle. This legislation will extend the project completion date and increase the cost-ceiling authorization of the Mni Wiconi Rural Water Project. S. 1999 is absolutely vital to moving forward with water development efforts in my State.

I appreciate the help that the committee, the committee staff—most notably, Patty Beneke—has provided to our efforts in South Dakota to improve the quality and supply of drinking water. I also want to thank the ranking minority member, Senator Smith, and his staff for their cooperation on these important issues over the years. I also want to thank John Steele, president of the Oglala Sioux Tribe in South Dakota, for testifying today on behalf of all four project sponsors, as well as Mike Hurley, the manager of the West River/Lyman-Jones Rural Water System, and Jim McCauley, the manager of the Lower Brule Sioux Tribe Rural Water System, as well as Paul Little, of the Oglala Sioux Tribe. They are here with us today. The fourth project sponsor is the Rosebud Sioux Tribe.

I think it's important to note that the Mni Wiconi Project is a cooperative effort, as indicated by the four local sponsors. The three tribal sponsors and the one non—tribal rural water sponsor have all worked jointly since 1988 to help make this project a reality and to meet a common goal—providing clean drinking water to a part of our State that lacks both quality and quantity of clean drinking water.

This project has become an important example of how Indian and non-Indians in South Dakota can come together to solve one of the biggest problems they collectively face. I want to thank, again, the local project sponsors for their hard work in making the Mni Wiconi Project a reality and demonstrating to the rest of the Nation how common goals can bring people of different cultures together.

The need for this legislation is simple. The Mni Wiconi Project will not be constructed by the completion date of 2003, as provided for in the 1994 law, because the Federal Government has simply not provided the level of annual funding needed to finish the construction that quickly. Although funding has been in the \$25 to \$30 million range for the past 5 years or so, to have met the goal of completion by 2003, the project would have needed funding levels in the \$40 million range. By stretching out the construction of the project, the administrative costs associated with the project continue to go up, as well, thereby creating the need for increasing the authorized cost ceiling of the project by another \$58.8 million.

S. 1999 will extend the construction date to 2008, as I indicated before, and this will be a reachable goal as the project can meet that timetable if funding continues in the \$30 million range.

Congress has become familiar with the Mni Wiconi Rural Water Supply Project over the years, after passing the original authoriz-

ing legislation in 1988, and expanding the legislation in 1994. But much progress has been made in recent years, and I'd like to take this opportunity to update the committee on that important progress.

The project is now more than 50 percent constructed, with Congress providing more than \$200 million in funding over the past 12 years. The project sponsors also recently held a dedication ceremony for the water drinking plant completion. Significant progress has already been made with thousands of South Dakotans already receiving water either from the core pipeline of the project or from temporary groundwater sources.

The Mni Wiconi Water Supply Project will deliver reliable, good-quality drinking water from a dependable source, the Missouri River, and will result in an improved quality of life as well as economic development and job creation. The four project sponsors—the Oglala Sioux Tribe, the West River/Lyman-Jones Rural Water System, the Rosebud Sioux Tribe, and the Lower Brule Sioux Tribe—have done an extraordinary job in working together, and, once again, I commend them for the level of cooperation and understanding they've all demonstrated.

I don't believe our needs get any more basic than good-quality, reliable drinking water, and I appreciate the fact that Congress has shown support for the Mni Wiconi Project over the last number of years. I look forward to continuing to work with my colleagues for quick passage of this important legislation and to the continued support of Congress for the Mni Wiconi Rural Water Supply Project.

Again, special thanks to Chairman Dorgan for his support. Thanks to the subcommittee and the committee as a whole for your support and willingness to hold this hearing today.

Next, I will turn to my colleagues to see if they have opening statements.

[The prepared statements of Senators Bingaman, Smith, and Reid follow:]

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR  
FROM NEW MEXICO

Thank you, Chairman Dorgan, for holding today's Subcommittee hearing on several pending bills affecting water projects across the West. I am pleased that included among the bills to be considered is H.R. 706, the Lease Lot Conveyance Act of 2002. This bill was introduced by Representative Joe Skeen from New Mexico and I am happy to be working with my colleague from the House of Representatives, as well as Senator Domenici, in support of getting this legislation enacted into law.

The bill directs the Secretary of the Interior to convey 403 lots that the Bureau of Reclamation has jurisdiction over, and has been leasing for over 50 years, to the Leaseholders Association representing individuals residing on the properties. The lots are located around the Elephant Butte and Caballo Reservoirs in New Mexico, and many of the lessees have been waiting several years to acquire their respective lots. Enactment of this bill will fulfill their long-held expectations.

I understand that with the changes made to the bill in the House of Representatives, the Administration has no further objections to this legislation. I therefore look forward to working with my colleagues in the Senate to move this legislation forward and on to the President for his signature.

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

Mr. Chairman, I appreciate your convening this legislative hearing today to take testimony on several water bills pending before the Subcommittee. I look forward to hearing from the witnesses today.

I know that these bills are important to a number of communities and to many of our colleagues. It would be my hope that we can resolve any issues with these bills, and report as many of them as possible out of the committee before the August recess. I look forward to working with you, Mr. Chairman, in a bi-partisan manner—as we have so many times in the past—to meet the water needs of these western communities.

I am the sponsor, with my colleague from Oregon, Senator Wyden, of two of the bills before the Subcommittee today. The first bill, S. 1824, would authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's irrigation works for 2001, and to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001. The second bill is S. 1883, the Wallowa Lake Dam Rehabilitation and Water Management Act of 2001.

I want to welcome my colleague, Congressman Greg Walden here today, and I look forward to hearing his comments on these bills as the sponsor of the House companion legislation. I would also like to welcome Dan Keppen, the Executive Director of the Klamath Water Users Association, and Jeff Oveson, the Director of the Grand Ronde Model Watershed Program. I appreciate your willingness to travel back here in order to provide testimony today.

The first bill, S. 1824, to authorize Reclamation to reimburse the Klamath water districts that paid for the operations and maintenance of the facility last year—yet received no water—is a matter of fundamental equity and justice. Last year, for the first time in the Project's history, water users who receive their water from Upper Klamath Lake received a zero water allocation.

Two biological opinions governed operations of the federal Klamath Project last year. One was issued by the U.S. Fish and Wildlife Service with respect to suckers and the other was issued by the National Marine Fisheries Service with respect to coho salmon. Taken together, these two opinions both raised the lake level of Upper Klamath Lake and increased flows in the Klamath River during an extreme drought. The real tragedy for these 1,200 farm families is that in February 2002, the National Research Council released a preliminary analysis of these two biological opinions which found that the underlying data did “not provide scientific support” for either the lake levels or the downstream flows—the two key management requirements in the biological opinions.

In the name of equity, I believe the federal government needs to return these operation and maintenance payments. I know that the Administration is concerned about setting a precedent, but frankly, I think the precedent would be a good one. Too often, because there is no budgetary impact on the United States treasury, the federal government is very cavalier with the lives and livelihoods of individuals.

This bill has already passed the House, and I would urge the Committee either to mark up this bill, or to move the House-passed bill in the full Senate in an expeditious manner.

The second bill I have introduced, S. 1883, would authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to participate in both the rehabilitation of Wallowa Lake Dam and in the Wallowa Valley Water Management Plan. Both of these projects enjoy wide local support—including water users, the Nez Perce Tribe, and the local watershed council—and will improve water management and salmon habitat in the watershed. The local entities have developed these two projects in consultation with numerous state and federal agencies. The projects provide a positive approach to resolving the water challenges facing the basin. I am proud of all of the work done to date by the project proponents to ensure broad-based support for their efforts.

While Wallowa Lake Dam is not a federal facility, I view the projects proposed in this bill as critical to meeting the federal government's tribal trust obligations in the basin, as well as helping to recover federally listed endangered species.

Just yesterday, this Committee approved a \$1.6 billion bill to authorize federal spending for the Cal-Fed program. I supported that bill and my California colleague's efforts to resolve significant water problems facing her state. However, as I looked through the list of projects that will be funded in Phase I of that program, I noticed that much of the money is going to lands or facilities that are not in federal ownership. I am hopeful of that same type of support for the efforts of Senator Wyden and me to resolve, with a much more modest amount of money, the water problems facing the Wallowa basin in our state.

I look forward to hearing from all the witnesses, and appreciate your work on these important water issues.

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PREPARED STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Mr. Chairman, thank you for giving me the opportunity to testify in favor of my bill, which will provide the City of Fallon, Nevada, the exclusive right to purchase approximately 6.3 acres of public land from the U.S. Bureau of Reclamation. I introduced this bill on August 2, 2001, and Senator Ensign has joined me as a co-sponsor.

Mr. Chairman, the 6.3 acres located in Fallon, Nevada, is part of the Newlands Irrigation Project, which is operated by the Bureau of Reclamation. The Bureau's Newlands Project irrigates west-central Nevada counties with water from Lake Tahoe and the Truckee and Carson Rivers.

Since 1984, the City of Fallon has leased the land from the Bureau for use as a rail freight yard and loading facility. The City, the State of Nevada, the U.S. Department of Transportation, and the Southern Pacific Railroad have collectively invested a significant amount of money in this facility, which is responsible for over 400 jobs in the local community.

On January 1, 2000, the long-term lease agreement between the City of Fallon and the Bureau of Reclamation expired. As negotiations began for a new long-term lease, the City and the Bureau determined that it would be in their mutual interest to transfer ownership of the property to the City.

Fallon is a rural agricultural community of 8,700 residents located in northern Nevada approximately 70 miles east of Reno. The freight yard is an important municipal asset that is critical to the economic well-being of the community. The sale of the land to the City would ensure future viability of the facility by enabling the City to make long-term investments in the property without having to worry about a lease renewal. Furthermore, the Bureau would be able to divest itself of an asset that no longer fulfills its core mission, thereby allowing the agency to focus on its traditional roles.

Mr. Chairman, my bill requires that The City of Fallon pay the Bureau of Reclamation the fair market value of the property as determined by an appraiser, without taking into consideration any structures or improvements on the property. The proceeds from the sale will be returned to the Bureau's Newlands Project fund accounts. The bill also makes the transfer to the City contingent upon the satisfactory conclusion of all necessary environmental reviews.

Mr. Chairman, The Fallon Rail Freight Loading Facility Transfer Act is a win-win situation for all affected parties and provides assurance that a vital asset will remain in the Fallon community and that the Bureau of Reclamation will continue to focus on its important mission.

Senator JOHNSON. In addition, I'd like to request that each witness please summarize your statement at the appropriate time.

I turn to Senator Domenici for any opening statement that he might have.

**STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR  
FROM NEW MEXICO**

Senator DOMENICI. Thank you very much, Mr. Chairman. I want to indicate to our New Mexicans, Jerry is here as the principal witness. Do you have any other New Mexicans with you?

Mr. STAGNER. Mike Knowles and his wife, Sherry.

Senator DOMENICI. But you're the only going to testify, Mr. Stagner?

Mr. STAGNER. That's correct.

Senator DOMENICI. All right.

And I want to indicate that Senator Bingaman and I have talked. He's worked very hard moving this bill along, and he only has one child, a son, and the son's graduating from college, and I think we figured, between all of us, we could do his work today and that he should go, and so he did.

And also I want to say, early on in the record here, we're passing a bill that the U.S. House of Representatives already passed, and it passed the House because one of the members that's retiring after many years of service, Representative Joe Skeen, worked tirelessly to get the various issues ironed out and to see that this bill got out of the House and came here to the Senate before he retired.

This is a bill that's long overdue, and time just got away from everyone. A long time ago, 403 lots were leased to people that now have little homes and backyards and picket fences, and they're all up against two lakes. Almost everybody is 55 and older, with a very large number of 65 and older, and they can't make any improvements, because the ownership rights are vague. And so they've all worked together, including the U.S. Government. We thank them.

They're here, and we thank you for your indication that you approve of this legislation. This will make not just 403 people rather happy with their government, finally, but it will show that, when we set our heads to it, we can solve complicated problems that appear to have no answers.

Mr. Chairman, thank you so much for bringing us in on this so these witnesses could get this behind them. I'd ask that my written statement be made a part of the record.

Senator JOHNSON. Without objection.

Senator DOMENICI. I thank you.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR  
FROM NEW MEXICO

Mr. Chairman, thank you for holding this important hearing today on the Elephant Butte Lease Lot Conveyance Act. And I want to welcome Mr. Stagner, a member of the Elephant Butte Lease Lot Board.

Today, this subcommittee has before it a piece of legislation that is of particular significance to New Mexico. H.R. 706, The Elephant Butte Lease Lott Conveyance Act, passed the House unanimously earlier this year, and I am glad that I can support this bill in the Senate. I also want to thank Congressman Skeen for his tireless work on this bill in the House. Without his good efforts, I do not think that we would be here today.

Let me take this opportunity to explain this bill's significance. Starting in the 1940's the Bureau of Reclamation began leasing lots of land around Elephant Butte lake in New Mexico for \$10 a year. The lease holders were told that if they did not make improvements to the lots, the leases would revert back to the government. Over the last 50 years, lease holders have made improvements to the lots such as, houses, roads and other necessary infrastructure.

The majority of the lease holders are now over the age of 65 and live on fixed incomes. The rental rates on these properties are increasing and many of the lease holders will be priced out of their homes.

This bill will allow lease holders to purchase 403 lots from the Bureau of Reclamation for fair market value. This is a total of about 250 acres out of a total of 78,000 acres that is within the Elephant Butte and Caballo Reservoir boundaries.

This bill will provide security to many of the lease holders who have already invested time and money into improving these lots. I think it is also important to note that allowing the lease holders to purchase these lots will in no way affect the public's access to Elephant Butte, or interfere with the Bureau's operation of the reservoir.

This bill has the support of New Mexico's Congressional delegation, the Bureau of Reclamation, as well as the 403 lease lot holders. This piece of legislation is important to New Mexico, and I strongly encourage my colleagues to support this bill. This piece of legislation has been years in the making, and now that we have the support of everyone involved, I hope that this bill will pass quickly through the Senate.

Senator JOHNSON. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR  
FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for conducting this hearing today.

I am pleased to see that today's agenda includes legislation important to the State of Washington, the Lakehaven Water Reclamation bill, which will provide the capacity and reliability of waste water systems in Washington State. I think my colleagues would be interested to learn that this is substantially the same legislation that passed the Senate in the 106th Congress. It is my hope that we can move forward on this expeditiously.

Let me take a moment to remind my colleagues of what this bill does. Consistent with the Reclamation Project Authorization Adjustment Act, it authorizes the Secretary of the Interior to participate in the design, planning, and construction, as well as land acquisition, for an important water reclamation project, the Lakehaven Project in Washington.

This project is important for many reasons. The Lakehaven utility district is one of the largest in Washington State, with water and sewer utilities providing 10.5 million gallons of water a day to over 100,000 residents and numerous corporate facilities in King County and parts of Pierce County. The demand for water from these sources has increased to a point that the district may soon exceed safe water production limits. It has also resulted in the reduction levels in all of the local aquifers.

Mr. Chairman, this project would begin to meet the needs of improving waste water systems serving a large segment of the Northwest population, and would provide additional protection for vital natural resources using economically feasible technology and proven technology.

The Federal Government has a role in maintaining the systems and assisting in building additional infrastructure to handle our Nation's massive needs. I would like to add, Mr. Chairman, that the bill limits the Federal share to just 25 percent of the total project cost, prohibits funds being provided by the Secretary from being used for project operation and maintenance, and complies with other limitations and obligations under the Reclamation Projects Act.

I understand that the Department of the Interior opposes the authorization of this project on two grounds, the exact same arguments that the Department used to oppose the legislation in the 106th Congress, when the Senate saw fit to pass it. First, it opposes the authorization of projects before feasibility assessments have been completed. I would simply point out that the authorization of this project does not preclude the feasibility study. The only prohibition under this act is that no fund shall be expended on construction before that feasibility assessment can be completed. With this legislation, we are in no way circumventing or changing that requirement.

Secondly, I am sensitive to the fact that the Bureau of Reclamation has not been able to fully fund all those projects already authorized. However, I believe that this project in Washington State,

is crucial. The authorization back load should not sidetrack us from pointing out important projects that must be done.

Mr. Chairman, the Nation's need for improved water infrastructure is continuing to grow. Since 1972, the Federal Government has spent about \$73 billion on wastewater treatment programs. While that's certainly no minor contribution, the progress we've made has been real. Something like 85 percent of wastewater has been eliminated. But, unfortunately, with aging water collection and treatment facilities across the country in the Nation, it is still estimated that 35 to 45 percent of U.S. surface waters do not meet the current water-quality standard.

So we have a big task, looking at our Nation's 16,000 wastewater systems and the enormous infrastructure that is needed to improve them. And while Congress has appropriated \$1.3 billion for wastewater infrastructure in fiscal year 2001, and another \$1.3 billion in the legislative year for fiscal year 2002, EPA has estimated that we will need to spend \$126 billion by 2016 to fully achieve the secondary treatment improvements of existing facilities. We still have a long way to go, and I want to keep working on this issue with my colleagues.

Again, the Lakehaven Water Reclamation Bill will take steps forward to improve the infrastructure needed in the Puget Sound region, an important area of our local economy that is at a point where we cannot move further without having these improvements.

I appreciate my colleagues' interest in having this hearing today on this important legislation.

Senator JOHNSON. Senator Wyden.

**STATEMENT OF HON. RON WYDEN, U.S. SENATOR  
FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman. Let me thank you and the committee for giving us a chance to air two important bills for the State of Oregon, particularly for rural Oregon today. I want to thank Jeff Oveson and Dan Keppen, who are out in the audience somewhere. Jeff has done yeoman work on that Wallowa Dam Project bill by way of bringing together a whole host of parties—the farmers and the ranchers, the tribe, and the environmental and citizens groups. In my view, Jeff and his folks have really raised the bar for what it takes to come up with a collaborative effort, and I want to thank him very much.

I'm also pleased that Dan Keppen is here. We have the congressman from the area, Congressman Walden here, who's worked very cooperatively with Senator Smith and myself. Both of the Oregon bills are legislation that we have worked very closely on. The bill that relates to the Klamath Basin, the Klamath Basin Project Users bill, is a particularly important piece of legislation to our State. The reimbursement of operation and maintenance funds to Klamath Basin producers is just one step towards restoring equity to a damaged system.

Last year was a low-water year. Emotions ran high. The Bureau of Reclamation denied farmers in the Klamath Basin water, and, at the same time, didn't do a whole lot to help the environment either. While the canals were dry, the folks that would have used the water from the Bureau of Reclamation's Klamath Basin Water

Project were still required to pay for the operation and maintenance of a water system that was not delivering water. These operation and maintenance fees were taking essentially the last pennies out of desperate, desperate people at the time that Senator Smith and Congressman Walden and I, along with the administration and a lot of people in the Basin, were trying to work out a way to preserve agriculture in the Basin while improving the environment.

Senator Smith and Congressman Walden and I have been pursuing a number of important efforts, a comprehensive effort to address the needs of the Basin. I want to thank my colleagues from the Oregon delegation, in particular, for working with me in a bipartisan way, and thank Dan Keppen for being here, as well.

This is a large puzzle, dealing with this Klamath Basin issue. I think if we had our way, we would just divine that there would be a whole lot more water immediately, and that is a little bit beyond the purview of what the U.S. Congress can obtain. But certainly, we can make a lot of progress in preserving agriculture, addressing environmental needs, by bringing together the stakeholders on this important piece of legislation. That's what Congressman Walden and Senator Smith and I have been trying to do. This is one of a number of projects we're pursuing together and on a bipartisan, bicameral basis. And we thank the committee for moving ahead with the legislation.

Senator JOHNSON. Thank you, Senator.

Congressman Walden, do you want to take a position at the witness table?

And we will turn first, however, to Senator Bennett for his testimony. Welcome to the committee, Senator.

**STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR  
FROM UTAH**

Senator BENNETT. Thank you very much, Mr. Chairman. I appreciate your holding the hearing and giving me the opportunity. I have a written statement, as well as a statement from the Colorado River Energy Distributors Association, that I would like to have included in the record.

Senator JOHNSON. Without objection.

Senator BENNETT. I want to welcome Don Christiansen, who is the general manager of the Central Utah Water Conservancy District, who has done an excellent job during his tenure. And he's here in the audience, and I want to acknowledge that and thank him for his service.

My bill, S. 2475, is a fine-tuning of the Central Utah Project Completion Act, which was passed by the Congress in 1992 and which represented the culmination of decades of effort on behalf of the Congress to get this all worked out properly.

My father worked on the Central Utah Project when it was still nothing but an idea and maybe a name on a piece of paper. He served in this body for 24 years. Jake Garn succeeded him, served for another 18. And I think the climactic moment of Jake's career was the passage in 1992, his final year, of this act. I was very glad that they did that so that I didn't have to deal with it when I succeeded Jake.

[Laughter.]

Senator BENNETT. But after 10 years of experience, there does need to be some fine tuning of the act. I don't believe anything that we're proposing is controversial.

The legislation has three main components. The first clarifies the responsibilities of the Secretary of the Interior with respect to the Central Utah Project. The second redirects unexpended budget authority for water conservation and reuse. And the third allows for prepayment of repayment contracts. And the details of each of these three are in my written statement.

Utah is one of the fastest-growing States in the country. It is also one of the driest States in the country, in normal times. And right now are not normal times. In some parts of the State, currently in drought, we are running at 5 percent of normal. The overall statewide number is substantially higher than that, but it is misleading for the description of the kind of drought we are facing as we get towards Arizona and New Mexico, down in the southern part and southeastern part of the State.

So, Mr. Chairman, I would hope there would be rapid consideration of this bill, and I very much appreciate your paying attention to these issues.

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Good afternoon. I thank Chairman Dorgan and Senator Smith for holding today's hearing. I would like to welcome Don Christiansen, the general manager of the Central Utah Water Conservancy District. During his tenure with the water conservancy district, Don has done an excellent job meeting the water needs of Utahns in some of the nation's fastest growing counties in the nation's second driest state.

I appreciate the opportunity to discuss my legislation, S. 2475, with the subcommittee this afternoon. S. 2475 amounts to a fine tuning of the Central Utah Project Completion Act (CUPCA), which this committee worked on and passed in 1992. Almost ten years after the enactment of CUPCA, experience and new realities have made apparent the need for adjustments to one of the most complex undertakings authorized by the Colorado River Storage Project Act.

My legislation has three main components. The first clarifies the responsibilities of the Secretary of the Interior with respect to the Central Utah Project. The second redirects unexpended budget authority for water conservation and reuse. The third component allows for prepayment of repayment contracts.

Through CUPCA, the Secretary of the Interior has full responsibility over the Central Utah Project. Since 1992, the Central Utah Water Conservancy District has developed an excellent working relationship with the Office of Central Utah Project Completion, which reports directly to the Assistant Secretary for Water and Science. My legislation would clarify the role of the secretary to make certain the secretary will continue to retain responsibility after project completion. Furthermore, S. 2475 authorizes a pilot management program with the secretary through the Bureau of Reclamation to assist the secretary with long-term management of the project.

The second component of my legislation will permit unexpended budget authority for previously authorized projects to be used for water conservation measures, including the use of reverse osmosis membrane technologies, water recycling, and conjunctive use. As I mentioned in the beginning of my statement, Utah is one of the fastest growing states and it is one of the driest states. Supporting technologies and techniques that will allow water to be better utilized is one of the smartest things we can do. The supplies of water are finite and the demands for water are increasing; by allowing unexpended budget authority to be used for water conservation, we are stretching our supplies. I believe this is a wise and prudent investment.

The third and final component of my legislation would allow for the prepayment of repayment contracts and strike the 2002 sunset date. Obviously, this will allow for the contracts to be paid off more quickly, benefitting water users and taxpayers.

Mr. Chairman, Utah is experiencing one of the worst droughts in a generation. While this legislation will not help in the short term, I believe that if we are able

to make these small changes included in my legislation, especially the water conservation enhancements, Utah will be better situated for the future.

Senator JOHNSON. Thank you, Senator Bennett.  
Congressman Walden.

**STATEMENT OF HON. GREG WALDEN, U.S. REPRESENTATIVE  
FROM OREGON**

Mr. WALDEN. Thank you very much, Mr. Chairman. I greatly appreciate your courtesy in the opportunity to come and share some comments before you today. And I want to follow up on the comments of my friend and colleague from Oregon, Senator Wyden, as we've worked together on this and other legislation with Senator Smith in a very productive and bipartisan and bicameral way in the State of Oregon, kind of the Oregon way to do it here in the Congress.

I'd also like to extend an official greetings to our Nation's Capitol to Dan Keppen, who is the executive director of the Klamath Water Users Association, who has traveled to testify today, as well. He's a good friend and outstanding representative of the farmers at the Basin.

I'd also like to welcome Jeff Oveson, as well. I'll be talking about the Wallowa Dam Bill in addition to this O&M refund legislation.

As Senator Wyden mentioned—and I have a statement that I'll put in the record, if I could, Mr. Chairman.

Senator JOHNSON. Without objection.

Mr. WALDEN. Thank you.

Mr. WALDEN. This legislation is very simple in—as Senator Wyden outlined, last year our farmers in the Klamath Basin had their water cut off for the first time in a hundred years. They barely got a drop. And yet they had to continue the payments for operating and maintaining a system that didn't deliver anything to them. And it seems like pretty standard principle in America that you shouldn't have to pay for something you didn't get. And that's what this legislation addresses by providing, in effect, a refund to people who are in very, very desperate straits.

This legislation was approved by the House Resources Committee without opposition, and cleared the House last November without opposition. What I'd like to share for you is a brief part of an article that ran last week in the *Portland Oregonian* that I think really puts in perspective the plight of these people and what they face today.

It's from the *Oregonian*, written by Michael Milstein. And it reads, "Almost every day, Charlotte Rohrbacher shuttles four children to and from daycare and practices, takes community-college courses, and deals with about 15 creditors wanting to know where their money is. By 9 p.m., as she sits in her computer class, she's exhausted. By midnight, she's lying awake, wondering which bill collectors will call tomorrow.

"This is what it means for a young family—farm family in the Klamath Basin to go a year without irrigation water. It means the big John Deere tractor that once turned their earth is gone, sold for a fraction at auction. It means they are barely hanging on to the two-story home that designed and built among the fields south of Klamath Falls the year before the water was turned off. It

means Charlotte Rohrbacher spends hours on the phone with creditors she's never met instead of working a ground she's known all her life. Some of them are back East in a little office building and don't know anything about Klamath Falls. They live in an apartment. 'When you say, "No water," they don't know what you mean,' she said.'

"If anyone can tell them, she can. It's been more than a year of almost no income, since Federal agencies halted water to more than a thousand farms in the Klamath Project, including hers, to help protect fish through a drought. Congress handed cash relief to waterless farm owners, but she and her husband lease most of their land, so they got little of it. Water is flowing again this year. Many are farming again. But, for her, it's a year too late."

Hers is not a singular case, Mr. Chairman, members of the committee. A number of those farm families went bankrupt throughout this process. Many hang on by just a string. This legislation will help right part of a wrong, and certainly throw them a lifeline that may allow them to survive another year and provide for their families. So when we talked about this being emergency legislation, indeed it's an emergency for them that we can help rectify.

So I urge your support and want you to know that, again, it had—this legislation had strong bipartisan support through the U.S. House. And I appreciate Senator Wyden's leadership in helping get this bill up for a hearing and for your consideration, and Senator Smith's help, as well.

Now, at the opposite end, 300-plus miles away from the Klamath Basin, lies another community that's trying to deal with water issues in a way that has brought together farmers and environmentalists and others.

The most pressing concern that faces citizens of Wallowa County, Oregon, right now is the potential disaster that looms from a decaying dam built in 1918. The 35-foot tall concrete does not come close to meeting current dam-safety requirements for stability against sliding and overturning, earthquake resistance, spillway capacity, and outlet-tunnel conditions.

In 1996, the Wallowa Lake Dam was listed as a high-hazard structure by the Oregon Water Resources Department. A sudden failure and release of water would almost certainly result in loss of life and property as well as severe environmental and economic damage to the communities that are downstream. In fact, the dam has been holding water at less than the maximum-authorized pool levels since 1970, when it was judged to be a public-safety hazard.

Now, tucked away in the foothills of the Wallowa Mountains, Wallowa Lake provides 800,000 recreational users annually with water for boating, waterskiing, swimming, and fishing. The Wallowa Lake Dam also provides irrigation water to 15,000 acres of prime ag land, a potable water supply for the city of Joseph, and flood controls for the cities of Joseph, Enterprise, and Wallowa. The reservoir also provides base flows to the Wallowa River and Grand Ronde Rivers, preserving and enhancing riparian habitat, fish stocks, waterfowl, and overall quality.

The steps that are being taken to ensure both the economic vitality, as well as environmental enhancement, will serve as a model for other rural watersheds in the West as they begin to rebuild and

update their current water management plans. The four phases of the plan are—when they're complete and thorough, they address all the components that make for a healthy watershed and surrounding ecosystem, while helping the community that depends upon it.

When they're completed in 2006, there will be a community ensured from flooding, assuring fish protection, water conservation, ag production, and a potable water supply, ESA-listed salmon restoration, fish passage, improved fish and wildlife habitat, hydro-power energy production, economic stability, and continued recreational use.

So, Mr. Chairman, this is a bill that I think is very worthy of your consideration. I appreciate, again, your indulgence and your time, and submit the rest for the record.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN, U.S. REPRESENTATIVE FROM OREGON

Chairman Dorgan, thank you for the opportunity to testify to your subcommittee today, and thank you for your support and cooperation. I appreciate it a good deal, as do the farming and ranching families of the Klamath Basin in southern Oregon and northern California. I'd also like to thank my good friends from Oregon, Senators Smith and Wyden. Senator Smith's sponsorship of the companion measure to my bill that has passed the House, H.R. 2828, and Senator Wyden's cosponsorship of it exemplify their dedication to the Klamath Basin and our productive working relationships. I'd also like to extend an official greeting to our nation's capital to Dan Keppen, the Executive Director of the Klamath Basin Water Users Association, who has traveled from Oregon to testify today. Dan is a good friend and is an outstanding representative of the hard-working farmers and ranchers in the Klamath Basin.

Mr. Chairman, S. 1824 gives hope to those people in the Klamath Basin whose livelihoods face ruin as a result of the federal government's decision to shut off water to farmers and ranchers in the basin last year for the first time in the nearly 100-year history of the Klamath Project. S. 1824 originated with the hard work of the House Committee on Resources in the form of hearings last year and subsequent passage in the House, and the work of the farmers and ranchers on the ground who simply need to survive long enough to come to some solution that addresses the needs of both fish and the agriculture community in the Klamath Basin. This legislation provides the measured relief these farmers and ranchers need, and the relief they deserve.

Senators Smith and Wyden and I continue to work together with diligence to find real and lasting solutions to the complex and difficult problems confronting the agriculture community, the Tribes and the environment of the Klamath Basin. President Bush has established an executive level working group to assist this effort, and our collective efforts are making progress. Rest assured that in the months ahead we will continue to bring legislation to address other, very significant issues in the Basin.

S. 1824 provides a measure of fairness and a measure of emergency relief. It authorizes the Bureau of Reclamation to return or waive fees paid by irrigation districts and ultimately by their patrons this year. You see, the farmers, ranchers and the irrigation districts in the Klamath Basin paid fees to run a system that never delivered the water they were promised. One should not have to pay for something they never received. In such a case, most of us would ask for a refund. And that's precisely what this measure provides, a fair and balanced refund. More importantly, it puts money back in the hands of the farmers and ranchers who so desperately need it to keep their operations afloat and the employees and businesses that depend on them.

S. 1824 would authorize the Secretary of the Interior to pay to each qualified Klamath Project entity an amount of money that was assessed them for operation and maintenance of the Klamath project for 2001. Section 2 defines "qualified Klamath Project" as an entity that: 1) has a water supply contract with the Bureau of Reclamation for water from the Upper Klamath Lake and the Klamath River; 2) distributes water received under the water supply contract; 3) received a severely lim-

ited supply based on the 2001 annual operations plan issued April 6, 2001; and 4) did not receive reimbursement from any state for these same expenses.

Mr. Chairman, some may look at the title of this bill, "The Klamath Basin Emergency Operation and Maintenance Refund Act of 2001," and say, "This happened over a year ago. There is no emergency." Mr. Chairman and members of the Committee, I disagree wholeheartedly. If I may, I would like to read to you the opening of a May 28, 2002 article from Portland's *Oregonian* newspaper written by Michael Milstein. It vividly shows how much of an emergency this legislation is to the people of the Klamath Basin. It reads:

"Almost every day, Charlotte Rohrbacker shuttles four children to and from day care and practices, takes community college courses and deals with about 15 creditors wanting to know where their money is.

By 9 p.m., as she sits in computer class, she's exhausted.

By midnight, she's lying awake, wondering which bill collectors will call tomorrow.

This is what it means for a young farm family in the Klamath Basin to go a year without irrigation water.

It means the big John Deere tractor that once turned their earth is gone, sold for a fraction of its cost.

It means they are barely hanging onto the two-story home they designed and built among the fields south of Klamath Falls the year before the water was turned off.

It means Charlotte Rohrbacker spends hours on the phone with creditors she's never met instead of working the ground she's known all her life.

"Some of them are back East in a little office building and don't know anything about Klamath Falls. They live in an apartment. When you say, 'No water,' they don't know what you mean."

If anyone can tell them, she can. It's been more than a year of almost no income since federal agencies halted water to more than 1,000 farms in the Klamath Project, including hers, to help protected fish through a drought. Congress handed cash relief to waterless farm owners, but she and her husband lease most of their land, so they got little of it.

Water is flowing again this year. Many are farming again.

But for her, it's a year too late."

Mr. Chairman, it's not too late to do what is right. And while some may say that this legislation is setting a precedence, I say back to them that last year's water shutoff was precedent setting for the Bureau of Reclamation.

This bill is the fair thing to do for a region that has experienced terrible hardship. I hope that this Committee and the Senate can support this long overdue legislation. It has strong bipartisan support and passed the House without objection, so shouldn't get tied up in Washington, D.C. political snares. Thank you for hearing the merits of the Klamath Basin Emergency Operation and Maintenance Refund Act of 2001, and I urge the Committee's speedy approval of it.

At the opposite end from the Klamath Basin of the congressional district that I represent is yet another community that depends on a reservoir system and healthy watershed. The most pressing of concerns that face citizens of Wallowa County, Oregon right now is the potential disaster that looms from the decaying dam that was built in 1918. The 35 foot tall concrete dam does not come close to meeting current dam safety requirements for stability against sliding and overturning, earthquake resistance, spillway capacity, and outlet tunnel condition. In 1996, the Wallowa Lake Dam was listed as a high hazard structure by the Oregon Water Resources Department. A sudden failure and release of water would most certainly result in loss of life and property as well as severe environmental and economic damage to the communities that lie downstream. In fact, the dam has been holding water at a less than the maximum authorized pool level since 1970 when the Oregon Water Resources Department judged the dam to be a public safety hazard.

Tucked away at the foothills of the Wallowa Mountains, Wallowa Lake provides 800,000 recreational users annually with water for boating, water skiing, swimming and fishing. The Wallowa Lake Dam also provides irrigation water to 15,000 acres of prime agricultural land, a potable water supply for the city of Joseph and flood control to the cities of Joseph, Enterprise and Wallowa. The reservoir also provides base flows to the Wallowa River and Grande Ronde Rivers preserving and enhancing riparian habitat, fish stocks, water fowl and overall quality.

The steps that are being taken to ensure the economic vitality as well as the environmental enhancement will serve as a model for other rural watersheds in the west as they begin to rebuild and update their current water management plans. The four phases of the plan are both complete and thorough, addressing all of the

components that make for a healthy watershed and surrounding ecosystem, while helping the community that depends upon it.

When the four phases of the Wallowa Lake Dam Rehabilitation project are completed in 2006 there will be a community insured from flooding and assuring fish protection, water conservation, agricultural production, a potable water supply, ESA listed salmon restoration, fish passages, improved fish and wildlife habitat, hydro-power energy production, economic stability and continued recreational use. I applaud the citizens of Wallowa County for coming together to create such a well developed water management plan that will serve as a blue print for all other communities to follow.

The citizens of Wallowa County are asking Congress for help to assist them in implementing these changes. While the cost of is high, the price pales in comparison to the cost and damage that occurred this last year in the Klamath Basin, not to mention the aversion of a potential catastrophe that puts residents of Wallowa County at risk for their lives and livelihoods everyday. Like any good proactive measure taken by congress, the initial cost should save the community and ultimately the country millions of dollars as well as quite possibly an entire species of fish in the future.

The Wallowa Lake Dam Rehabilitation and Water Management Act of 2001 fits with the Bush administration desire to have local communities find solutions to their local problems. It helps meet the trust obligations to the Nez Perce Tribe. It helps meet stream flows for federally endangered species. And it brings a feeling of safety to the people that depend on Wallowa Lake Dam.

Thank you very much, Mr. Chairman, for the opportunity to speak before your Committee.

Senator JOHNSON. Thank you, Congressman. Thank you, Senator Bennett. Unless there are any questions from the committee, I thank you for your leadership and for sharing your views with us.

The next witnesses will represent the administration, the Honorable Bennett W. Raley, Assistant Secretary of Water and Science, Department of the Interior; and Mark A. Limbaugh, Director, External and Intergovernmental Affairs, Bureau of Reclamation, Department of the Interior.

Welcome.

**STATEMENT OF BENNETT RALEY, ASSISTANT SECRETARY,  
WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR**

Mr. RALEY. Thank you, Mr. Chairman. On behalf of the Department, it's a pleasure to be here. We're glad to be back in front of the committee, and thank you and the committee members and committee staff for the many courtesies you've extended us as we've worked through issues.

I serve as Assistant Secretary for Water and Science in the Department of the Interior, and I'm here to present the administration's views on S. 2475. In light of the fact that Senator Bennett has ably described the legislation, I would like to proffer my written testimony for the record, and, if that's acceptable, simply conclude by saying that, while the administration has a few issues, we're certain that we can work them out with Senator Bennett and you and members of the committee so that this legislation could go forward.

So if I could submit my testimony for the record, I'll save time—

Senator JOHNSON. Without objection.

Mr. RALEY [continuing]. For the work you've got. Thank you.

[The prepared statement of Mr. Raley follows:]

PREPARED STATEMENT OF BENNETT RALEY, ASSISTANT SECRETARY,  
WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

My name is Bennett Raley. I serve as the Assistant Secretary—Water and Science in the Department of the Interior. I appreciate the opportunity to appear before you to provide views of the Department on S. 2475 which would amend the Central Utah Project Completion Act. The proposed legislation attempts to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of the repayment contract for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment.

The Central Utah Project Completion Act, Titles II-VI of P.L. 102-575, provides for the completion of the construction of the Central Utah Project (CUP) by the Central Utah Water Conservancy District. The Act also authorizes funding for fish, wildlife, and recreation mitigation and conservation; establishes an account in the Treasury for deposit of these funds and other contributions; establishes the Utah Reclamation Mitigation and Conservation Commission to coordinate mitigation and conservation activities; and provides for the Ute Indian Water Rights Settlement.

The Administration has previously expressed concerns with this legislative proposal, and would like to work with the Chairman and the Committee to modify the language to include several important amendments, amendments which must be made in order for us to support the legislation.

In addition, the Department of Justice has indicated that it is examining whether the bill's provisions authorizing Central Utah Water Conservancy District to control assignments of administrative responsibility within the Department of the Interior raise constitutional difficulties. The Administration is also prepared to work with the Committee and the Chairman to eliminate any constitutional infirmities.

Section 201(b) of Public Law 102-575 (Act) essentially deauthorized several of the project features without clarifying how the amounts previously expended in investigating and planning those projects and features should be dealt with. S. 2475 would clarify that these costs are non-reimbursable and non-returnable, which could result in a paygo impact.

In addition, amendments to Section 201(e) of S. 2475 provide the Secretary with sufficient flexibility to continue to utilize the expertise and capability within the Bureau of Reclamation to fulfill her responsibilities under the Act. These provisions authorize a pilot management program within the Bureau of Reclamation. The pilot management program will provide a mechanism for the Secretary and the District to create a mutually acceptable management program within the Bureau of Reclamation to assist the Secretary in her responsibilities for the long term management of the Bonneville Unit. It is important that the Secretary be given the flexibility to extend the pilot management program indefinitely. It is also important to clarify that the amendments to this section of the Act, which expand the designation of authorities which are specifically reserved to the Secretary and may not be delegated to the Bureau, to include aspects of the Colorado River Storage Project Act (CRSP), are limited to the Bonneville Unit and do not affect other aspects of the CRSP. Further, the amendments do not affect the Bureau of Reclamation's and Western Area Power Administration's responsibilities regarding all matters relating to all CRSP power functions including power revenues, power rates, and rate-making. Therefore, the Administration supports the amendments to Section 201(e) of the Act.

Over the past several decades the population along the Wasatch front in Utah has grown dramatically which has resulted in an increased demand for municipal and industrial water. The last paragraph of Section 202(a)(1)(B) of the Act only provides for features to deliver irrigation water. S. 2475 includes an amendment to this section of the Act to provide the flexibility to construct features that also deliver municipal and industrial water. The Administration supports this amendment.

The amendments to Section 202(c) of the Act, as proposed in S. 2475, section 1(d), do not designate a specific amount that would be available for these expanded activities, but rather authorizes the entire amount of available ceiling under the other units of the Central Utah Project to be made available. S. 2475 should be modified to: (1) limit the amount available under Section 202(c) to a specific amount; (2) deauthorize the balance of the unexpended budget authority provided for in the other units of the Central Utah Project; and (3) delete the authorization for Hatchtown Dam in Garfield County. The Administration does not support the amendments to Section 202(c) of the Act unless these changes can be incorporated into the amendments. We would appreciate the opportunity to work with the sponsors of the legis-

lation, the Utah delegation, and the Congressional committees to modify the amendments to Section 202(c) such that they would be acceptable to all parties.

The Administration supports the amendments to Section 210 of the Act as proposed in Section 1(e) of S. 2475.

Again, Mr. Chairman, if the changes recommended above are made, the Administration would support S. 2475. I would be happy to answer any questions you may have.

Senator JOHNSON. Are there any questions from the committee?

Senator DOMENICI. I was just going to comment that with that kind of conduct, we'll be nice to him forever.

[Laughter.]

Senator JOHNSON. I think your brevity has won friends on the subcommittee.

Mr. RALEY. Senator, may I have that in writing?

[Laughter.]

Senator JOHNSON. I'm not sure the gratitude can be banked, but it's here for today.

[Laughter.]

Mr. RALEY. And, Senator, if you will excuse me, my colleague is going to testify as to the rest of the legislation on—

Senator JOHNSON. Very good.

Mr. RALEY [continuing]. But I did—given that this is a hearing, I wanted to come and tell you how glad you're up and running.

Senator JOHNSON. Very good.

Mr. Limbaugh.

**STATEMENT OF MARK A. LIMBAUGH, DIRECTOR, EXTERNAL AND INTERGOVERNMENTAL AFFAIRS, BUREAU OF RECLAMATION**

Mr. LIMBAUGH. The last comment is foreboding to me, as I have six bills to testify on, so I'll try to be brief.

My name is Mark Limbaugh. I'm the Director of External and Intergovernmental Affairs for the Bureau of Reclamation here in Washington, D.C., and I'm pleased to be here to represent the Department on these bills.

I'll just go down the list here and give our comments, if that's okay, Mr. Chairman, and submit all of my written comments for the record.

Senator JOHNSON. Very good.

Mr. LIMBAUGH. S. 1310 and H.R. 1870, concerning the Fallon Rail Freight Loading Facility Transfer. The House passed H.R. 1870 and referred to the Senator, and it's nearly identical to S. 1310, so both of these bills, I will speak to simultaneously. It's about the sale of the—of 6.3 acres of real property within the Newlands Project in Nevada to the city of Fallon, Nevada. The Department supports the proposed conveyance, and would support S. 1310 with a suggested amendment. The Department does support H.R. 1870, as passed by the House and referred to the Senate.

An important provision of H.R. 1870 requires the city of Fallon to pay for the appraisal of the property, and we encourage that the committee—to amend S. 1310 to adopt this language that appears in Section (b)(1)(A) of H.R. 1870, as passed by the House.

This concludes my statement on S. 1310 and H.R. 1870.

On S. 1385 and H.R. 2115, the Lakehaven Washington Reuse Project. Although there are a few drafting differences between S.

1385 and H.R. 2115, my comments will be applicable to both bills, as they are presented.

While the Department strongly encourages local water recycling efforts, we must oppose authorizing this additional Federal recycling project. Both bills authorize the Secretary of the Interior to participate in the design, planning, and construction of and land acquisition for the Lakehaven Water Reclamation Project in the State of Washington.

Title 16 and subsequent amendments authorized the construction of 25 reclamation reuse projects and also authorize the Secretary to undertake a program to identify wastewater recycling opportunities and conduct appraisal level and feasibility studies in analyzing the viability of these future projects.

Today, Congress has provided funding to design, plan, or construct 19 of the 25 authorized projects under title 16. In addition, under the general authority of title 16, funding has been provided to identify and investigate, at the appraisal or feasibility level, eight potential water recycling projects and to conduct three research and demonstration projects.

While we recognize the value of wastewater reuse efforts and how it can assist States and local communities in solving temporary water-supply problems, the Department opposes authorizing an additional construction project without requiring feasibility studies to determine whether these particular projects warrant Federal funding.

In general, reclamation places priority on funding new projects that are economically justified and environmentally acceptable in a watershed are not eligible for funding under another Federal program and directly address administrative priorities for reclamation programs, such as reducing the demand on existing Federal water-supply facilities.

The Department also imposes enactment of this legislation because authorizing new construction projects is likely to place an additional burden on Reclamation's already tight budget. Today, Reclamation has been able to provide full funding for only four of the reclamation and reuse projects presently authorized under title 16. At current funding levels, Reclamation will be able to complete funding for the 25 currently authorized projects in 10 years.

Finally, the Department opposes enactment of provisions in the bills that authorize land acquisition prior to the completion of the feasibility study. In the Department's view, Federal contributions for a land acquisition should await the outcome of such a study. For these reasons, the Department cannot support authorizing the new construction request.

This concludes my testimony on those bills, sir.

Mr. Chairman, the next bills are S. 1824 and H.R. 2828 concerning the Klamath Project O&M reimbursement. The bill authorizes refunds of amounts collected from Klamath Project irrigation and drainage districts for operation and maintenance of the projects transferred and reserved works for the year—water year of 2001, and also authorizes the Secretary to waive requirements that the districts pay additional O&M charges for 2001. Inasmuch as S. 1824 and H.R. 2828 are nearly identical, my comments will address both bills.

The troublesome series of events that occurred last year in the Klamath Basin were a reminder of the cyclical nature of droughts in the West and the increasing demands for a finite amount of water. Reclamation has worked hard to counter the financial difficulties suffered by the irrigators, their families, and the community as a whole.

The Department of the Interior responded quickly last year and continues to play an integral role in finding workable, long-term solutions for that region. In fact, this past March, the President established the Klamath River Basin Federal Working Group, which is chaired by Secretary of the Interior, Gail Norton. The working group has since undertaken immediate and long-term actions to address complex, economic, and natural resource issues in the Basin.

In addition to the administration's efforts, the region's congressional delegation, including Senators Ron Wyden, Senator Gordon Smith, along with Congressman Greg Walden, were instrumental in the passage of legislation authorizing financial assistance to Klamath Basin water usage.

While we all hope this situation will never repeat itself, cyclical drought conditions pose a considerable challenge in the arid West, where we must manage water for endangered species, fulfill our Native American trust responsibilities, and meet the needs of irrigators and other water users. The Department recognizes the unfortunate plight of the water-supply contract holders of the Klamath Project, however we do have some concerns about the long-term policy and cost ramifications these bills may unintentionally set.

The fundamental principles of reclamation have always included fulfilling our commitments and delivering water to our contractors. The corresponding commitment of the water users to help maintain this infrastructure, in good times and in bad, is essential to the success of our programs, and we do not want to minimize that obligation.

Regardless of how much water is delivered to our projects in the West, maintenance of facilities must continue if they are to remain functional for future deliveries over the long term, such as with the Klamath Project today. I have no doubt the administration and Congress will, where appropriate, treat others affected by droughts and endangered-species issues with the same passion as they have with the Klamath contractors. The Department values its working relationship with our Klamath Project water users and is committed to working through the complex issues all of us face in that region.

Reclamation and the Department stands ready to work with Senator Wyden, Senator Smith, and other members of this subcommittee to find mutually acceptable solutions to Klamath Basin problems.

This concludes my testimony on that bill.

The next bill, S. 1883, Wallowa Lake Dam. While we believe there are merits to the proposed program, the Wallowa Lake Dam Rehabilitation and Water Management Program in Oregon, the Department does not support S. 1883.

Wallowa Lake Dam is a privately-owned dam constructed in 1918 and raised in 1929 and is owned and operated by the Associ-

ated Ditch Companies, Inc., or ADC. The U.S. Army Corps of Engineers and the Oregon Resource Department have identified the dam-safety deficiencies of the Wallowa Lake Dam. ADC, in conjunction with the Grand Ronde Model Watershed Council, and working with Reclamation and other local, State, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation and Water Management Program to address these dam-safety deficiencies.

Reclamation itself has an inventory of aging dams and the responsibility to ensure the safety and reliability of Reclamation dams to protect the downstream public. Dam safety is one of Reclamation's highest priorities.

I would like to give you a sense of the scope of our dam-safety responsibilities. The Bureau has reservoirs impounded by 457 dams and dikes. Of these structures, 362 dams located at 252 different project facilities would likely cause loss of life if they were to fail. Approximately 50 percent of Reclamation's dams were built between 1900 and 1950, and about 90 percent of the dams were built before currently-used state-of-the-art design-and-construction practices. Aging Reclamation-owned dams, which lack state-of-the-art structural-reliability features, require Reclamation to conduct extensive ongoing risk-management activities to assure safety and performance of these dams and protect the public from unreasonable risks.

While we fully understand the importance of ensuring the safety of Wallowa Lake Dam, the dam is not a Federal project. It is privately owned and operated and falls under the Dam Safety Program of the Oregon Department of Water Resources. Reclamation believes that the Wallowa Lake Dam and Rehabilitation and Water Management Program is worthwhile, with potentially numerous benefits; however, we are concerned about the proposed Federal role in this project. Despite the very high Federal cost share for the project, there is no—currently no Federal interest in the dam, and none provided by the bill. Moreover, there is no provision for repayment by project beneficiaries, in accordance with existing Reclamation law.

We are also concerned that Reclamation participation in this project would adversely impact ongoing projects and operations. Reclamation funds should be targeted to perform essential functions at our own Federal projects, including security at BOR dams and reservoirs, facility operations and maintenance, resource management, Reclamation dam-safety activities, and authorized construction activities.

This concludes my testimony on S. 1883.

My next testimony is on S. 1999 concerning the authorization of the Mni Wiconi Rural Water Supply Project. S. 1999 would increase the authorization ceilings for the project and extend the time period for which appropriations are authorized. Since the project cannot be completed unless these changes are made, the Department supports enactment of S. 1999.

The Mni Wiconi Rural Water Supply Project was authorized in 1988 and was expanded in 1994. The authorizations intended construction to be completed within 10 years, and appropriations were authorized through 2003. However, annual appropriations have

been insufficient to complete construction on the project within the time frame originally planned in the final engineering report.

Mr. Chairman and members of the subcommittee, the administration is firmly committed to completing the Mni Wiconi Rural Water Supply Project, and supports the passage of S. 1999.

Finally, Mr. Chairman, I'd like to provide comments on H.R. 706, the transfer of Elephant Butte Lease Lot Conveyance Act. H.R. 706 provides for the transfer and disposal of 403 residential lease lots located on Federal properties at Elephant Butte and Caballo Reservoirs near Truth or Consequences, New Mexico.

In the late 1940's, small quarter-acre and half-acre lots along the shoreline of these reservoirs were made available for the public to lease and occupy on a short-term basis. Over time, permanent structures and other improvements have replaced initial short-term recreational facilities, and many of the structures now are used as full-time residences.

The Department supports efforts to convey certain Reclamation lands and facilities to private entities; in particular, those that are no longer necessary for managing either the dam or the recreation areas and supports H.R. 706, as passed by the House of Representatives in March 19, 2002, and referred to the Senate.

Mr. Chairman, members of the subcommittee, thank you very much for the time. I conclude my time on the six bills that we had before us today, and I'd certainly stand for any questions you may have.

[The prepared statements of Mr. Limbaugh on the preceding bills follow:]

PREPARED STATEMENTS OF MARK A. LIMBAUGH, DIRECTOR, EXTERNAL AND INTERGOVERNMENTAL AFFAIRS, BUREAU OF RECLAMATION

S. 1310/H.R. 1870

I am Mark A. Limbaugh, Director of External and Intergovernmental Affairs for the Bureau of Reclamation (Reclamation). I am pleased to present the views of the Department of the Interior on S. 1310 and H.R. 1870, concerning the Fallon Rail Freight Loading Facility Transfer. H.R. 1870, as passed by the House and referred in the Senate, is nearly identical to S. 1310. Both bills provide for the sale of about 6.3 acres of real property within the Newlands Project, Nevada (acquired in 1920 by the United States government), to the city of Fallon, Nevada. The Department supports the proposed conveyance, and would support S. 1310 with the amendment suggested below. The Department supports H.R. 1870, as passed by the House and referred in the Senate.

The House Resources Subcommittee on Water and Power held a hearing on H.R. 1870, as introduced, on December 10, 2001 (a copy of our statement is attached for the record).<sup>1</sup> The Department did not support the bill as introduced, and recommended specific amendments to provisions on credit of sale proceeds, appraisal, and liability. Subsequently, the House subcommittee adopted these amendments. An important provision in H.R. 1870, suggested by the Department, requires the city of Fallon to pay for the appraisal of the property.<sup>2</sup> We encourage the Committee to amend S. 1310 to adopt this language, which appears in Sec. (b)(1)(A) of H.R. 1870, as passed by the House of March 2, 2002, and referred to the Senate.

S. 1385/H.R. 2115

I am pleased to present the views of the Department of the Interior (Department) on S. 1385 and H.R. 2115, concerning the Lakehaven water reclamation project in the state of Washington. Although there are a few drafting differences between S.

<sup>1</sup> The statements have been retained in subcommittee files.

<sup>2</sup> Sec. (b)(1)(A) of H.R. 1870 (RFS), concerning the appraisal of the property, adds the phrase "and paid for by the city of Fallon, Nevada".

1385 and H.R. 2115, the bills are effectively identical, and therefore, my statement is applicable to both bills. The Department previously submitted its views on H.R. 2115 to the House Resources Committee, by letter of October 22, 2001 (a copy of which is attached for the record). The Department opposes both bills.

S. 1385 and H.R. 2115 both authorize the Secretary of the Interior (Secretary) to participate in the design, planning, and construction of, and land acquisition for, the Lakehaven water reclamation project in the state of Washington. S. 1385 and H.R. 2115 limit the Federal share of project costs to 25 percent of the total costs and restrict the Secretary from providing funding for the operation and maintenance of this project. While the Department strongly encourages local water recycling efforts, we must oppose authorizing this additional Federal recycling project for the reasons described below.

In 1992, Congress adopted, and the President signed, the Reclamation Projects Authorization and Adjustment Act (Public Law 102-575). Title XVI of this Act, the Reclamation Wastewater and Groundwater Study and Facilities Act, authorized the construction of five water reclamation and reuse projects. Four of these projects are in California and the fifth is in Arizona. The Secretary also was authorized to undertake a program to identify other water recycling opportunities throughout the 17 western United States, and to conduct appraisal level and feasibility level studies to determine if those opportunities are worthy of implementation. In addition, the Secretary was authorized to conduct research and to construct, operate, and maintain demonstration projects. The Bureau of Reclamation has been administering a grant program to fund these Title XVI activities since FY 1994.

In 1996, Public Law 104-266, the Reclamation Recycling and Water Conservation Act, was enacted. This Act amended Title XVI and authorized the Secretary to participate in the planning, design, and construction of 18 additional projects, including two desalination research and development projects. These new projects are distributed within five states, including California, Nevada, Utah, Texas, and New Mexico. Title XVI of P.L. 102-575 was further amended in 1998 by Public Law 105-321, to authorize a project in Salem, Oregon. Finally, Title XVI was amended twice in 2000, first by Public Law 106-544, to authorize a project in Sparks, Nevada, and then by Public Law 106-566, which provided the Secretary with general authority to conduct planning studies in the State of Hawaii. To date, Congress has provided funding to plan or construct 19 of these 25 specifically authorized projects. In addition, under the general authority of Title XVI, funding has been provided to identify and investigate, at the appraisal or feasibility level, eight potential water recycling projects, and to conduct three research and demonstration projects.

Municipal, industrial, domestic, and agricultural wastewater reuse efforts can assist states and local communities in solving contemporary water supply problems. However, the Department opposes authorizing additional construction projects in the absence of feasibility studies to determine whether these particular projects warrant Federal funding. In general, Reclamation places priority on funding new projects that: (1) are economically justified and environmentally acceptable in a watershed context; (2) are not eligible for funding under another Federal program; and (3) directly address Administration priorities for the Reclamation program, such as reducing the demand on existing Federal water supply facilities.

The Department also opposes enactment of this legislation because authorizing new construction projects is likely to place an additional burden on Reclamation's already tight budget. To date, Reclamation has been unable to provide the full authorized funding amounts for all but four of the water reclamation and reuse projects presently authorized by Title XVI. At current funding levels, it will take Reclamation more than 10 years to complete funding of the 25 currently authorized projects.

Finally, the Department opposes enactment of the provision in S. 1385 and H.R. 2115 authorizing land acquisition prior to completion of a feasibility study. Federal contributions for land acquisition should await the outcome of a feasibility study.

For these reasons, the Department cannot support authorizing this new construction request.

S. 1824/ H.R. 2828

I am pleased to present the views of the Department of Interior (Department) on S. 1824 and H.R. 2828, concerning refunds of amounts collected from Klamath Project irrigation and drainage districts for operation and maintenance of the Project's transferred and reserved works for water year 2001. The bill also authorizes the Secretary of the Interior to waive requirements that the districts pay additional operation and maintenance (O&M) charges for the remainder of 2001. In as much as the bills are nearly identical, my comments will address both bills.

As much as the Department can sympathize with the unfortunate plight of the water supply contract holders in the Klamath Project, we do have some concerns about the long-term policy and cost ramifications these bills may unintentionally set.

The troublesome series of events that occurred last year in the Klamath Basin were a reminder of the cyclical nature of droughts in the West and the increasing demands for a finite amount of water. The financial difficulties suffered by the irrigators, their families, and the community as a whole is something Reclamation has worked hard to counter. The Department responded quickly last year and continues to play an integral role in finding workable long-term solutions for that region.

In March 2002, the President established the Klamath River Basin Federal Working Group, which is chaired by Interior Secretary Norton and includes Commerce Secretary Evans, Agriculture Secretary Veneman and CEQ Chairman Connaughton. The Working Group has since undertaken immediate and long-term actions to address the complex economic and natural resource issues in the basin. For instance, the Working Group announced \$1.6 million from the Department of Agriculture (USDA) to accelerate assistance for water management and water quality actions on Forest Service land. The Department accelerated the construction schedule on screening of the A canal, and anticipates finishing construction in April 2003. Reclamation announced two significant restoration projects that will add water to a water bank. These projects involved partnerships with The Nature Conservancy and The Rangeland Trust. The Administration is considering additional water quality and water quantity measures and is considering reprogramming of Reclamation funds to accelerate water conservation and habitat restoration projects in the Klamath River Basin. Also, the USDA provided \$20 million to help affected farming families.

In addition to these Administration efforts, the region's congressional delegation, including Senator Gordon Smith and Congressman Greg Walden, were instrumental in passing a potent conservation title in the Farm Bill, also strongly supported by the Administration, which included \$50 million specifically for Klamath farmers and ranchers to pursue conservation measures. The Klamath community may also be able to qualify for some of the large funding increases for the Environmental Quality Incentives Program (EQIP), Wetlands Reserve Program (WRP), and Conservation Reserve Program (CRP) authorized in the Farm Bill.

While we all hope that this situation will never repeat itself, cyclical drought conditions pose a considerable challenge in the arid West, where we must manage water for endangered species, fulfill our trust responsibilities to Native Americans, and meet the needs of irrigators and other water users. Although what happened in the Klamath Basin was an extraordinary example of drought and Endangered Species Act (ESA) conditions hampering water deliveries for contract customers, this is not the first example, nor will it be the last. Over the years, there have been countless examples of when contractors were unable to get their full contract allotment of water due to drought or environmental demands. Nonetheless, O&M costs were incurred and the contractors paid their share.

Regardless of how much water is delivered, maintenance of facilities must continue if they are to remain functional. As Reclamation enters the dawn of its second century, it is important that we not shed the tenets of our success from our first 100 years. The fundamental principles of Reclamation have always included fulfilling our contractual commitments and delivering water to our contractors in the arid West. The corresponding contractual commitment of the water users to help maintain this infrastructure, in good times and bad, is essential to the success of the program.

The Department recognizes the hardships experienced by Klamath area residents. It is also keenly aware of the severe drought conditions playing out across the West. Reclamation also recognizes it will have additional water management challenges in the future. I have no doubt that the Administration and Congress will act with the same passion with other affected parties, where appropriate, as they did with Klamath customers. What we must not do is give cause to those persistent critics of Reclamation programs that allege the beneficiaries of our programs do not pay their fair share, even in the most difficult of times. That is why the Department has some serious concerns about the long-term policy and cost ramifications that these bills may unintentionally set. For example, applying the logic of these bills to all such situations could cost Federal taxpayers many millions of dollars per year in lost O&M payments. Every year there are water contractors who do not receive the full amount of water for which they have contracted, due to drought, ESA concerns, or over-allocation of scarce water. Nevertheless, if those contractors want to

ensure future deliveries, they must help maintain the facilities that make those deliveries possible.

The Department values its working relationship with our Klamath Project customers and is committed to working through the complex issues all of us face in that region. Reclamation stands ready to work with Senator Smith and other members of this Subcommittee to find a mutually acceptable solution for the Klamath Project customers.

I appreciate the opportunity to comment on S. 1824 and H.R. 2828 and I would be happy to stand for questions.

S. 1883

I am pleased to present the views of the Department of the Interior on S. 1883, a bill that would authorize Reclamation to participate in the Wallowa Lake Dam Rehabilitation and Water Management Program in Oregon.

While we believe there are merits to the proposed program, the Department does not support S. 1883.

Wallowa Lake Dam is a privately-owned dam constructed in 1918 and raised in 1929, and is owned and operated by the Associated Ditch Companies, Inc. (ADC). Dam safety deficiencies have been identified by the U.S. Army Corps of Engineers and Oregon Water Resources Department. ADC, in conjunction with the Grande Ronde Model Watershed Council, Reclamation, and other local, state, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation and Water Management Program to address dam safety deficiencies and to tie correction of those deficiencies to larger environmental issues in the Wallowa River Basin.

The Wallowa Lake Dam Rehabilitation and Water Management Program is proposed to begin in FY 2002 and continue through FY 2007, at an estimated total cost of \$38,800,000. S. 1883 sets out an 80/20 cost share for this Program, under which the federal government would pay \$32 million funded through the Bureau of Reclamation.

Reclamation itself has an inventory of aging dams—and the responsibility to ensure the safety and reliability of Reclamation dams to protect the downstream public. Dam safety is one of Reclamation's highest priorities. I would like to give you a sense of the scope of our dam safety responsibilities: the Bureau has reservoirs impounded by 457 dams and dikes. Of these structures, 362 dams and dikes, located at 252 different project facilities, would likely cause loss of life if they were to fail. Approximately 50 percent of Reclamation's dams were built between 1900 and 1950, and about 90 percent of the dams were built before currently-used state of the art design and construction practices. Aging Reclamation-owned dams, which lack state-of-the-art structural reliability features, require Reclamation to conduct extensive ongoing risk management activities to assure safe dam performance and protect the public from unreasonable risk.

While we fully understand the importance of ensuring the safety of Wallowa Lake Dam, this dam is not a federal project. It is privately owned and operated, and falls under a dam safety program of the Oregon Department of Water Resources. Reclamation believes the Wallowa Lake Dam Rehabilitation and Water Management Program is worthwhile, with potentially numerous benefits; however we are concerned about the proposed federal role in this project. Despite the very high federal cost share for the project, under S. 1883 there is currently no federal interest in the dam, and none is provided by the bill; moreover, there is no provision for repayment by project beneficiaries in accordance with reclamation law.

We are also concerned that Reclamation's participation in this program would adversely impact ongoing projects and operations. S. 1883 would authorize the use of Reclamation funds for a non-Federal purpose. Reclamation funds must be targeted to perform essential functions at our federal projects, such as security at BOR dams and reservoirs, operations and maintenance (O&M), resource management, dam safety, or construction. The Department cannot, therefore, support S. 1883.

S. 1999

I am pleased to present the views of the Department of the Interior on S. 1999, concerning authorization of the Mni Wiconi Rural Water Supply Project. This Project serves the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and seven counties in southwestern South Dakota. S. 1999 would increase the authorization ceiling for the Project and extend by five (5) years the time period for which appropriations are authorized. Since the Project cannot be completed unless these changes are made, the Department supports enactment of S. 1999.

The Mni Wiconi Rural Water Supply Project was authorized in 1988 (P.L. 100-516) and included the Oglala Sioux Rural Water System, the Oglala Sioux Core Sys-

tem, the West River Rural Water System, and the Lyman-Jones Rural Water System. The Mni Wiconi Project was expanded in 1994 (P.L. 103-434, Title VIII) to include the Rosebud Sioux and Lower Brule Sioux Rural Water Systems.

The authorizations intended construction to be completed within 10 years, and appropriations were authorized through 2003. However, annual appropriations have been insufficient to complete construction on the Project within the time-frame originally planned in the Final Engineering Report.

S. 1999 extends to the year 2008 the authorization for appropriations to complete the project. The bill also increases the authorized ceiling by \$58.8 million to cover expenses that were not identified until after the sponsors (the Oglala, Rosebud and Lower Brule Sioux Tribes and West River/Lyman-Jones Rural Water Systems) released their Final Engineering Report, plus estimated administrative costs related to the extension from 2003 to 2008.

Mr. Chairman, the Administration is firmly committed to completing the Mni Wiconi Rural Water Supply Project. If S. 1999 is not enacted, the authority for appropriations will expire in 2003; Project construction would be shut down and the full benefits of the Project would not be realized. Only a portion of the Project population would be served water. If the expiration date is extended without a corresponding increase in the cost ceiling, the project would have to be redesigned to determine which features could be constructed within the available ceiling. This unfortunate prospect may be averted if S. 1999 is enacted, and I reiterate the Department's support for the bill.

H.R. 706

I am pleased to present the views of the Department of the Interior on H.R. 706, the Elephant Butte Lease Lot Conveyance Act, as passed by the House of Representatives and referred to the Senate (RFS). The Department has no objections to H.R. 706 as passed by the House of Representatives and referred to the Senate (RFS).

H.R. 706 provides for the transfer and disposal of 403 residential leased lots located on federal properties at Elephant Butte and Caballo Reservoirs near Truth or Consequences, New Mexico. In the late 1940s, small quarter-acre and half-acre lots along the shoreline of Elephant Butte and Caballo Reservoirs were made available for the public to lease and occupy on a short-term basis. Individuals were permitted to place tents, campers, or construct temporary structures on the site for the duration of their stay. Although the original intent of the lease lot program was to provide lots for part-time recreational use, over time permanent structures and other improvements have replaced initial recreational facilities with many of the structures now used as full-time residences.

The Department supports efforts to convey certain Reclamation lands and facilities to private entities—in particular, those that are no longer necessary for managing either the dam or the recreation areas. However, the Department did not support H.R. 706 as introduced. In testimony before the House Resources Committee on December 10, 2001 (a copy of which is attached for the record), we raised several concerns with H.R. 706 as introduced: for example, the method by which fair market value would be determined, disposition of proceeds from the sale of the leased lots, and compliance with applicable laws prerequisite to conveyance.

Reclamation staff subsequently worked with the House Resources Committee to develop acceptable legislative language. The resulting Amendment in the Nature of a Substitute, offered by Representative Calvert, addressed our most significant concerns. Ultimately, those changes were adopted and passed by the House of Representatives on March 19, 2002, and are reflected in H.R. 706 (RFS).

Thank you for the opportunity to comment on H.R. 706 as passed by the House of Representatives and referred to the Senate (RFS).

This concludes my statements. I would be happy to answer any questions.

Senator JOHNSON. Thank you, Mr. Limbaugh. I'm advised that Chairman Dorgan may have several questions to submit for your response, and that will be forthcoming.

Senator DOMENICI.

Senator DOMENICI. I have no questions. I just wanted to know if you know, how long did the lessees, the Government and other interests, negotiate and work on the issues in the last bill you testified about on Caballo Lake and Elephant Butte? Do you know how

many years? I'm sure that Mr. Stagner knows, and he'll tell us, but I'm just—

Mr. LIMBAUGH. Senator—Mr. Chairman and Senator Domenici, I don't have any information on the length of time this has been on-going, but I can get back to you on that, if you desire.

Senator DOMENICI. It's not that important. We'll get it for the record.

Mr. LIMBAUGH. Okay, thank you, sir.

Senator JOHNSON. Senator Wyden, any questions?

Senator WYDEN. Yes, I wanted to ask a couple of questions. Particularly, let me begin, if I might, on the Klamath Basin legislation, because it seems to me that this is a perfect example of folks being penalized. I mean, here you've got a situation where they're not getting the product, and they're not going to get a remedy under existing contracts.

And we want to work with you. You all have been very cooperative in this whole effort. But my sense is that if they don't have a legislative remedy, literally we are going to set a precedent that says they have no remedy under existing law when they get no product. In other words, you're talking about setting a precedent the other way. I'm talking about setting an anti-agriculture, anti-environmental precedent that's extraordinarily dangerous. It would be one thing if they had a remedy under an existing contract. But they don't, and I'm just wondering what can we do to work this out with you, because I think that, absent the Smith-Walden-Wyden legislation here, we're going to be setting an anti-agriculture precedent.

Mr. LIMBAUGH. Well, Mr. Chairman, Mr. Wyden, I can appreciate your concerns. I believe the Department has shown that they are very sensitive to the farmers of the Klamath Basin and to agriculture, in general, in Oregon there in that part. I certainly think that the concerns that we have are about Reclamation-wide actions that—on collecting these O&M costs that would basically set a different expectation, in terms of folks that don't get all of their water. There are other areas of the country that, while not precluded from getting water, do not receive a hundred percent of their supply every single year.

Senator WYDEN. How about zero percent?

Mr. LIMBAUGH. Yeah. Well, and that—zero is an extreme example. So, quite possibly, we could work with you to look at the extenuating circumstances that are—

Senator WYDEN. We'd like to do that. I understand your concern about the precedent, and certainly I can conceive of scenarios where it could be used as a boondoggle to go out and exploit the Treasury. But here, we have a situation where, as my colleague said, our folks didn't get anything. You have been working closely with us. This is not a question of that. You have been cooperating fully with us. I just think, to say, after people get nothing, and there's no remedy under contract law—I think we'd be setting a precedent that's certainly not what the administration wants to do, and it would really be an anti-agriculture one.

The only other point on the other bill, with respect to Wallowas—as you know, the administration has stressed collaborative approaches. And I credit you for it. I credit the Secretary for it. It

doesn't get any more collaborative than the effort that we have seen in the Wallowa. I mean, these folks have been at the table doing everything that the President and the Secretary, to their credit, have been saying is what natural resources policy is all about.

And it seems to me, if we—again, in the same spirit as the first piece of legislation—if we can't work this one out with you, it sends a really horrendous message throughout our part of the world that, if you do the heavy lifting, if you do all this collaborative work, well, shoot, somebody in Washington is just going to come up with some other reason why you can't do it.

So I make the same plea on the second bill that I did on the first bill—that is, just work with us. We know you are sympathetic to the collaborative effort. It doesn't get any more collaborative than this one. And just, by way of your response, as long as you indicate you'll work with us, you don't have to get mauled here as a witness on this point today. Is that something we can agree on, to work with you on it some more?

Mr. LIMBAUGH. Mr. Chairman—or Mr. Wyden, yes, we would appreciate the opportunity to work with you on this.

Senator WYDEN. Right, thank you.

Thank you, Mr. Chairman.

Senator JOHNSON. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

Mr. Limbaugh, yesterday in this committee, we passed out a bill on the Cal-Fed Program of \$1.6 billion. It had to do with a lot of non-Federal projects. And I guess I'm wondering—if endangered-species issues and larger Federal programs can create a nexus for that, surely it can for a little dam in Wallowa County.

Mr. LIMBAUGH. Mr. Chairman and Mr. Smith, the Cal-Fed legislation is a different piece of legislation, and—

Senator SMITH. No doubt about it. There's a lot of non-Federal property in that. And I'm wondering if you support that, the Cal-Fed Program?

Mr. LIMBAUGH. Mr. Chairman and Senator Smith, I'm not prepared to give the administration's position on the Cal-Fed Program at this point. I think it's been given in several testimonies in the past, and I'm just not prepared at this point to give you that position.

Senator SMITH. Well, we need to work with you on this Wallowa Dam, because this is something we need to do, because if we need to help find a Federal nexus, it's not going to be hard to do that. If we need to make some provisional changes about doing that. But, the bottom line, there are tribal issues, there are endangered-species issues, there's a whole range of overlay of Federal interests having to do with Wallowa Dam, and we've got to work it out with you.

So we'll look forward to doing that, and I did owe the comments of my colleague on Klamath.

Senator JOHNSON. Thank you, Senator. Thank you, Mr. Limbaugh, and we will—

Senator SMITH. Thank you very much.

Mr. LIMBAUGH. Thank you. Mr. Chairman, if Mr. Dorgan has questions, do you want me to remain in the audience, or do you want to submit the——

Senator JOHNSON. We will submit the question to you, and we appreciate your expeditious review of those questions.

Mr. LIMBAUGH. Okay, no problem. Thank you, Mr. Chairman.

Senator JOHNSON. Thank you.

The next panel consists of Mr. Dan Keppen, executive director of the Klamath Water Users Association of Klamath Falls, Oregon; John Steele, president of the Oglala Sioux Tribe, Pine Ridge, South Dakota; Jerry Stagner, board member of Elephant Butte/Caballo Leaseholders Association of El Paso, Texas; Jeff Oveson, director of the Grande Ronde Model Watershed Program, La Grande, Oregon; and Don A. Christiansen, general manager of Central Utah Water Conservancy District, Orem, Utah. If each of these gentlemen would come to the witness table——

I'm advised that there is a 15-minute roll-call vote that was called for just recently. What I want to do is get as much of this in as possible. And there may even be some juggling that we can do to not lose any testimony at all, but we do want to be expeditious.

I want to thank each of you. We would encourage each of you to summarize your statements, if at all possible. Your statements will be received, in full, in the record.

I will turn first to John Steele, who is president of the Oglala Sioux Tribe. John has been an extraordinary leader for the Oglala Sioux and is very well-versed with one of the most important water projects in all of the Great Plains, and that is the Mni Wiconi Water Project. Welcome, President Steele.

**STATEMENT OF JOHN STEELE, PRESIDENT, OGLALA SIOUX TRIBE, PINE RIDGE INDIAN RESERVATION**

Mr. STEELE. Thank you very much, Senator. I would like to thank the committee for the hearing on S. 1999. My name is John Yellowroot Steele. I'm the president of the great Oglala Sioux Tribe, the land of Red Cloud and Crazy Horse, in the great State of South Dakota.

I've filed a written formal statement, and I request that be entered into the record.

Senator JOHNSON. Without objection.

Mr. STEELE. The written statement was developed in cooperation with all four sponsors of the Mni Wiconi Project.

My presence here today is to represent all of the Mni Wiconi sponsors, all four in South Dakota. These sponsors are the Oglala Sioux Tribe, West River/Lyman-Jones, Rosebud Sioux Tribe, and the Lower Brule Sioux Tribe. All four sponsors have contributed to the written testimony filed with the subcommittee and have joined us in the audience for this hearing. I would like to acknowledge at this time Mr. Mike Hurley of the West River/Lyman-Jones sponsorship, and Mr. Jim McCauley of the Lower Brule Sioux Tribe, who are all seated behind me, and also Mr. Paul Little of the Oglala Sioux Tribe, legislative liaison for the Mni Wiconi Project.

I would like to thank the chairman and the subcommittee for giving this matter attention and for providing an opportunity for this

hearing. I would like to thank the Bureau of Reclamation for their support for S. 1999. I think it's a very important bill, and it's going to add \$58.8 million to the project construction ceiling, bringing the Federal share to \$391 million. It also extends the project completion date from 2003 to 2008.

I would like to bring to the subcommittee's attention some of the important points in the written testimony. First, you should know that this project has brought the Oglala Lakota people in western South Dakota together with non-Indian farmers and ranchers in an endeavor for the common good of our respective peoples. This is the most significant step toward a better understanding amongst us since 1889. This was when the Great Sioux Reservation created by the Treaty of 1868, was divided into smaller reservations to make room for non-Indian settlers. The Lakota leaders and membership have gained respect for the people served by the West River/Lyman-Jones, and we feel that they have gained respect for our capabilities and desire to improve the quality of life in this part of South Dakota for everyone. I'd like to thank Mr. Hurley, of West River/Lyman-Jones, for his efforts in this respect.

The subcommittee should also know that the improvement in the quality of life on Pine Ridge Reservations and other reservations over the project is a necessity. On my reservation, the per-capita income is the lowest in the Nation, less than \$4,000 annually. A large majority of the population falls below the poverty level. This poverty is reflected in the quality of our infrastructure and the opportunity for future economic development. Opportunities are limited or nonexistent. This project is one of several building blocks that must be placed before our people can progress. This is an essential building block.

In this building, in this city, and across the Nation, most people take for granted the availability of good water. This is not the case in Pine Ridge until this project began, and it will not be the case in Pine Ridge until this project is completed.

I can show you that most housing on Pine Ridge is well below standard. I can also show you plastic containers of all types around and inside these homes that are used to haul water and store water for drinking, cooking, and bathing. This project is changing the circumstances. Many people can now use the plumbing in their homes to deliver safe, clean water.

The consequences of poverty and the historic absence of safe water on Pine Ridge are deep. Water-related diseases have been a significant problem. Impetigo, shigellosis, hepatitis, gastroenteritis, and others are not as prevalent in our population because water from the project is being delivered. There has not been a hepatitis outbreak since the project was initiated on the reservation. These are very significant.

I'm deeply concerned about other diseases associated with poverty. Our staff has examined mortality rates for heart disease, cancer, and diabetes. The findings are deplorable. I am informed that the discounted future health care costs for these three prominent diseases will be between \$.8 and \$1.6 billion above the costs typical of the population with normal incidents of these diseases over the next 50 years. These are extra costs, not total costs.

I relate these findings to inform the subcommittee that, while the Mni Wiconi Project cannot provide a full answer to these diseases and that the excessive Federal costs for health care associated with these diseases, the Mni Wiconi Project is a step in the right direction. It will provide an essential foundation for improved earnings and employment, which, in turn, will lower the rate of the incidents and mortality associated with these diseases.

In closing the support of the subcommittee for S. 1999 will be greatly appreciate by all the sponsors in this invaluable project.

I thank you. And I apologize, as I have a plane to catch, Honorable Senators. I'll be happy to answer any questions.

[The prepared statement of Mr. Steele follows:]

PREPARED STATEMENT OF JOHN STEELE, PRESIDENT, OGLALA SIOUX TRIBE,  
PINE RIDGE INDIAN RESERVATION

This testimony has been developed conjunctively and is offered on behalf of the Oglala Sioux Tribe, West River/Lyman-Jones, Inc., the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe, the four beneficiaries and sponsors of the Mni Wiconi Rural Water Supply System in southwestern South Dakota. S. 1999, a re-authorization of the Mni Wiconi Project, will increase project funding by \$58.8 million (October 1997 dollars) and extend the completion of the project to 2008. The sponsors, individually and collectively, support S. 1999 and seek support by the Subcommittee.

BACKGROUND

The Mni Wiconi Project Act of 1988 (Public Law 100-516) authorized and directed the Secretary of the Interior to construct the Mni Wiconi Rural Water Supply Project to provide a safe and adequate municipal, rural, and industrial water supply to both Indian and non-Indian residents of South Dakota. Initially, the Project included the Oglala Sioux Rural Water Supply System (OSRWSS), the West River Rural Water System, and the Lyman-Jones Rural Water System. In 1994, the West River and the Lyman-Jones Systems were merged into one system, known as the West River/Lyman-Jones Rural Water System. The Mni Wiconi Act Amendments of 1994 (Public Law 103-434, Title 8) added construction of the Rosebud Sioux and the Lower Brule Sioux Rural Water Systems to serve the respective reservations, thereby increasing the number of Project "sponsors" to four. The amendments also raised the authorized appropriation ceiling for the Project from \$87.5 to \$263.2 million, subject to cost indexing, and provided that the systems would generally be constructed in accordance with the Project's Final Engineering Report, dated May 1993.

The overall Project includes a water treatment plant, 4,500 miles of pipeline, 60 booster pump stations, and 35 water storage reservoirs. The Project will ultimately serve more than 52,000 people, including more than 40,000 on the three Indian reservations.

CURRENT STATUS OF CONSTRUCTION AND FUNDING

The following is the average federal funding need to complete the project in FY 2008. Figure 1<sup>1</sup> shows the location of the project and the current status of construction.

Total Federal Required .....	\$391,091,000
Federal Spent Through FY 2002 .....	\$213,384,726
% Spent .....	54.56%
Amount Remaining .....	\$177,706,275
Average Required for FY 2008 Finish .....	\$ 29,617,712

The Project has a total estimated cost (October 2001 dollars) of \$411 million. Federal funding requirements for the project are \$391 million, including the \$58.8 million proposed by S. 1999. The total amount spent from federal funds is \$213.4 million, 54.56% of the total federal requirement. Most non-federal funds for the project have already been expended. The amount remaining in federal funds to complete the project is \$177.7 million, which will require an average annual appropriation

<sup>1</sup>Figure 1 has been retained in subcommittee files.

through FY 2008 of \$29.6 million. If cost indexing at 3% is taken into account between FY 2002 and FY 2008, the average indexed funding requirement is \$34.9 million annually.

The sponsors are extremely pleased to report to the Subcommittee that the OSRWSS water treatment plant on the Missouri River near Fort Pierre, South Dakota, is fully operational and will deliver treated water on a sustained and dependable basis during FY 2002 and thereafter. Large diameter OSRWSS core pipelines (24 inch) will have been constructed by the end calendar year 2002 to Vivian and Murdo, over a distance of 100 miles. The completion of these critical segments of the core pipeline permits the Lower Brule Sioux Tribe to interconnect at Vivian and deliver water immediately to large areas of West River/Lyman-Jones. Over a period of several years, Lower Brule will complete its core system into the Reservation. The completion of the OSRWSS core pipeline to Murdo permits the Rosebud Sioux Tribe and other parts of West River/Lyman-Jones to interconnect at that location. Over 50% of the design population will have access to Missouri River water from the OSRWSS core pipelines at the 2002 level of completion.

The project now has the most significant project components completed and can conclude the project in a timely manner given amendment of the project ceiling as proposed by S. 1999 and adequate appropriations in fiscal years 2003 through 2008. The degree of poverty and need for improvement of drinking water are set forth in greater detail in section 3 of this statement and underscore the importance of this project.

Attention is directed to the fact that the Pine Ridge Indian Reservation and the western portion of the West River/Lyman-Jones service areas are the furthest from the water treatment plant on the Missouri River. These areas will be served last, and it is crucial that the project is funded adequately and timely to serve the remaining 50% of the project design population over the next six years (Figure 1).

#### UNIQUE NEEDS OF THIS PROJECT

This project covers much of the area of western South Dakota that was formerly the Great Sioux Reservation established by the Treaty of 1868. Since the separation of the Reservation in 1889 into smaller, more isolated reservations, including Pine Ridge, Rosebud and Lower Brule, tensions between the Indian population and the non-Indian settlers on former Great Sioux lands has been high with little easing by successive generations. The Mni Wiconi Project is perhaps the most significant opportunity in more than a century to bring the sharply diverse cultures of the two societies together for a common good. Much progress has been made due to the good faith and genuine efforts of both the Indian and non-Indian sponsors. The project is an historic basis for renewed hope, dignity and improvement in quality of life among the Indian people. It has been a basis for substantive improvement in relationships.

The project beneficiaries, particularly the three Indian Reservations, have the lowest income levels in the Nation. The health risks to the Indian people from drinking unsafe water are compounded by reductions in health programs. It is respectfully submitted that the project is unique and that no other project in the Nation has greater human needs. Poverty in the Indian service areas is consistently deeper than elsewhere in the Nation. Health effects of water borne diseases are consistently more prevalent than elsewhere in the Nation, due in part to (1) lack of adequate water in the home and (2) poor water quality where water is available. Higher incidences of impetigo, gastroenteritis, shigellosis, scabies and hepatitis-A are well documented on the Indian reservations of the Mni Wiconi Project area although improvements have been noted since the initial delivery of good water beginning in 1994. At the beginning of the third millennium one cannot find a region in our Nation in which social and economic conditions are as deplorable. These circumstances are summarized in Table 1. Mni Wiconi builds the dignity of many, not only through improvement of drinking water, but also through direct employment and increased earnings during planning, construction, operation and maintenance and from economic enterprises supplied with project water. The Subcommittee is urged to consider the need for creating jobs and improving the quality of life on the Pine Ridge and other Indian reservations of the project area.

Table 1.—1990 BUREAU OF CENSUS ECONOMIC STATISTICS \*

Indian Reservation/State	Per Capita Families Below Poverty Level		
	Income	Percent	Unemployment (%)
Pine Ridge (Shannon County) .....	\$ 3,029	59.6	32.7
Rosebud (Todd County) .....	4,005	54.4	27.3
Lower Brule (Lyman County) .....	4,679	45.0	15.7
State of South Dakota .....	10,661	11.6	4.2
National .....	14,420	10.0	6.3

\* 2000 census data are not yet available for income and poverty. Preliminary estimates based on 1997 census information indicate that conditions have not changed significantly.

Employment and earnings among the Indian people of the project area are expected to positively impact the high costs of health-care borne by the United States and the Tribes. OSRWSS data suggest clear relationships between income levels and federal costs for heart disease, cancer and diabetes.

It is believed that the Subcommittee will share the shock of the sponsors with respect to future health care costs associated with poverty and the extremely high mortality rates of Indian people in the Great Plains. OSRWSS has found that an extra \$0.8 to \$1.6 billion (present value of 50 years of future health-care) will be required for the 24,000 member Indian population in the Mni Wiconi Project (relative to the non-Indian population). This is not total costs of health care, it is the extra cost of health care. A task force to thoroughly study this matter with the objective of taking corrective action is needed.

The Oglala Sioux Rural Water Supply System is a part of the solution. It brings much needed employment, which, in turn, engages part of our unemployed and brings about some measurable improvement in the health of the Lakota Nation, thereby reducing federal health-care costs and, most of all, the tragedy in the families affected. Support for the additional funds needed for completion of the project and acceleration of the Project in the Administration's budget will be invaluable.

Financial support for the Indian membership has already been subjected to drastic cuts in funding programs through the Bureau of Indian Affairs. This project is a source of strong hope that helps off-set the loss of employment and income in other programs and provide for an improvement in health and welfare. Tribal leaders have seen that Welfare Reform legislation and other budget cuts nation-wide have created a crisis for tribal government because tribal members have moved back to the reservations in order to survive. Recent Census Bureau data indicate that the population of Shannon County (Pine Ridge Indian Reservation) increased over 24% between 1990 and 2000. The populations of the Rosebud and Lower Brule Indian Reservations have also continued to grow. Economic conditions have resulted in accelerated population growth on the reservations. The Mni Wiconi Project Act declares that the United States will work with us under the circumstances:

. . . the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply and public health needs of the Pine Ridge, Rosebud and Lower Brule Indian Reservations . . .

Indian support for this project has not come easily because the historical experience of broken commitments to the Indian people by the Federal Government is difficult to overcome. The argument was that there is no reason to trust and that the Sioux Tribes are being used to build the non-Indian segments of the project and the Indian segments will linger to completion. These arguments have been overcome by better planning, an amended authorization and solid agreements and relationships among the parties. The Subcommittee is respectfully requested to take cognizance of the need to complete the project to maintain the faith of the Indian people.

The Mni Wiconi sponsors have worked especially hard to implement cost controls and to minimize the increase in the authorization required to finish this valuable project. There has been every effort to comply with cost reduction measures, and the sponsors trust that others will find that actions and decisions have been genuine, comprehensive and effective.

COMPONENTS OF ADDITIONAL COST

Before fully reviewing the components of the increase of \$58.8 million in the project ceiling, the sponsors are in complete agreement that the Bureau of Reclama-

tion has worked with us in a thoroughly cooperative and effective manner throughout the project. In preparation of the cost estimates for HR 4368, the Bureau of Reclamation worked closely with the sponsors. Agreement was reached on the causes of the cost increases and the steps to be taken to control and limit future costs and to reconfigure the OSRWSS core system. Table 2 summarizes the factors requiring amendment of the project ceiling and the amounts of additional costs.

Factors contributing to increases in cost include items not originally contemplated in the Final Engineering Report (FER), upon which the project costs were based, including extension of the project completion date from 2003 to 2008 and the associated costs of administration. Operation and maintenance buildings were required that were not originally included in the project costs. Moreover, facilities were approved and constructed that were not part of the original plan formulation, but were subsequently determined necessary due to change in circumstances.

Bid prices, particularly on the OSRWSS core and distribution system on the Pine Ridge Indian Reservation, were received at higher prices than contemplated in the Final Engineering Report (FER). The Reservation is the most remote area in the project, the number of bids received was generally low (whether for the OSRWSS core or distribution system) and bid prices by contractors reflected a higher level of risk. Moreover, criteria used in common by all sponsors for estimating minor construction items, did not adequately reflect the requirements for the OSRWSS core (Table 2).

OSRWSS and the other sponsors agreed to a reconfiguration of the OSRWSS core that resulted in an estimated savings of \$5.5 million. Federal procurement processes were improved but with less impact on savings than the reconfiguration of the OSRWSS core. Important is a review of the project design criteria based on the 1990 Census of Population in the FER and the subsequent population count by the Bureau of Census for 2000. An accelerated growth rate was a factor in the cost of additional construction on the Pine Ridge Indian Reservation. Population on Pine Ridge has grown at an estimated annual rate of 2.18% as contrasted with the design rate of growth of 1.65%, an increase of 32% in the growth rate. By year 2020, little more than a decade after project completion, the design population on Pine Ridge will have reached 24,560 persons, 17% greater than the 21,000 persons projected in the Final Engineering Report by the same date. Stated differently, if current growth rates are sustained, the design capacities for Pine Ridge will be exceeded in years 2011 and 2012, respectively, 3 to 4 years after the scheduled completion of construction. The population of other service areas is growing but more in accord with original projections. The increase in population on Pine Ridge is believed to stem in large part from the availability of a new source of safe and adequate water as well as new opportunity for earnings and employment in the Project.

On each of the Indian Reservations in the project: Pine Ridge, Rosebud and Lower Brule, population estimates prepared by the Bureau of Indian Affairs argue for higher population than estimated by the Bureau of Census. Therefore, numbers of persons residing on the reservations may significantly exceed the numbers presented here, and the ability of the project to serve a future population may be more important than currently found.

Reconfiguration, as agreed-upon by the sponsors and the Bureau of Reclamation, provides for a northern and southern pipeline in the OSRWSS core with pipe sizes meeting FER design requirements but with some excess capacity for the following reasons: (1) along the northern route, a pipe size between 10" and 12" is required between the water treatment plant and Philip Junction, and 12 inches would be provided; and (2) along the southern route, a pipeline between 20" and 24" would be required from the water treatment plant to Murdo, and 24" would be provided. The Oglala Sioux Tribe needs a core transmission system with capability to deliver water through the southern and northern OSRWSS core as defined in the Final Engineering Report. Reconfiguration supports the projections of project population based on the 2000 Census.

#### SICANGU MNI WICONI (ROSEBUD INDIAN RESERVATION)

The Sicangu Mni Wiconi-Rosebud Sioux Rural Water System was not included in the original Mni Wiconi Act. Nine years ago an amendment was introduced to add Rosebud and Lower Brule to the Project and make other modifications to the legislation. That amendment, enacted as part of P.L. 103-434, and the amendment introduced this year illustrates the commitment of the project sponsors, the Congress and Administration to improving the quality of life for thousands of South Dakotans on three Indian Reservations and beyond.

Table 2.—DETAILS OF INCREASE IN PROJECT CEILING

(October 1997 \$)

Item	OSRWSS		WR/LJ	Rosebud	Lower Brule	Total
	Core	Distribution				
Not Included in FER						
Added Years Administration .....	\$ 2,458,000	\$ 2,675,000	\$1,549,000	\$2,443,000	\$1,016,000	\$10,141,000
Operation and Maintenance	—	6,681,000	988,000	1,098,000	1,044,000	9,811,000
Buildings .....	—	4,723,000	—	433,000	4,845,000	10,001,000
Other Construction .....						
Features Bid Higher Than FER Estimates	23,506,000	8,920,000	—	—	1,199,000	33,625,000
Savings Proposed by Sponsors	(140,000)		—	(60,000)	(10,000)	(320,000)
Federal Procurement .....	(5,502,000)	(110,000)	—	—	—	(5,502,000)
Reconfiguration .....						
Total Costs	\$20,322,000	\$22,889,000	\$2,537,000	\$3,914,000	\$8,094,000	\$57,756,000

While the population of project area still endures with some of the poorest water quality and lowest income levels in the Nation, Mni Wiconi has made a big difference to their life. In 1997 and 1998 the Rosebud Sioux Tribe worked with West River/Lyman-Jones to bring high quality water to Horse Creek, Swift Bear and White River. Indians and non-Indians alike now have a reliable source of high quality water and schools in White River no longer have to close because of a lack of water. Other success stories abound in the area served by the Mni Wiconi.

For Rosebud the present amendment is needed primarily to extend the sunset date and address facilities not contemplated in the Final Engineering Report. For other project sponsors the amendment is more critical. The amendment is needed to construct the reservation distribution system for Lower Brule and the north loop of OSRWSS. These facilities are needed to meet critical needs at Lower Brule and in the WR/LJ service areas. On behalf of the thousands of people who have yet to benefit from Mni Wiconi and who will not benefit without passage of this amendment, the Rosebud Sioux Tribe seeks your support. It is also urged that the Subcommittee bear in mind that legislation is seldom complete and perfect and one cannot rule out additional modifications that may be needed to meet our objective of providing equal benefits to all of the Sicangu Oyate in our Primary and Secondary Service Areas.

#### LOWER BRULE

The Lower Brule Rural Water System has demonstrated its ability to manage and maintain their portion of the project with the tremendous amount of progress accomplished over the last few years. A state of the art microfiltration water treatment plant was constructed and placed into operation in December 1999. The completion of this plant has not only benefited the users of the LBRWS but also allowed the provision of high quality water to a significant number of users of the West River/Lyman Jones (WR/LJ) Rural Water System from Oacoma to Draper.

The provision of water to WR/LJ RWS and its users has been a very rewarding experience. The cooperation and communication between the two systems, especially the operation and maintenance personnel, has been exceptional and has thus led to the successful delivery of high quality water to users on both systems. As a result, much of the apprehension that was felt prior to this supply of water has turned to praise.

LBRWS has committed current funding for the construction of the last segment of LBRWS core pipeline between Kennebec and Reliance during the 2002 construction season. This will result in the core pipeline from Vivian to Reliance serving WR/LJ service areas along the pipeline and the cities of Vivian, Presho and Kennebec.

The major items affecting the cost increase for Lower Brule are the pipe sizes and unit costs for the core pipeline; pipe sizes, quantities (The current total footage includes 510,200 feet for pasture taps. Much of this quantity may not have been in the FER cost estimate) and unit costs for the distribution system; there is a decrease in the estimated cost of pump stations; costs for reservoirs are substantially higher; and the costs the water treatment plant and administration building were not included in the FER.

Another factor affecting Lower Brule's cost was the initial distribution of the appropriated funds. During the first years the project received funds, the funds were distributed on a percentage of sponsors overall portion of the project. As such, the amount of money received by Lower Brule on a yearly basis (\$500,000-\$700,000) was not sufficient to fund a worthwhile segment of the project. The funds needed to be accumulated over a period of years. This not only affected construction costs but also significantly increased the cost of administration as a percentage of the construction costs.

Primarily, as a result of the underestimated cost in the Final Engineering Report, the LBRWS has received the extent of the funding designated for its portion of the project with the receipt of the 2001 funds. The LBRWS with the support of the other sponsors is proceeding with the optimism that the amendment will be approved in a time frame that will not impact the progress currently being made. To that extent, LBRWS has received \$1,450,000 in FY 2002 funds for the Kennebec to Reliance segment of core pipeline. If the amendment is not passed, the continued support of the other sponsors to designate funds for Lower Brule's portion cannot be expected. Therefore, it is crucial to the continued success of Lower Brule and the Mni Wiconi Project as a whole that the proposed amendment is passed.

Senator JOHNSON. Thank you, President Steele. It's an excellent statement. And unless Senator Domenici has any questions, we would be pleased to allow you to catch your plane.

Mr. STEELE. Thank you.

Senator JOHNSON. Very good.

I know, with other time constraints, Mr. Jerry Stagner, we would appreciate any testimony that you might have at this time, and I would—

Mr. STAGNER. Thank you very much, Mr. Chairman.

Senator JOHNSON. Very good.

**STATEMENT OF JERRY STAGNER, BOARD MEMBER,  
ELEPHANT BUTTE CABALLO ASSOCIATION, EL PASO, TX**

Mr. STAGNER. Thank you, Mr. Chairman. Mr. Chairman, distinguished committee members, my name is Jerry Stagner. I'm president of State National Bank in Truth or Consequences, New Mexico. I am on the Leaseholders Board, although I do not have an interest in a lease lot. With me, is board member Mike Mowles.

We're here today representing the Leaseholders of Elephant Butte and Caballo Reservoirs. Thank you for allowing us the opportunity to address your committee on behalf of the association.

The association is a nonprofit organization whose purpose is the purchase of lease lots at Elephant Butte and Caballo Reservoirs. On behalf of the association, we want to thank Representative Skeen and his support of the passing of H.R. 706, the Lease Lot Conveyance Act. We also want to thank Senator Domenici and Senator Bingaman for their support.

These lease lots are in the State of New Mexico, near the shores of the Elephant Butte and Caballo Reservoirs. Elephant Butte was dedicated in 1916. Caballo was built around 1930. The reservoirs are approximately 2 hours south of Albuquerque, New Mexico, and about 2 hours north of El Paso.

These lease lots first became available in 1940 at a cost of about \$10 a year. It took about 40 years for these lots to be leased up. They were—the lease lot holders were told to do improvements to their lots, or they would revert back to the government. The lease owners got busy, established roads, poured lot foundations for their cabins, brought in electricity, either had water piped in or drilled wells, drainage and retaining walls were built, septic tanks were installed, and other upgrades were made. All of these improvements were the result of the sweat and labor and equity of the leaseholders.

It is important to note that all improvements were approved by the Government. And so far as we know, no funds have been expended by the State of New Mexico, nor the Federal Government, for the benefit of the leaseholders. However, State Park does maintain some major roads for access to the beaches.

Collectively, the leaseholders now feel threatened, because the leases have been increased substantially over the last 30 or 40 years. As time progresses, they feel like they're going to be priced out of their homes.

Senator DOMENICI. Mr. Stagner, I wonder if we might interrupt for a moment?

Mr. STAGNER. Yes.

Senator DOMENICI. Could you summarize your statement so we could have a couple of questions, and it will be made a part of the record.

Mr. STAGNER. Sure. I think the record will show that the legislation is very, very much supported, and we just thank you for the support for H.R. 706.

[The prepared statement of Mr. Stagner follows:]

PREPARED STATEMENT OF JERRY STAGNER, BOARD MEMBER, ELEPHANT BUTTE/  
CABALLO ASSOCIATION, EL PASO, TX

Mr. Chairman and distinguished committee members, my name is Jerry Stagner. I am the president of State National Bank in T or C, a member of the Economic Development Committee and a member of the Work Force Development Board. I am on the lease lot holders board although I do not have an interest in a lease lot. With me is board member Mike Mowles.

We are here today representing the lease lot holders of Elephant Butte and Caballo Reservoirs. Thank you for allowing us the opportunity to address your committee on behalf of the association. Our association is a non-profit organization whose purpose is the purchase of the lease lots at Elephant Butte and Caballo Reservoirs.

On behalf of the association, I would like to thank the House of Representatives and Joe Skeen for their support in their unanimous passing of H.R. 706, the Lease Lot Conveyance Act, which allows for the privatization of the lease lots. Senators Bingaman and Domenici have also, assured us of their support of this bill before you today.

Our association supports H.R. 706, passed by the House of Representatives, which provides for the privatization of 403 lease lots.

These lease lots are in the state of New Mexico, near the shores of Elephant Butte and Caballo Reservoirs. Elephant Butte Reservoir was dedicated in 1916. Caballo Reservoir was built around 1930 as a flood control and holding area.

The reservoirs are about two hours to the south of Albuquerque, New Mexico and about two hours north of El Paso, Texas, which are the closest large cities to our area.

The first lease lots became available in the 1940's. In spite of \$10 a year lease fee, it took a good 40 years before all of the lots were leased. Lease holders were told unless improvements were made to the lots, the leases would revert back to the government. Leaseholders got busy and established roads, poured foundations for their cabins brought in electricity and either had water piped in or drilled wells. Drainage and retaining walls were built, septic tanks were installed and other upgrades were made. All of these improvements were a result of the sweat, labor and equity of the lease holders.

It is important to note all improvements were approved by the government, and, insofar as we know, no funds whatsoever have been expended by the state of New Mexico nor the federal government for the benefit of the lease lots. However, state parks does maintain some major roads for public access to the beaches.

Collectively, we now feel threatened as lease fees have increased substantially. As time progresses, we must anticipate even more increases. Leaseholders fear they will be "priced out" of their homes.

These are the people who moved here because of afford ability; many of who are considered to be at poverty level or below. More than 75 percent of the lease lot holders are over age 55, and about 70 percent of these are over age 65. The majority of these senior citizens are on fixed incomes. Most are retired, and having an affordable place to live, on land they themselves have worked and nurtured, is an opportunity in which they should be secure in.

There are 403 lots, but far more people will be affected by the outcome of this legislation. Every lease lot has a family associated with it and is often used by several generations. There are many families in which the father acquired the lot. He raised his kids with "the lake" as an integral part of their upbringing. That tradition continues today in the lives of his grandkids and great grandkids. Every lot touches the lives of a family. Many hundreds of people call these lots home.

Elephant Butte and Caballo Reservoir's boundaries, including the lakes, encompass approximately 78,000 acres. The lease lots occupy only 250 acres, or 0.3 percent of the land within this area. Therefore, more than 99.5 percent, or 77,750 acres of the area are, and will be, available for full public utilization. The lease lots are not an issue with regard to public recreation.

Currently, the majority of leaseholders are reluctant to make major improvements on their lease lots due to the land title questions. Private ownership of lease lots will not only sustain existing economic conditions, but will also provide owners the security to invest in permanent structures and improvements. It will add needed jobs to the community, increase economic stability, increase revenue to the county through property taxes and to the surrounding community through gross receipts taxes.

The important point I want to make today is our association, the state of New Mexico, its congressional delegation and the surrounding communities, believes all the lease lots should be privatized. We believe all the lots are equally important to those currently leasing them. There is no effect to the public by allowing the lots to be purchased by their lease holders. In the past 4 to 5 decades these lots have been leased, there has been no conflict with public users and no loss of use by the public. Therefore, we encourage you to pass H.R. 706, as written, to include privatization of 403 lease lots.

Our process has been long and arduous. We have been working for more than 2 decades toward the purchase of our lots. It is impossible to condense into a five minute presentation lifetime experiences such as a kid's first fish or a widow living on a fixed income.

We are thankful to finally be before you today, and thank you for your time, and for your support of H.R. 706. Again, we would like to thank Senator Bingaman and Senator Domenici for their support. Please feel free to ask Mr. Mowles or me any questions you might have. We would be happy to answer your questions.

Senator DOMENICI. Thank you.

And on behalf of both of Senator Bingaman and myself, we'd like you to carry back to our friends at the two lakes where this problem is finally going to be resolved, commend the leadership that came from all of you locally, including you. You have no monetary interests, but you served on the board and from what I understand, were a major catalyst in getting this program, which is complicated, with a lot of people having different views and ideas, getting it put together.

We want you to also share with them the fact that we got a clean bill of health from the Federal Government and its agencies, that that's why it can go through so rapidly. It shouldn't take very long now—with this being the last stumbling block, it'll go to the floor some afternoon late, since there will be no objection, and I'm not even sure that we'll be able to tell you in advance when that is. We'll probably have to tell you the next day.

Mr. STAGNER. Thank you.

Senator DOMENICI. We thank both of you for coming all this way. In particular, I want to thank Senator Bingaman, who chairs the committee, for pursuing this at an early date. He's the one that sets the dates, and we're here very early.

Mr. STAGNER. By the way, Senator Bingaman—or Senator Domenici, I'll answer your question. It's been going on for about 20 years.

Senator DOMENICI. Twenty years.

Mr. STAGNER. Twenty years.

Senator DOMENICI. Well, I know I've been here two or three times.

Mr. STAGNER. And we thank you for your support.

Senator DOMENICI. You're welcome. Can we proceed to the next one, or do you want to let me go vote and just hold it open? What's your pleasure?

We're going to be in recess until the chair returns. Thank you.

[Recess.]

Senator SMITH. Ladies and gentlemen, we will reconvene this hearing, and we welcome you all here. I don't know that there is a particular order, so why don't we start, Don, with you? And let's talk Central Utah.

Mr. CHRISTIANSEN. Very good, thank you.

Senator SMITH. Do you cover BYU?

[Laughter.]

Senator SMITH. If so, I'm with you.

Mr. CHRISTIANSEN. They are within our district.

Senator SMITH. Okay, I'm for you, then.

[Laughter.]

Mr. CHRISTIANSEN. They survive on a little bit of our water, that's true.

**STATEMENT OF DON A. CHRISTIANSEN, GENERAL MANAGER,  
CENTRAL UTAH WATER CONSERVANCY DISTRICT, OREM, UT**

Mr. CHRISTIANSEN. Mr. Chairman and members of the committee, I appreciate the opportunity to be here today to testify on the bill to amend the Central Utah Project Completion Act. I have submitted a written testimony, and I would appreciate it if that testimony would be entered into the record, and I'll just summarize very quickly.

Senator SMITH. Without objection.

Mr. CHRISTIANSEN. It's been 10 years since that piece of legislation has passed. We've had a tremendous opportunity and a tremendous working relationship with the Federal Government in working to complete the Central Utah Project. And it's been a learning experience for us, an experience that has taught us many things.

What you have before you is a bill that will do some fine tuning, as Senator Bennett explained in his testimony very ably, and will allow us to move forward to the completion of this project, placing emphasis on conservation, reuse, conjunctive use of surface and groundwater, and improved water quality. And I just want to also emphasize that we're not asking for any increased authorization, and we're just looking to rescue some stranded authorizations.

And that will complete any testimony I have. And if there are any questions, I'd be happy to answer them now, Mr. Chairman. [The prepared statement of Mr. Christiansen follows:]

**PREPARED STATEMENT OF DON A. CHRISTIANSEN, GENERAL MANAGER, CENTRAL  
UTAH WATER CONSERVANCY DISTRICT, OREM, UT**

Mr. Chairman, thank you for the opportunity to testify today on a bill to amend the Central Utah Project Completion Act (CUPCA), which originally passed Congress as part of the Reclamation Projects Authorization And Adjustment Act of 1992, (P.L. 102-575). During the ten years since CUPCA became law, the Central Utah Water Conservancy District has exercised the unique opportunity to step into the shoes of the Bureau of Reclamation and complete the planning, design and construction of the Central Utah Project (CUP).

This one-of-a-kind experiment has forced the State of Utah and the water users within the ten counties served by the District to examine very closely exactly what type of project we needed. After all, under the reforms of CUPCA, the Utah taxpayers are paying 35% of the construction costs to complete the project. We have learned much. We have tried to be creative and innovative in how we planned the features to complete the transbasin diversion of Utah's share of Colorado River water to the populous Wasatch front. While we have made progress, we are not yet complete. Simply put, the bill you have before you provides some fine tuning to the

original CUPCA authorization to reflect the contemporaneous changes to CUP reflecting the current needs of Utah's water users.

Chairman Hansen once told me that the Central Utah Project is the closest thing to eternal life on earth. Well, we hope Mr. Chairman, the amendments we are proposing will enable us to complete a project which not only creates more supply, but one which also places greater emphasis on water conservation, wastewater reuse, conjunctive use of surface water supplies with groundwater resources and improved water quality through desalination and reverse osmosis technologies.

S. 2475 amends CUPCA to provide flexibility allowing for the transfer of unused spending authority between CUPCA programs. CUPCA originally authorized the expenditure of over \$900 million to complete the Central Utah Project (CUP). This authorization was broken down into numerous feature or program specific authorizations. These features or program specific authorization levels were based upon original estimates from the Bureau of Reclamation, some of which were first made in the draft 1964 Definite Plan Report. I am sure it will come as no surprise that the project we are building has changed substantially from the one planned by Reclamation in 1964. In fact, CUPCA itself deauthorized a list of certain project features; however, the Act did nothing to dispose of Reclamation's investigation costs for those de-authorized projects. S. 2475 will clean up the books, so-to-speak, by making them non-reimbursable.

Since 1992, the District has reformulated the CUP in a number of significant ways. Several project features including the irrigation and drainage system have been eliminated and other programs have been redesigned to be more cost effective. In addition, CUPCA's water conservation program has met with great acceptance and is expected to fully utilize its program specific authorization. The District's program to purchase water rights to meet minimum stream flow needs is also in need of additional funding. Further, certain water delivery features such as the Diamond Fork System have been redesigned to eliminate the controversial Monks Hollow dam. Because of underground tunnel construction problems, this redesign has increased the overall cost of the Diamond Fork System beyond the authorization limit contained in CUPCA.

S. 2475 amends the authority given to the Secretary of the Interior in Section 202(c) of CUPCA to redirect unexpended budget authority for water conservation projects, water rights acquisition, and other specifically authorized project features in title II of CUPCA. I want to emphasize that S. 2475 does not increase the total authorization for the Central Utah Project.

As I indicated previously, CUPCA also transferred construction responsibility for CUP from the Bureau of Reclamation to the Central Utah Water Conservancy District, the state sponsoring agency for the project. Oversight of the District's planning and construction activities is provided by the Department of the Interior.

The legislation would clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project. This language would ensure that the highly effective administrative arrangement now in place would be allowed to continue. In addition, because from time to time the District has, over the past ten years, asked for assistance from the Bureau of Reclamation, the legislation would authorize a pilot program to be developed between Reclamation and the District to enable increased opportunity for Reclamation to assist the District and the Assistant Secretary in carrying out completion of the project.

Finally, S. 2475 would provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and eliminate a 2002 deadline for such prepayment. This small change would allow the water districts to pay off their contracts more quickly. Thank you.

Senator SMITH. I'll turn it back to the great Senator.

Senator DORGAN. Senator Smith, thank you very much.

Senator SMITH. You bet.

Senator DORGAN. Mr. Christiansen, thank you very much. As Senator Smith has no doubt indicated, we were just finishing a vote on the floor of the Senate, so we appreciate your indulgence.

Next, we will hear from Mr. Jeff Oveson, director of the Watershed Program in—is it La Grande, Oregon?

Mr. OVESON. La Grande.

Senator DORGAN. La Grande, Oregon. And that would be, then, the Grand Ronde Model. Is that right?

Mr. OVESON. Correct.

Senator DORGAN. Mr. Oveson, thank you very much for being with us. Your entire statement will be made a part of the record, and you may summarize. Why don't you proceed?

**STATEMENT OF JEFF OVESON, EXECUTIVE DIRECTOR,  
GRANDE RONDE MODEL WATERSHED PROGRAM, LA  
GRANDE, OR**

Mr. OVESON. Thank you, Mr. Chairman. I have submitted testimony that I would rather than you include as part of the record.

As you said, I'm Jeff Oveson. I'm executive director of the Grande Ronde Model Watershed Program. The Model Watershed Program is grassroots watershed council supported by the Northwest Power Planning Council, numerous Federal and State agencies, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and private landowners. We have facilitated implemented of over 300 habitat and watershed restoration projects since 1992.

It's my honor to testify before you on behalf of steering committee of the Wallowa Lake Dam Rehabilitation and Water Management Plan. It is my pleasure to bring to your attention a locally developed plan that has demonstrable environmental, economic, and social benefits. I particularly want to thank Senator Smith, Senator Wyden, and their staffs for their help and support in formulating this plan and bringing forward legislation to authorize Reclamation's participation in its implementation.

The immediate objectives of the plan are to provide extra water to the Lusting River for ESA-listed fish species to rehabilitate the Wallowa Lake Dam and to provide passage to the dam for the re-introduction of sockeye and coho salmon.

I will discuss two watersheds briefly in Wallowa County. The first, the Lusting River, that originates in the Eagle Cap Wilderness, then flows through 20 miles of wild and scenic corridor and, finally, through 10 miles of irrigated agricultural land before its confluence with the Wallowa. Numerous studies funded and conducted by the Bureau of Reclamation, the Bonneville Power Administration, Oregon Department of Fish and Wildlife, Nez Perce Tribe Fisheries, and the Model Watershed, amongst others, have identified time after time after time that low flow is the single-largest inhibiting factor of fish production in the Lusting River.

Over the last 10 years, cooperation between those landowners on the Lusting, the Nez Perce Tribe Fisheries Program, the Oregon Department of Fish and Wildlife Program, has resulted in coordinated flushing flows to ease the upstream migration of adult salmon returning to their spawning beds, have provided access for the fisheries people to conduct their ongoing activities, and they have participated in numerous water-conservation projects, and continue to this day to participate in water-conservation projects. The fact remains that in-stream flows are still insufficient.

Twenty miles up the Wallowa River from the confluence with the Lusting River is Wallowa Lake, a natural lake whose capacity was augmented with construction of the Wallowa Lake Dam in 1918. The water behind the dam serves a wide range of purposes, including water for irrigation of over 16,000 acres with a direct effect on over 40,000 acres, drinking water for the city of Joseph, recreational use for over 80,000 visitors per year, flood control for the

downstream cities of Joseph, Enterprise, and Wallowa, and stable base flows for riparian habitat, fish stock, and waterfowl.

In 1996, the dam, as you heard earlier, was recorded a high hazard by the Oregon Water Resources Department of Dam Safety. A sudden failure of the structure would obviously endanger human lives and cause extensive property damage and do long-term damage to fish and riparian habitat.

Subsequent to that declaration, the amount of water that can legally be stored in the pool behind the dam has been lowered considerably. Associated Ditch Company owners and builders of the dam began planning and design of improvements, and realized that they were not the only beneficiaries of a functional dam.

So, quite simply, several of us got together, made out a list of the people that we needed to work with, and invited the participation of 41 agency, tribal, and private entities to help design the project that would eventually establish this mission statement, to rehabilitate the Wallowa Lake Dam and implement the Water Management Program for the Wallowa Valley, serving the needs of agriculture, fish and wildlife enhancement, recreation, flood control, municipal water supply, and hydropower generation.

ADC has agreed to help make this mission come true by supporting Nez Perce Tribe efforts to restore historic coho and sockeye salmon runs by providing fish passage, by storing and delivering 4500-acre feet of water annually to the Lusting River to replace irrigation withdrawals, and by installing fish screens on diversions. This plan addresses Endangered Species Act issues, community economics, tribal trust responsibilities, the Clean Water Act, the Northwest Power Planning Council Columbia Basin Fish and Wildlife Program, the Oregon Plan for Salmon Watersheds, the Wallowa County Nez Perce Tribes Salmon Habitat Recovery Plan, and the Grande Ronde Model Watershed Action Plan.

The risks of not implementing this plan include continued decline of stocks of ESA-listed fish species, the failure to meet Tribal Treaty right obligations, a loss of economic structure and property value, a loss of municipal drinking-water supply, and the risk of flood danger.

This bill is not just about dam safety, nor is it about restoring fish populations, nor just about irrigation. This bill is about the needs and opportunities to stabilize the environmental, economic, and social structures of natural-resource-based communities, communities that have clearly demonstrated their willingness to work together to preserve all three.

I will take any questions.

[The prepared statement of Mr. Oveson follows:]

PREPARED STATEMENT OF JEFF OVESON, EXECUTIVE DIRECTOR, GRANDE RONDE MODEL WATERSHED PROGRAM, LA GRANDE, OR

I'm Jeff Oveson, Executive Director of the Grande Ronde Model Watershed Program (GRMWP or Model Watershed), a program built on the premise that natural resource management should begin at home, and embedded in the county governments of Wallowa and Union Counties. The political boundaries of these two counties basically encompass the Grande Ronde Basin, a tributary of the Snake River, in Northeastern Oregon. The Model Watershed Program, since its inception in 1992, has been a collaborative organization directed by Board Members from both counties representing County Government, federal and state natural resource agencies, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, Soil

& Water Conservation Districts, environmental interests, and private landowners. The organization, founded with and through the support of the Bureau of Reclamation (Reclamation), Bonneville Power Administration (BPA), and the Governor's Watershed Enhancement Board (GWEB, now OWEB) supports activities principally in watershed restoration and species recovery on both federal and private lands and are funded primarily through BPA's Fish and Wildlife Program, the OWEB, and Reclamation. To date, we have facilitated the investment of over \$17,000,000 in restoration projects throughout the 5200 square mile basin.

I appreciate the opportunity to testify before you on behalf of the steering committee of the Wallowa Lake Dam Rehabilitation and Water Management Plan regarding Senate Bill 1883 or the Wallowa Lake Dam Rehabilitation and Water Management Plan. This bill could appropriately be titled "Lostine River Salmon Restoration Plan", or "Community Sustainability Plan", or a number of other things that accurately portray its real virtues. It really is an honor to bring to your attention a locally developed plan that has such demonstrable environmental, economic, and social merits. I particularly want to thank Senator Smith and Senator Wyden and their staffs for the support in formulating this plan and bringing the proposed legislation forward.

This project will accomplish these objectives:

- rehabilitate the Wallowa Lake Dam
- provide passage at the dam for the reintroduction of sockeye and coho salmon
- provide extra water to the Lostine River for ESA listed fish

I will discuss with you two watersheds in Wallowa County: the Lostine River, and the Wallowa River, in an attempt to make clear their interconnectivity, and the reliance of each on the other in providing water for Threatened and Endangered fish species, irrigation, urban consumption, recreation, and overall ecosystem balance.

The Lostine River begins in the Eagle Cap Wilderness Area, flows through a designated Scenic Area, and on through agricultural lands for 10 miles before its point of confluence with the Wallowa River. The middle portion of the Lostine is home to a number of irrigation diversions that tend reduce flow in the river in the late summer to the point that passage by adult salmon migrating to their historic spawning grounds is impossible, and rearing habitat for is severely diminished.

Hankin and Reeves Surveys in 1991 (Nez Perce Tribe and Oregon Dept. of Fish & Wildlife), the Lostine River Instream Flow Study in 1998 (R2 Resource Consultants, Nez Perce Tribe, and Oregon Dept. of Fish & Wildlife, Bonneville Power Administration, and Bureau of Reclamation), and the Lostine River Salmonid Passage Enhancement Study of 2001 (Harza, GRMWP, and Natural Resources Conservation Service), all collaborative efforts to accurately assess conditions in the Lostine, all funded and completed by partners in fish restoration, identified instream flow as the primary limiting factor in the spawning, rearing, and migration of chinook salmon, summer steelhead, and bull trout, all three of which are ESA listed fish. This condition is especially onerous during the months of August and September. Low flow also impacts free migration and rearing of juvenile stages of all three species.

Over the past decade, irrigators on the Lostine have cooperated with Nez Perce Tribal Fisheries and Oregon Department of Fish & Wildlife in efforts to overcome passage and rearing challenges by conserving on water diversion, coordinating flushing flows to facilitate upstream migration, and providing access to tribal and agency personnel for management activities. Even now, they are collectively and individually working with Natural Resources Conservation Service and Soil & Water Conservation District personnel designing and implementing water quantity and quality improvement projects that will affect the Lostine. The recently passed Farm Bill will support this effort a great deal.

#### INSTREAM FLOWS ARE STILL INSUFFICIENT ON A REGULAR ANNUAL BASIS

Approximately 20 river miles up the Wallowa River from its confluence with the Lostine is Wallowa Lake, a natural holding facility for water whose capacity was augmented by the construction of a dam in 1918, later to be increased in size in 1929 when hydropower capabilities were added.

The extra water behind the dam serves a wide range of purposes, among them:

- water for irrigation of over 15,000 acres of the county's prime agricultural lands (management of the dam directly affects over 40,000 irrigated acres)
- drinking water for the city of Joseph
- recreational use by over 80,000 users per year for fishing, boating, water skiing, and sight seeing
- flood control-active storage is managed to provide flood protection to the downstream cities of Joseph, Enterprise, and Wallowa

- stable base flows for the Wallowa and Grande Ronde rivers, preserving and enhancing riparian habitat, fish stocks, water fowl, and water quality

In 1996, Oregon Water Resources Department Division of Dam Safety listed the Wallowa Lake Dam as a “high hazard” structure. The sudden failure of the dam would likely result in loss of life as well as millions of dollars in property damage, and would have a devastating long term impact on the downstream ecology.

Associated Ditch Company (ADC), builders and owners of the dam, began planning and design of improvements. This assessment fostered the realization that ADC and the irrigators were not the only ones reliant on the integrity of the structure, nor would they be the only beneficiaries of the rehabilitation of the dam. This recognition of need and opportunity led ADC to invite input from a wide variety of agencies, interests, and the Nez Perce Tribe (41 such entities attended the first organizational meeting). The goal was to design a project that would address all needs and opportunities and be a lasting positive landmark in Wallowa County, environmentally, economically, and socially. With that in mind, a mission statement was developed:

“To rehabilitate Wallowa Lake Dam and implement a water management program for the Wallowa Valley serving the needs of agriculture, salmon recovery, fish and wildlife enhancement, recreation, flood control, municipal water supply, and hydropower generation.”

To assure that this mission statement comes to fruition, the irrigators of the ADC have agreed to:

- support the Nez Perce Tribal Fisheries in providing fish passage above the dam to restore historic sockeye and coho salmon runs
- store and deliver 4,500 acre feet of water to the Lostine to replace irrigation withdrawals (thereby assuring a minimum flow of 30 cubic feet per second in the Lostine)
- screen diversions to avoid luring and trapping juvenile bull trout in irrigation canals

The Endangered Species Act clearly supports this project. It also overtly threatens the livelihood of irrigators and economy of Wallowa County if action is not taken. The Clean Water Act does the same. The Tribal Trust nexus is addressed by this proposed project, as are the action plans associated with Bonneville Power Administration Fish & Wildlife Program Mitigation, the Wallowa County/Nez Perce Tribe Salmon Habitat Recovery Plan, The Oregon Plan for Salmon and Watersheds, The Northwest Power Planning Council’s Salmon and Steelhead Production Plan, The GRMWP Action Plan, and others.

There are some clearly identified issues, and risks of not implementing this project:

- consistent late season low flows in the Lostine put at risk
  - irrigators (third party or regulatory intervention)
  - salmon, steelhead, and bull trout, as well as less prominent species associated with them
  - Tribal Treaty rights
  - local economic structure and land values
  - the social fabric of small communities
- the loss of maximum function of the Wallowa Lake Dam jeopardizes
  - thousands of acres of irrigated land
  - loss of significant income county wide from tourism associated with the water resources of Wallowa County
  - the continuing decline in populations of ESA threatened and endangered fish
  - municipal drinking water supply
  - success of the Nez Perce Tribal/ODFW fish hatchery program funded by BPA, scheduled for construction beginning this year

A fully functioning dam at Wallowa Lake will address these issues and more:

- Nez Perce Tribal Fisheries will have the opportunity to restore the historic runs of sockeye and coho salmon to the Wallowa Basin
- over 40,000 acres of irrigated lands will stay in production with reduced risk to ESA fish. Likelihood of litigation, such as occurred in the Klamath Falls Basin, is also reduced
- the cities of Joseph, Enterprise, and Wallowa will be protected from floods
- the viable population of chinook salmon, summer steelhead, and bull trout in the Lostine can be maintained and enhanced the city of Joseph will have a safe and reliable water supply

This bill is not only about dam safety, or restoring fish populations, or irrigation. It is about needs and opportunities to stabilize the environmental, economic, and social fabric of a natural resource based community that has clearly demonstrated its willingness to preserve all three.

Senator DORGAN. Mr. Oveson, thank you very much for your testimony.

And, finally, we will hear from Mr. Dan Keppen. And Mr. Keppen is the executive director of the Klamath Water Users Association, Klamath Falls, Oregon. And, Mr. Keppen, your statement, too, will be made a part of the permanent record in its entirety, and you may proceed to summarize.

**STATEMENT OF DAN KEPPEM, EXECUTIVE DIRECTOR,  
KLAMATH WATER USERS ASSOCIATION, KLAMATH FALLS, OR**

Mr. KEPPEM. Thank you, Mr. Chairman, members of the subcommittee. I appreciate the opportunity to testify before you today on S. 1824 and H.R. 2828.

I have developed a written statement that also includes recent articles and other information I refer to in this testimony. I ask that they be included in the record, Mr. Chairman.

Senator DORGAN. Without objection.

Mr. KEPPEM. And my name is Dan Keppen. I've been executive director of the Klamath Water Users Association since November 2001. We're a nonprofit corporation that represented the Klamath Irrigation Project farmers and ranchers. We have represented them since 1953. Our members include rural irrigation districts, other public agencies, as well as private concerns that beneficially use water on both sides of the California-Oregon State line in Klamath Basin.

Today, I would like to provide you with reasons to support S. 1824 and H.R. 2828. And at this time, I would also like to thank Senator Smith and Senator Wyden for their leadership in moving this legislation forward. I would also like to thank Congressman Greg Walden for cosponsoring a companion bill on the House side this year.

Before I specifically address this bill, I think it is important to provide you with a sense of additional background on how Klamath Project irrigators are faring this year, 14 months after their water supplies were cut off from Upper Klamath Lake to meet the alleged needs of suckers in the lake and coho salmon downstream of Iron Gate Dam.

The 2001 water cutoff imposed impacts to the local community that were immediate and far reaching. We're still feeling those impacts today. The loss of irrigation supplies devastated farmers and imparted an estimated \$200 million economic ripple effect through the broader community. This year, we are starting to see the far-reaching impacts of such a dramatic action. In fact, the economic woes facing the local community are intensifying as we move into the new year, as evidenced by several things that we've seen.

One is a dramatic devaluation of both land and machinery assets in the Basin. Two, land debt-free retirements are having to borrow against deflated land values to finance tax or living expenses. Loaning institutions are discontinuing service to financially viable and low-risk farm operations. Farm operations that successfully re-

structured debt in 2001 are now facing bankruptcy. And infrastructure expenditures to increase water and energy conservation actions have been postponed or abandoned.

The attached *Oregonian* article, which Congressman Walden referred to earlier, is included in your testimony, and it reflects the struggles of one of our local families dealing with this issue right now.

Last year's cutoff also tragically underscored the vital linkage that exists between irrigated farmland and wildlife. Water that would normally flow through farmland habitat was directed instead towards three species protected under the Endangered Species Act. The vitality of over 430 other wildlife species was threatened when they were subjected to the same fate as farmers. The attached briefing paper included in the written testimony describes this very unique relationship that exists in Klamath Basin between irrigated agriculture and the environment.

Now, here we are in 2002, the water is flowing, and that's a very good thing. But still, local water users, I believe, are gun shy because of last year's unexpected cutoff and, really, right now, expect at any time that another cutoff could occur. And this is, in large part, due to the uncertainty imbedded in the current biological opinions released last week by the fisheries agencies for the 19-year operations plan developed for the project. Despite findings the National Academy of Sciences that demonstrate the lack of scientific data supporting higher lake levels for suckers and increased flows for coho salmon in the Klamath Basin, the final biological documents prepared by U.S. Fish and Wildlife Service and National Marine Fisheries Service instead perpetuate the same theories that surfaced in prior biological opinions.

And this year, we're not alone in criticizing the opinions. The action agency in this matter, which is the U.S. Bureau of Reclamation, on June 3 also sharply criticized the efforts of both fishery agencies, as outlined in an article that's attached to the testimony that you have. Significantly, Reclamation disagreed that the agencies' determination that Klamath Project operations will jeopardize the continued existence of both species. And while Reclamation has agreed to operate the project this year consistent with those opinions, it intends to reinstate consultation later this year to address the serious concerns it has with those documents.

So this year, we've got full project deliveries expected. We think that they will stay there. There's findings from the National Academy of Sciences that offer the opportunity to steer Basin species recovery into a new direction. This could provide a setting where historic adversaries can come together to identify mutually-beneficial actions that truly help the environment, like our neighbors to the north.

Sadly, with continued resistance by Federal fishery biologists to consider new information and ideas, the conflict intensifies, and the potential for cooperation diminishes. It is, therefore, refreshing to discuss with you today this proposal that will truly help Klamath irrigators and may implicitly encourage further productive actions that will help move our community towards detente in the Klamath Basin.

This bill before you, S. 1824, provides both a measure of fairness and a measure of emergency relief. It authorizes the Bureau of Reclamation to return or waive fees paid by irrigation districts and ultimately by their patrons this year. The bill would refund money spent by water districts in the Klamath Basin meant for operations and maintenance of the canals that would normally deliver water to farmers. The legislation requires reimbursement of these costs and, in turn, requires irrigation districts to return the savings to their members. The bill also creates a waiver for individuals that fall under the Warren Act. These are folks that are not within districts, but have their own contracts with the Government.

In essence, the districts and these farmers last year paid fees to run a system that never delivered the water that they were promised. They paid for something they never received, and they are asking for a refund. And that's precisely what this measure does. More importantly, it puts money back in the hands of the farmers who so desperately need it.

And, in closing, again, thank you.

I would like to at least respond to Mark Limbaugh's comment earlier regarding the concern about precedent-setting here relative to Reclamation policy and cost. I mean, we need to take a look at the fact that this is a pretty unique situation. I've got a letter from Oregon Water Resources Department dated last week that acknowledges, you know, no agricultural committee in our Nation's history has faced this kind of crisis, and the legislation, therefore, I believe, is intended uniquely to address that crisis. And using it as precedent, I think, is kind of a flawed argument, in our view.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Keppen follows:]

PREPARED STATEMENT OF DAN KEPPEM, EXECUTIVE DIRECTOR, KLAMATH WATER  
USERS ASSOCIATION, KLAMATH FALLS, OR

Thank you for inviting me to testify today. I have developed a written statement that also includes recent articles and other information I refer to herein.

My name is Dan Keppen. I have been Executive Director of the Klamath Water Users Association (KWUA) since November 2001. KWUA is a non-profit corporation that has represented Klamath Irrigation Project farmers and ranchers since 1953. KWUA members include rural irrigation districts and other public agencies, as well as private concerns that beneficially use water on both sides of the California-Oregon border. KWUA focuses on issues that affect thousands of people dependent on the Project, including farm and ranch families, local businesses, and our rural communities. Local water users also play an important role in Klamath Basin wildlife conservation activities, including efforts to provide environmental water to two national wildlife refuges. We are also actively engaged in environmental restoration activities undertaken in other forums, as further discussed in the attachment to this testimony.

Today, I would like to provide you with reasons to support S. 1824—"The Klamath Basin Emergency Operations and Maintenance Refund Act of 2001". At this time, I would like to thank Senator Smith and Senator Wyden (D-OR) for their leadership in moving this legislation forward in the Senate. I would also like to thank Congressman Greg Walden for sponsoring a companion bill on the House side last year.

Before I specifically address this bill, I think it is important to provide you with additional background on how Klamath Project irrigators are faring this year, 14 months after water supplies from Upper Klamath Lake were cut off to meet the alleged needs of suckers in the lake and coho salmon downstream of Iron Gate Dam.

## IMPACTS ASSOCIATED WITH THE 2001 WATER CUT OFF

The 2001 water cutoff imposed impacts to the local community that were immediate and far-reaching. Loss of irrigation supplies devastated farmers and imparted an estimated \$200 million economic “ripple” effect through the broader community. This year, we are starting to see the far-reaching impacts of such a dramatic action. In fact, the economic woes facing the local community are intensifying as we move into the new year, as evidenced by the following:

- Dramatic devaluation of both land and machinery assets;
- Land debt-free retirees having to borrow against deflated land values to finance tax or living expenses;
- Loaning institutions discontinuing service to financially viable and low risk farm operations;
- Farm operations that successfully restructured debt in 2001 are now facing bankruptcy; and
- Infrastructure expenditures to increase water and energy conservation actions have been postponed or abandoned.

The attached *Oregonian* article accurately reflects the struggles of one Klamath Basin farming family impacted by last year’s water crisis.

Last year’s cutoff also tragically underscored the vital linkage that exists between irrigated farmland and wildlife. Water that would normally flow through farmland habitat was directed instead towards three species protected under the ESA. The vitality of over 430 other wildlife species was threatened when they were subjected to the same fate as farmers. The attached briefing paper describes the unique relationship that exists between agriculture and the environment in the Klamath Basin.

## 2002—THE WATER IS FLOWING, BUT FEARS ARE GROWING

This year, water is coursing through the Klamath Project, but local water users—still gun shy from last year’s unexpected cutoff—expect at any minute that another cutoff could occur. This is in large part due to the uncertainty embedded in the current biological opinions released last week by U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) for the 10-year operations plan developed for the Klamath Project. Despite findings by the National Academy of Sciences that demonstrate the lack of scientific data supporting higher lake levels for suckers and increased flows for coho salmon in the Klamath Basin, the final biological documents prepared by USFWS and NMFS instead perpetuate the same theories that surfaced in prior biological opinions.

This year, we are not alone in criticizing the opinions. The action agency in this matter—the U.S. Bureau of Reclamation—on June 3rd also sharply criticized the efforts of both fishery agencies (see attached *Oregonian* article). Significantly, Reclamation disagreed that the agencies’ determination that Klamath Project operations will jeopardize the continued existence of both species. While Reclamation has agreed to operate the Klamath Project this year consistent with the two biological opinions, it intends to reinstate consultation later this year to address the serious concerns it has with those documents.

This year—with full Project deliveries expected, and with findings from the National Academy of Sciences that offer the opportunity to steer Basin species recovery into a new direction—could provide a setting where historic adversaries can come together to identify mutually beneficial actions that truly help the environment. Sadly, with each new volley launched by critics of irrigated agriculture, and with the continued resistance by federal fishery biologists to consider new information and ideas, the conflict intensifies, and the potential for cooperation diminishes. It is, therefore, refreshing to discuss with you today a proposal that will truly help Klamath Basin irrigators and may implicitly encourage further productive actions that will help move our community move towards detente in the Klamath Basin.

## S. 1824 PROVIDES A TIMELY AND FAIR BOOST TO LOCAL IRRIGATORS

This bill provides both a measure of fairness and a measure of emergency relief. It authorizes the Bureau of Reclamation to return or waive fees paid by irrigation districts and ultimately by their patrons this year. The bill would refund money spent by water districts in the Klamath Basin meant for operations and maintenance of the canals that would normally deliver water to farmers. The legislation requires reimbursement for these costs and in turn requires the irrigation districts to return this savings to their members. The bill also creates a waiver for individuals that fall under the “Warren Act.” These individuals would be reimbursed for operations and maintenance payments they have made even though they may not be within a district.

In essence, the farmers and the irrigation districts last year paid fees to run a system that never delivered the water they were promised. They paid for something they never received, and they are asking for a refund. And that's precisely what this measure does. More importantly, it puts money back in the hands of the farmers who so desperately need it.

In closing, I would like to restate a quote made by Representative Greg Walden last November before the House Committee on Resources—"This legislation gives hope to those people whose livelihoods face ruin as a result of the Interior Department's decision to shut off water to farmers for the first time in the nearly 100-year history of the Klamath Project. These farmers and ranchers just want to survive long enough to come to some solution that takes care of both fish and farmers. This legislation provides the measured relief these farmers need."

Thank you.

Attachments: \*

1. 6/4/02 *Oregonian* article
2. 5/28/02 *Oregonian* article
3. "The Klamath Project Agricultural Environment"

Senator DORGAN. Mr. Keppen, thank you very much. Let me just ask a quick question dealing with Senator Smith, if I might. The cutoff of water occurred on what date in the Klamath area?

Mr. KEPPEM. April 6, 2001.

Senator DORGAN. Senator Smith, you offered an amendment on the floor of the Senate on the subject. What was the date of that, roughly? What period of the year?

Senator SMITH. I want to say June. I could stand corrected. In the June framework.

Senator DORGAN. What is the growing season there? What kind of crops are involved?

Mr. KEPPEM. Well, it's grain—potatoes are pretty important, but grain, alfalfa, barley, hay, mint, horseradish on the California side, and irrigated pasture.

Senator DORGAN. Did you indicate that the losses were roughly \$200 million?

Mr. KEPPEM. Right. That's according to local estimates.

Senator DORGAN. We did—we appropriated some money—roughly \$20 million, was it? Didn't we have an appropriation to try to deal with some of the impact? I recognize that it was probably a fraction of the loss, but how was that distributed, and did the farmers receive it?

Mr. KEPPEM. Yes, they did. And I believe, in overall, that was a success. It was \$20 million that was distributed through USDA programs, and that definitely did help. What we're talking about in this legislation is, again, kind of a refund to the folks that paid O&M. And it's interesting, because, on the California side, the State government actually took care of that. This is for the Oregon portion of the Basin, which didn't receive those reimbursements this year.

Senator DORGAN. I understand the O&M issue, and I should say that Senator Wyden and Senator Smith have really served you all well. The reason I asked the question is I did not vote—I believe I voted to table the amendment.

Senator SMITH. That was a mistake, Senator, but we'll forgive you.

[Laughter.]

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\* These attachments can be found in subcommittee files.

Senator DORGAN. Well, I don't know that it was a mistake, but I regretted the fact that it set up a Hobson's Choice with respect to the ESA and some other—and the water needs. And I guess what I was unclear about, and I asked several questions at the time, was whether the crops had already largely been destroyed. And then the question then was simply remuneration for that period.

The point you're making today is one I fully understand, that the precedent here is awful, and you sit there now wondering whether somebody's going to cut off water again. If so, when, why, and how? And so I have—this is not an easy issue, and I very much sympathize with the farmers who have lost their livelihood here.

I support this legislation. I think it makes a lot of sense. I think your two Senators have worked hard to try to advance this. But I remember the discussion we had at some length about this, because I understand the circumstances that these farmers have been put in, and I don't like it at all. And we need to find a way to deal with it.

Mr. KEPPEL. Thank you for your comments. I appreciate that.

Senator DORGAN. I want to submit some questions for the record. And before I call on Senator Smith, let me ask that the record of this hearing include testimony from the Honorable Ken Thedford, the mayor of the city of Fallon, Nevada, on the subject of S. 1310; testimony from Samuel Penney, chairman of the Nez Perce Tribal Executive Committee, the Nez Perce Tribe, in support of S. 1883; testimony by Tom Jovanovich, president, board of commissioners, Lakehaven Utility District, and it's in support of S. 1385 and H.R. 2115; testimony by C. Booth Wallentine, chief executive officer, Utah Farm Bureau, on S. 2475; and the statement of Robert McMillan, president of the Strawberry Water Users Association, on S. 2475. Without objection, they will be included in the record for this hearing.

Senator DORGAN. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

Just as a refresher to your recollection of that, and for this record, it's important, I think, to state exactly what my amendment would have done. It was not a frontal attack on the Endangered Species Act. All it said was that we would, as a matter of statute, live with the 1993 biological opinion, and that opinion had a lake level at which the sucker fish has long survived. And the new biological opinion put it at historic highs. And the National Academy of Sciences, tragically, said, well after my amendment failed, that there was no scientific basis for those higher levels. It was a political judgment to get rid of farmers in the refuge. That's what it was, and notwithstanding deeds personally signed by Franklin Roosevelt.

And I look back at this now, and Dan's comment about the new studies that have just come out, the new biological opinions, they're all predicated on what is known as the Harvey Report. And the Harvey Report has never been subject to peer review. That's what the National Academy of Sciences specifically said had no scientific basis for it.

I have every desire to live within the Endangered Species Act. But all I'm saying is, for crying out loud, if we're going to impose,

not \$20 million, but \$200 million damage on a community, by any economic calculation, we ought to at least submit that science to peer review. And if it's good, it ought to withstand it.

And that's my beef with all of this. This was a government-manufactured crisis, pure and simple, from beginning to end. And if it can happen in Klamath, it can happen in North Dakota. If you've got any dams and any farmers, look out, because the precedent is horrible. And Klamath Falls has become a rallying cry to every irrigated agricultural community in the United States of America.

I feel vindicated, in part, by the National Academy of Sciences. On the other hand, I don't think the Damocles sword is gone, because they're still relying upon this study that they refused submit to any kind of community, like National Academy of Sciences. It's just really hard to take that kind of damage to your constituents, when they just arrogantly say, "No, this is what it means, and we're not willing to change, and we're not even willing to have any outside group study it." It makes no sense.

But anyway, that's what happened. And that's what my amendment would have done, and it tragically failed by a couple of votes.

Dan, one of the things that's frustrating to you, probably, is that everybody thinks nothing's ever been done in terms of mitigation. People feel like, you know, "You haven't done anything." You've done quite a bit, haven't you?

Mr. KEPPEL. I've only been onboard for 6 months, and—it feels like 6 years, but in the last ten years, the water users in the Klamath Basin really have tried to do some constructive things. They've supported and have worked directly on some wetland restoration projects, sucker habitat projects. The water users—

Senator SMITH. Do you get credit for any of that?

Mr. KEPPEL. Well, they thought they were going to get credit when they first started out.

Senator SMITH. So the goal posts keep moving, and however much you put up, it's never enough.

Mr. KEPPEL. The reliance on sucker recovery, in particular, has been on project water, higher lake levels. And the association has been pushing for 10 years to consider some of these other activities—restoration on the land and along riparian streams—and they actually even put the first recovery plan together for the Basin 10 years ago, and they reiterated that last year in another plan. So there's a lot of things that have been done.

The ticket has been—our involvement in the past has been kind of hinged upon the fact that there would be some sort of a credit given back to the project, that, in exchange for these programs that truly will help the suckers out, there needs to be a corresponding decrease in the amount of reliance on lake levels for sucker recovery. And that hasn't happened. In the last 10 years, there's really no credit given at all. There still is this real narrow focus on lake levels for recovering suckers, and then higher stream flows for recovering coho salmon downstream.

As the Senator mentioned, the NAS report last year essentially said, "No, that wasn't justified"—the way that was operated last year wasn't justified. And that's just tragic. I mean, in the local community, people view that as—I guess it would be like a guy that comes out of a prison after being unjustly sentenced for 10

years, and all of a sudden somebody comes out of nowhere and lets him go, and he walks out of that prison. And what's the feeling inside of him? It's like, "Hey, I'm free. There's a new future. I'm moving in a new direction, but it just should not happen." That's where we are.

Now we've got biological opinions out that are throwing the same arguments out that we heard prior to the National Academy of Science review. It's—

Senator SMITH. And to make it even more bizarre, to increase the stream flows for salmon downstream, what they do is they hold the water upstream—don't give it to the farmers or the fowl or the refuge, but they cook it up to a degree that's lethal to salmon downstream, and they spill it on them in the fall. It is a story of man-made tragedy.

But, anyway, thank you, Dan.

Mr. KEPPEL. Thank you.

Senator SMITH. And, Jeff, you heard the administration's response to Federal nexus. Have you got any suggestions? We've got to work this thing out. We've got to get this dam saved, because I can think of a whole bunch of Federal values to be served by that dam operating and restoring some of these fish runs.

Mr. OVESON. Well, we would agree with you, Senator. There's no shortage of Federal nexus here, with the Endangered Species Act, Tribal Trust responsibilities, the Clean Water Act. The Lusting alone has three endangered fish in it. And we've had it mentioned that this is a regional issue and not a Federal issue, and it's really quite a mistake. ESA, the last I checked, was a Federal law, and we're trying to act on it on a regional basis, but we need Federal money to do it.

Senator SMITH. So if we don't do anything like this, and the Federal Government says we can't help the dam to bring it up to code to bring it up to Federal standards, then eventually you get in trouble for these other listings. Isn't that potentially the problem?

Mr. OVESON. One of the real big potential problems is that we have a lot of irrigators up there with their fannies hanging out a mile right now in the Lusting and up in Prairie Creek out in Wallowa Lake. And I asked Dan earlier, if I could make the reference, what we're trying to avoid is ending up in a situation like is going on in Klamath Falls.

Senator SMITH. Well, the truth is, Jeff, that had the Federal Government, beginning with the '93 biological opinion, done anything that it had recommended, instead of hiding behind the protection, "Well, this involves some private property, so we can't help," and then they come along, and they turn it off because they say, "You don't meet the Federal standards." I mean, I just think that is unacceptable, and I see that happening, and that's why we have to win this fight with the Bureau, and I predict we will.

I don't think the dots are being connected between the overarching undergirding Federal policy behind all of these things that are affecting private property dramatically. And so we've got some convincing to do, but we'll do it.

Mr. OVESON. Well, I don't think it even has to be a fight with Reclamation, because they've been a big partner of ours for a long time.

Senator SMITH. Very, very much so. Thank you, Mr. Chairman.

Senator DORGAN. Thank you very much.

We want to thank all of you for testifying. We're sorry that we had to interrupt the hearing for a vote, but we very much appreciate your contribution.

This subcommittee hearing is adjourned.

[Whereupon, at 4:05 p.m., the hearing was adjourned.]



## APPENDIXES

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### APPENDIX I

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#### Responses to Additional Questions

DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION,  
OFFICE OF EXTERNAL AND INTERGOVERNMENTAL AFFAIRS,  
*Washington, DC, August 19, 2002.*

Hon. BYRON L. DORGAN,  
*Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I have reviewed the additional question related to my June 6, 2002, appearance before the Subcommittee on Water and Power, Committee on Energy and Natural Resources. Enclosed is the response to the follow-up question.

Sincerely,

MARK A. LIMBAUGH  
*Director*

[Enclosure]

*Question.* (S. 1385) The Administration opposes the Lakehaven project in part because "authorizing new construction projects is likely to place an additional burden on Reclamation's already tight budget." Given the unmet needs concerning water in the West, the country's fastest growing region, shouldn't Reclamation be seeking an increase in funding rather than simply opposing all new projects?

*Answer.* The Bureau of Reclamation undergoes a comprehensive budget review on a fiscal year basis. This review includes a look at both short and long term budgetary needs on all our programs. That budget is submitted as part of an overall package by the Department of the Interior and sent to the Office of Management and Budget (OMB). The OMB balances this proposal and all of the other Departmental requests within the scope of revenue available and the President's priorities to establish the fiscal year's budget.

Your question mentioned unmet needs concerning water in the West. Given the multitude of authorized projects with little or no funds appropriated, Reclamation's priority is to address previously authorized projects prior to adding additional projects to the list. Our budget request for FY03 reflects funding priorities set by Reclamation, the Department, and OMB in moving toward the completion of these previously authorized projects.

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#### RESPONSES OF DON CHRISTIANSEN TO QUESTIONS FROM THE COMMITTEE

*Question 1.* Please give us your perspectives on how well the division of responsibilities provided for by the Central Utah Project Completion Act for the implementation of the CUP have worked.

*Answer.* The District is very pleased with the structure and nature of the working relationship that has been developed and in place in 1992. The State of Utah and the waterusers who are paying for 35% of the project feel that the planning and construction of the project features are more in tune with its needs. Our working relationship with the Office of the Assistant Secretary is excellent and in our opinion has assisted in making important decisions in a timely and constructive manner.

*Question 2.* Why should the Committee agree to make the expenditures for planning and developing certain features non-reimbursable?

*Answer.* S. 2475 does not change in any way the reimburseability of planning and development for the water related features which are the responsibility of the Dis-

trict. We assume your question goes to that provision relating to the Pump back storage power features in the Diamond Fork System of the project which had been evaluated at great cost and abandoned by the Bureau of Reclamation during the 1980's. The Western Area Power Administration may be seeking to include these costs in the rates charged to its power contractors, specifically the Colorado River Electric Distributors Association (CREDA) and not the District or its water users. These power features were never constructed and the investigation costs should not be passed to power users. Perhaps your question should be more appropriately addressed to the CREDA representatives.

[Responses to the following questions submitted to Assistant Secretary Bennett Raley of the Department of the Interior were not received at the time the hearing went to press.]

QUESTIONS FOR ASSISTANT SECRETARY BENNETT RALEY,  
DEPARTMENT OF THE INTERIOR

*Question 1.* (S. 2475) The Central Utah Project Completion Act, enacted in 1992, provides that the Secretary of the Interior is to retain responsibility for the Project and prohibits delegation to the Bureau of Reclamation. At the same time, that Act provides an enhanced role for the Central Utah Water Conservancy District, including responsibility for construction of project features.

From your perspective, how has this worked out?

*Question 2.* (S. 2475) Please describe in more detail how you expect the pilot program provided by the bill to work.

*Question 3.* (S. 2475) You have testified in support of the prepayment provisions in the bill. What do you see as the advantages of these provisions?

## APPENDIX II

### Additional Material Submitted for the Record

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#### STATEMENT OF COLORADO RIVER ENERGY DISTRIBUTORS ASSOCIATION (CREDA)

Mr. Chairman, members of the Subcommittee, the Colorado River Energy Distributors Association (CREDA) appreciates the opportunity of providing a statement in support of S. 2475. CREDA is a nonprofit organization representing 155 consumer-owned electric systems (CRSP power contractors) that purchase federal hydropower and resources of the CRSP. CREDA was established in 1978, and serves as the "voice" of its members in dealing with CRSP resource availability and affordability issues. CREDA represents its members in dealing with the Bureau of Reclamation (Bureau), as the generating agency of the CRSP, and Western Area Power Administration (WAPA), as the marketing agency of the CRSP. CREDA members are all non-profit organizations, serving nearly 3 million electric consumers in the six western states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming. CREDA members purchase over 85% of the CRSP power resource. Attached is a listing of current CREDA members.

Our interest in this legislation stems from the fact that the Central Utah Project is a participating project—an irrigation project—of the Colorado River Storage Project (CRSP). The CRSP was authorized in the Colorado River Storage Project Act of 1956 (P.L. 485, 84th Cong., 70 Stat. 50), as a multi-purpose federal project that provides flood control; water storage for irrigation, municipal and industrial purposes; recreation and environmental mitigation and protection, in addition to the generation of electricity. Repayment of the federal investment of the CRSP has been the responsibility of CRSP power contractors for 30 years. This repayment is ensured by long-term contracts providing for the purchase of CRSP resources. The rates charged to these power contractors repay all of the federal investment in generation and transmission facilities (with interest), all power-related operation and maintenance costs, and environmental costs. In addition, the CRSP contractors are paying over 95% of the cost of the irrigation features of the CRSP (those costs that are beyond the ability of the irrigators to pay). In fact, in the current CRSP rate, 35% of the total annual revenue requirement is due to irrigation assistance. These contracts are not fixed cost; they allow for rate adjustments in order to ensure repayment of the federal investment in the CRSP.

When the federal reclamation projects were begun, they were designed, constructed, operated, and maintained by the Bureau of Reclamation. The Bureau also owned the transmission system and marketed the power from the projects. When WAPA was formed under the Department of Energy Organization Act in 1977, the design, construction, operation, and maintenance functions remained with the Bureau and the transmission system and marketing responsibilities were moved to WAPA.

Construction and capital projects are funded through the federal Treasury at the interest rate determined by Congress or at the time construction starts. These projects go through a budgeting process associated with the federal budget, and money is appropriated for these projects with Congressional approval. As revenues are collected for the sale of federal power, there is a priority assigned to payment of obligations. The priority of repayment of the projects is that O&M expenses for WAPA and the Bureau are paid first and then repayment of the highest interest capital investment is made to the federal Treasury. The components associated with the power features are paid first, including the appropriate interest, and then the power revenues are used to pay the irrigation projects at no interest.

Each year, WAPA compiles a "power repayment study" which estimates expenses of both the Bureau and WAPA, and is the basis for the CRSP rate. After WAPA has completed the power repayment study and if a rate adjustment is necessary, a public process is begun. We are currently in the midst of this process, which could result in a 30% rate increase. As the Subcommittee is aware, the western electricity

market has been extremely volatile over the recent past couple of years. As a result, CREDA members are scrutinizing every expenditure to keep costs as low as possible for their consumers. CREDA, representing its members, works with the Bureau and WAPA through a 1992 contractual arrangement regarding work program and rate treatment issues, in an effort to mitigate rate increases.

CREDA's support of S. 2475 focuses on two provisions of the bill. The first regards treatment of costs that have been expended by the Bureau for studies of features of the CUP that will not be constructed by the Federal government. As an example, during the 1980's, despite opposition from the CRSP power contractors, the Bureau explored adding a large generation component to the Diamond Fork feature of the CUP. Subsequently, the Bureau determined the Federal government would not construct the feature. CREDA believes costs such as these should be non-reimbursable and non-returnable, meaning they would not be paid by the CRSP power contractors. Section 1(a) of S. 2475 provides that assurance.

Secondly, CREDA understands the Central Utah Water Conservancy District's desire to continue its relationship with the Secretary. Likewise, CREDA has existing working and contractual relationships with the Bureau, specifically regarding construction, operation and maintenance and rate treatment for the CRSP facilities. CREDA felt it necessary to ensure that relationship is maintained. The language of Section 1(b)(3) of S. 2475 provides that assurance.

In summary, CREDA's specific interests in S. 2475 relate to the CRSP from a financial and ongoing implementation standpoint. We encourage timely passage of S. 2475. We thank the Subcommittee for considering CREDA's statement.

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STATEMENT OF TOM JOVANOVIĆ, PRESIDENT, BOARD OF COMMISSIONERS,  
LAKEHAVEN UTILITY DISTRICT

Mr. Chairman and members of the Subcommittee, the Board of Commissioners for the Lakehaven Utility District would like to introduce testimony in support of Senate Bill 1385 and its companion bill H.R. 2115. The Lakehaven Utility District ("Lakehaven") is one of Washington State's largest water and sewer utilities providing service to over 100,000 residents. It is located in South King County and encompasses the City of Federal Way and portions of Des Moines, Kent, Auburn, Pacific, Algona, Milton and unincorporated King and Pierce Counties. The Bill before you would authorize the Secretary of the Interior to participate in the planning, design and construction of the Lakehaven Water Reclamation Program by amending Title XVI of the Reclamation Projects Authorization and Adjustment Act of 1992. The Lakehaven Water Reclamation Program would be the first Title XVI authorization in the State of Washington.

PROGRAM SUMMARY

Lakehaven Utility District is proposing a water reclamation program using innovative, yet proven, technologies to enhance the reliability of existing water supplies and improve the quality of the environment. The proposed activities include the reduction or elimination of local secondary wastewater to the Puget Sound, conjunctive use of reclaimed water, groundwater and surface water, and enhancement of existing wetlands and fish habitat.

The program would take advantage of recent regulatory procedures governing the use of reclaimed water by constructing additional treatment systems at the District's two Wastewater Treatment Plants (WWTP) to further purify all or a portion of the plant's secondary effluent; constructing a transmission and distribution pipeline system to transport this water to reuse areas; and developing facilities to direct the water to the aquifer system through injection wells, sub-surface infiltration galleries and land applications. The cost for these facilities is estimated to be \$38 million.

BACKGROUND AND HISTORY

Lakehaven utilizes groundwater sources that are recharged primarily from local precipitation. While development has reduced the ability for these aquifers to naturally recharge, the demand for water from these sources has increased to exceed their safe production limits and has resulted in a reduction in water levels in all local aquifers with a corresponding reduction in well water production. To mitigate declining groundwater levels, Lakehaven, together with Tacoma Water, Seattle Public Utilities, City of Kent, and Covington Water District are entering into an agreement to develop Tacoma's second diversion water right on the Green River. However, water rights limitations, flood control functions of Howard Hansen Dam, habi-

tat maintenance, and concerns over future Endangered Species Act restrictions may limit Lakehaven's ability to utilize this water supply.

Lakehaven has two secondary wastewater treatment plants currently discharging over 6 million gallons of water a day to Puget Sound. The ability to utilize reclaimed water to manage groundwater levels has been proven to be successful in other areas; however, it has not been applied in Washington State. Using reclaimed water to supplement Lakehaven's water supplies would provide needed water supply reliability not only for Lakehaven but also for the rapidly growing South King County area.

In the 2000 Washington State legislative session, Lakehaven sought and the State legislature implemented legislation authorizing the recovery of water, including reclaimed water, stored in underground reservoirs. This legislation was signed by Governor Locke in March of that year.

The stage is now set for implementing this important program.

#### BENEFITS OF THE PROGRAM

The benefits and opportunities related to this program, in addition to increasing the reliability of water supply on a regional basis, are:

- Conjunctive use of reclaimed water, groundwater and surface water
- Ability to help maintain river/stream levels during periods of drought—would assist in maintaining fishery levels and rebuilding wetlands
- Protection of natural recharge areas
- Water conservation enhancements
- Ability of neighboring water/sewer purveyors to partner in the program, enhancing reliability for their customers

This program will produce exceptional regional benefits and opportunities. It will provide for the water supply needs of the community for many years to come, as well as to enhance the environment. The local groundwater resources that have sustained the population for many, many years has been stressed in recent years by development and periodic droughts to the extent that water tables have declined. These water tables can be recovered by the use of water that now is discharged to Puget Sound, without having to rely on additional surface water sources, such as local rivers that provide for fish habitat. The technology associated with this proposed program is proven and economically feasible. Recycling of this limited resource through reclamation is the viable alternative for the future.

#### REQUESTED ACTION

The benefits, both locally and regionally, are significant but the cost is also significant and we are requesting that the Federal government become one of our partners in the Lakehaven Water Reclamation Program.

Thank you very much for the opportunity to provide this testimony to the Subcommittee.

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#### STATEMENT OF ROBERT W. McMULLIN, PRESIDENT OF THE STRAWBERRY WATER USERS ASSOCIATION

Mr. Chairman and members of the subcommittee, my name is Robert McMullin; I serve as the President of the Strawberry Water Users Association (SWUA). I appreciate the opportunity to address you regarding a topic, which is very important to SWUA and its shareholders.

Attached is a copy of my resume. My home, my friends and family, my orchards and my heart are in south Utah County, Utah.

SWUA is a nonprofit corporation organized in 1922 primarily for the purpose of contracting with the United States Bureau of Reclamation (Reclamation) to repay to the United States the remaining unpaid construction costs of the Strawberry Valley Project (SVP), and to provide a water supply to approximately 2,800 SWUA shareholders, including the south Utah County, Utah cities of Springville, Mapleton, Genola, Spanish Fork, Salem, and Payson. SWUA repaid to the United States all of the costs of construction of the SVP in 1974.

The SVP is a federal reclamation project constructed between 1906 and 1915. The SVP provides approximately 70,000 acre-feet (AF) of water to approximately 41,000 acres of land in south Utah County, Utah. Most lands served by the SVP have insufficient water.

Because south Utah County has always been a dry spot in a desert state, SWUA and its shareholders have been among the very first, and the very strongest, supporters of the Central Utah Project (CUP). The following quotes come from pages

16 to 19 of the history of the CUP found in the Final Environmental Impact Statement for the Bonneville Unit of the CUP (BUEIS):

Investigation work on the Central Utah Project began soon after the turn of the century under the Reclamation Act of 1902. The Strawberry Valley Project, with Strawberry Reservoir as its key feature, was a forerunner of a larger central Utah development soon to be envisioned. Strawberry Reservoir was completed in 1913, and as early as 1919 local municipal and agricultural water users and other leaders who recognized future water requirements in central Utah began considering the possibility of expanding the existing Strawberry Valley Project.

Investigations on obtaining additional water for the Strawberry Valley Project were begun in the spring of 1945. During the course of these studies, the plan was expanded to cover essentially the same area that was considered in the Colorado River-Great Basin Project, and the name Central Utah Project was given to the Proposal.

The Central Utah Water Conservancy District (CUWCD) was formed in 1964 as the local entity that would repay the local share of the CUP. Since the mid-1960s, south Utah County residents began paying property taxes to CUWCD to support the CUP. SWUA shareholders, many of them struggling family farmers, have been paying those taxes ever since. They have yet to see significant CUP benefits.

From the conception of the CUP it was intended that CUP facilities would replace certain SVP facilities. The SVP's Strawberry Dam was replaced by the CUP's Soldier Creek Dam. The SVP's Strawberry Reservoir was replaced by the CUP's Enlarged Strawberry Reservoir. The SVP's collection system was replaced by the CUP's Strawberry Collection System. The SVP's Strawberry Tunnel was replaced in part by the CUP's Syar Tunnel.

From the very beginning it was clear that without the cooperation and support of SWUA and its shareholders there could be no CUP. Again, I quote from page 549 of the BUEIS:

If the necessary operating agreements for storage, exchange, and use of some existing facilities to convey the water to points of use could not be obtained, development of the Bonneville Unit would be terminated at the enlarged Strawberry Reservoir, with no water being exported to the Waseca Front.

SWUA gave its support to the CUP, and allowed SVP facilities to be replaced by CUP facilities.

Prior to the enactment of the Central Utah Project Completion Act (CUPCA) (Titles II through VI of the Reclamation Projects Authorization and Adjustment Act of 1992) it was anticipated that SWUA, CUWCD and the United States would be required to enter into an agreement for the operation and maintenance of CUP facilities for the benefit of both the SVP and the CUP. Such an agreement was signed by the United States, CUWCD and SWUA in 1991. Congress mandated one year before the agreement. I refer you to section 209 of CUPCA.

From the beginning of the CUP it was anticipated that south Utah County and east Juab County irrigators would be provided CUP water and water infrastructure. Section 202 of CUPCA, one of the sections CUWCD seeks to amend, authorized \$150 Million for the construction of the Irrigation and Drainage System, or in the alternative \$125 Million for the construction of alternate features to deliver irrigation water to lands in the Utah Lake Drainage basin.

During the construction of Jordanelle Reservoir as part of the Municipal and Industrial System (M&I System), a feature of the Bonneville Unit of the CUP, south Utah and east Juab County residents were asked to agree to wait to receive CUP Bonneville Unit benefits dead last. A solemn promise was made by all levels of federal, state and local officials and leaders that the patience, cooperation, support and sacrifice of the south Utah County and east Juab County people would never be betrayed. They would never be left out of the CUP.

CUWCD has now said that it will take most of the irrigation CUP water promised to south Utah and east Juab Counties to Salt Lake County for M&I use, outside the Utah Lake Drainage Basin. The small amount of water that will be provided to south Utah County will be for M&I purposes only. Frankly, SWUA could and would swallow a bitter pill and quietly accept the loss of the promised irrigation water if the majority of the authorized \$125 million were used to provide water conservation and efficiency infrastructure to help south Utah and east Juab Counties make their very short water supply go farther. In the process, water quality, safety and environmental concerns could be addressed as well.

CUWCD is instead before Congress seeking authorization to use all of the \$125 million originally intended for the construction of alternate features to deliver irri-

gation water to lands in the Utah Lake Drainage basin to deliver municipal water to Salt Lake County, outside the Utah Lake Drainage Basin. The bill before the Committee today (S. 2475), like its companion which passed the House Resources Committee last week (H.R. 4129) is very artfully drafted. Yet, its provisions in reality would still completely exclude irrigators, and would in addition leave CUWCD a discretionary loophole so large that it can and absent legislative changes, will exclude the farmers and urban residents of Utah Lake Drainage basin, that is, south Utah and east Juab Counties.

There are five principal reasons why you should reject CUWCD's efforts to deny the Utah Lake Drainage Basin CUP irrigation water and CUP irrigation water infrastructure:

First, Solemn promises should be kept. Senator Hatch and former Senator Jake Garn worked tirelessly to include an irrigation provision in CUPCA. We respectfully submit that other men and women of their character require no further discussion of this point.

Second, CUWCD and the Department of the Interior have proposed this legislation in violation of an important environmental statute. In 1992 Congress literally kicked the Bureau of Reclamation out of any formal CUP management role and entrusted CUWCD, a state agency, with the responsibility of completing the CUP under the direct supervision of the Department of the Interior. In return, CUWCD agreed that it would be considered a federal agency for purposes of compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq. (NEPA). See section 205(b) of CUPCA. Section 4332 of NEPA states:

The Congress authorizes and directs that, to the fullest extent possible: . . . all agencies of the Federal Government shall

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) alternatives to the proposed action;
- (iv) the relationship between local short-term uses of mans environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrieveable commitments of resources which would be involved in the proposed action should it be implemented.

In short, before proposing legislation which would have a significant impact on mans environment, Strawberry believes the Department of the Interior and CUWCD by law must draft an environmental impact statement. The bill's modification of the authorization under section 202 of CUPCA, which will shift the use of \$125 million from providing irrigation water to the Utah Lake Drainage Basin to providing M&I water outside the Utah Lake Drainage Basin, is indeed a major federal action which significantly affects the quality of the human environment. Congress should not ignore its own important environmental laws by considering legislation of such magnitude without the required environmental impact statement.

Third, section 206 of CUPCA contains a clear principal of equity that was intended to protect against unfair distributions of CUP benefits. Unfortunately, Congress was so certain that south Utah County would be provided CUP benefits that south Utah County falls through a crack in section 206. While the technical language of section 206 does not apply to south Utah County, the principals of equity embodied there should be applied to south Utah County.

Fourth, a key part of the CUP is the Strawberry/Jordanelle Exchange. Imported water must be released from the Enlarged Strawberry Reservoir to Utah Lake to satisfy priority water right holders who would otherwise be entitled to the waters of the Provo River. This makes it possible for CUWCD to lawfully store waters of the Provo River in Jordanelle Reservoir and deliver that water through the M&I System. Most of the CUP water used in the Utah Lake Drainage Basin will not be consumed, but rather will flow to Utah Lake, where it can be counted as satisfying a portion of the required Strawberry/Jordanelle exchange. This conserves an equal amount of water in the Enlarged Strawberry Reservoir which would otherwise have to be released to Utah Lake for the exchange. Literally, the CUP water used in the Utah Lake Drainage Basin can be used at least twice. By contrast, if that same water is instead used in Salt Lake County, outside the Utah Lake Drainage Basin, no portion of it returns to Utah Lake. It can be used only once. Use of the unallocated CUP water in the Utah Lake Drainage Basin is literally more than twice as efficient and productive, and results in a considerably greater CUP yield. We know of no better water reuse and conservation program.

Lastly, much of Salt Lake County is dense, urban or suburban sprawl. What is not already developed on that model appears to be largely planned on that model. More water means more of the same and greater endless densities. South Utah and east Juab Counties have only begun to plan and grow. With CUP water, both municipal and agricultural, south Utah and east Juab Counties have the opportunity to create small cities near preserved agricultural lands. We want a place for our children to grow and prosper here, not in a larger, denser, Salt Lake Valley metropolis. We want to support and save some of south Utah County's agricultural heritage as well. With improved infrastructure, the CUP can serve the interests of all south Utah and east Juab County residents, farmer and city dweller alike. We ask for that opportunity.

We respectfully ask that this Committee honor the promises made to the very earliest supporters of the Bonneville Unit of the CUP & who waited for its benefits, for so many decades.

At a minimum, Strawberry urges Senators Hatch and Bennett to be certain that the CUWCD and the Department of the Interior comply with NEPA and present an environmental impact statement with proposed changes to section 202 of CUPCA so that decision makers will have the benefit of understanding the impact of this legislation's proposal to convert large quantities of irrigation water to municipal, not in Utah County, where it was promised to go, but in Salt Lake County.

Finally, Strawberry would respectfully ask that this Committee consider earmarking at least a viable portion of the \$125 million authorization for irrigation water delivery infrastructure for conservation so our farmers will conserve and more efficiently use their existing, very limited supply of water. Given the extreme nature of this year's drought, this is particularly important if those farmers are to be denied additional CUP irrigation water supplies.

Thank you very much for your time and careful consideration.

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STATEMENT OF SAMUEL N. PENNEY, CHAIRMAN OF THE NEZ PERCE  
TRIBAL EXECUTIVE COMMITTEE, NEZ PERCE TRIBE

On behalf of the Nez Perce Tribe, I would like to take this opportunity to express the Tribe's support of the Wallowa Lake Dam Rehabilitation and Water Management Act.

Since time immemorial, the Nez Perce Tribe lived, fished, hunted, gathered, and practiced their religion in the area of northeastern Oregon now known as Wallowa County. Salmon, steelhead, and other fish species have been and continue to be a critical component of Nez Perce religion, culture, subsistence, and commercial endeavors.

The important dam rehabilitation project contemplated by this Act is integral to the efforts of the Nez Perce Tribe and others to reintroduce and restore sockeye salmon to Wallowa Lake. Before 1900, approximately 24,000 to 30,000 sockeye returned to Wallowa Lake each year. In 1890, a small dam was built at the outlet of Wallowa Lake to divert water for irrigation. When the Wallowa Lake Dam was constructed, it did not include fish passage facilities and no such facilities have ever been incorporated into the structure. The Dam, in conjunction with over-harvest and other factors resulted in the extinction of sockeye from Wallowa Lake by 1904.

The Nez Perce Tribe has been pursuing restoration of sockeye as part of a comprehensive salmon restoration program in northeastern Oregon, which also involves spring chinook, fall chinook, and steelhead through the Northeast Oregon Hatchery program. It is our belief that rebuilding healthy fish populations and healthy communities are not mutually exclusive. In fact, these endeavors can not be accomplished in isolation of each other. It is said that proper fisheries management is built on a triad that includes fish populations, habitat, and people.

Restoration of salmon to Wallowa Lake will not only be beneficial to the ecosystem and the Wallowa County citizens, but also to restoration of Snake River sockeye salmon population, which are listed as endangered under the Endangered Species Act.

Rehabilitation of the Dam will include construction of necessary fish passage facilities and further the efforts of the Tribe and others to restore imperiled species. In addition to the fish passage and sockeye salmon restoration benefits, the rehabilitation of the Dam will provide multiple benefits including enhanced flood control, improved water conservation and management of irrigation withdrawals, greater stability of the City of Joseph water supply, increased flows in the Lostine River for imperiled spring chinook salmon (a project in which the Tribe has invested a tremendous amount of resources), as well as generally contributing to the economic stability of the local community.

Rehabilitation of the Wallowa Lake Dam ensures that the legal and trust obligations of the United States to protect and enhance treaty-reserved fishing rights is honored. The Act further assists in efforts of tribal, local, state, and federal stakeholders to meet the requirements of the Clean Water Act and the Endangered Species Act.

This Act builds upon cooperative relationships between the Tribe and citizens of local communities, along with both state and federal resource management agencies to collaboratively and creatively develop a plan that benefits fish recovery along with timber, cattle, and agricultural interests. This Act and the collaborative relationship that exists in Wallowa County serves as a great example of how to avoid a volatile situation like the Klamath Basin catastrophe of last year.

The Tribe strongly supports the Wallowa Lake Dam Rehabilitation and Water Management Act and believes that everyone in the community can benefit from its passage.

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STATEMENT OF THE HONORABLE KEN TEDFORD,  
MAYOR OF THE CITY OF FALLON, NEVADA

Chairman Dorgan, Members of the subcommittee, my name is Ken Tedford and I am the Mayor of the City of Fallon, Nevada. I am pleased to have this opportunity to submit the following testimony to the subcommittee in favor of the passage of S. 1310, The Fallon Rail Freight Loading Facility Transfer Act.

If enacted into law, S. 1310 will enable my City to acquire through purchase at appraised value a six (6) acre parcel of federally owned land that the City currently leases from the Bureau of Reclamation. This parcel is located inside the corporate limits of the City. The City is aware that the United States government, through the U.S. Reclamation Service, predecessor of the Bureau of Reclamation, acquired the freight yard property in 1920. It appears that from 1920 until the mid-1980's the Bureau of Reclamation conducted operations thereon related to the Newlands Project, including but not limited to the electric generation and distribution utility operated by the Bureau of Reclamation and the Truckee-Carson Irrigation District. Federal use of the property ended in the early 1980's. The first agreement for the City's use of the property was a five (5) year lease in 1984 between the Bureau of Reclamation and the City. That lease anticipated construction of the present railroad loading facility, which was accomplished pursuant to the 1990 lease between the City and the Bureau of Reclamation.

Earlier this year, during negotiations to extend the City's lease of the property, the Bureau advised the City that it was their preference that the City assume fee ownership of the property rather than continuing to lease it. This is the City's desire as well. As a result, we asked Senators Harry Reid and John Ensign to introduce this legislation to authorize the Bureau to sell the parcel to the City. A companion measure, that was sponsored by Congressman Jim Gibbons, has been passed in the House of Representatives.

The City's construction and operation of the freight yard facility under the existing lease has been financially encouraged and supported by the State of Nevada and the Southern Pacific Railroad pursuant to an Operating Agreement dated July 5, 1990. The United States Department of Transportation also participated financially through the Operation Agreement, funding certain grants designed to assist and promote local railroad service. Accordingly there is, a significant financial investment in the freight yard facility by federal and state governments and private industry. The City of Fallon has expended approximately \$150,000.00, the State of Nevada has expended approximately \$75,000.00, and the U.S. Department of Transportation has expended approximately \$500,000.00 on the facility. Additionally, Southern Pacific Railroad has funded capital improvements to upgrade and maintain approximately 20 miles of track necessary for the operation of the facility. Accordingly, the combined investment in this facility is well in excess of \$1,000,000.00. This cooperative funding demonstrates the importance to the community and the State of Nevada for the continued viable operation of this facility by the City of Fallon.

For more than ten years the freight yard facility has served as an anchor for the railroad spur which extends through the City limits. The railroad spur would have been discontinued and taken out of service were it not for this facility. The facility serves as a railhead for a mining company located in the small town of Gabbs, seventy miles to the east and south of Fallon. Mining is that community's only industry and maintaining a railhead is essential to the economy of the town.

The revenue that the City receives from the freight yard facility and the rent that it pays to the Bureau of Reclamation for the use of the property are insignificant

as compared to the regional economy that the facility and the railroad spur generate and support.

Before concluding, Mr. Chairman, I would like to touch briefly on the environmental condition of the property. Because the property has been used for industrial purposes for more than 75 years—for the bulk of that time as an electrical utility maintenance, storage and operations area—we and the Bureau both believe that an environmental assessment should be completed prior to a transfer. To that end, a Phase I Environmental Site Assessment has been completed and a Phase II Environmental Site Assessment is currently underway. Soil samples have been taken and laboratory analyses conducted. While things generally look good, some additional investigations will need to be completed before it can be determined if the property is environmentally clean or whether some sort of remediation will be required.

Mr. Chairman, this concludes my statement. Thank you again for allowing me to submit this testimony in support of this legislation.

STATEMENT OF C. BOOTH WALLENTINE CHIEF EXECUTIVE OFFICER,  
UTAH FARM BUREAU FEDERATION

Mr. Chairman, my name is Booth Wallentine. I am the CEO of the Utah Farm Bureau Federation, which represents over 22,000 member families in Utah, a significant number of whom reside in Utah and Juab Counties in our state. I offer this statement to express the Utah Farm Bureau's concern about proposed changes to the Central Utah Project Completion Act (CUPCA).

Our interest has been to improve the efficiency and productivity of agriculture production in Utah. Agriculture is a critically important industry to the economy of Utah and Juab counties. In 2000, cash receipts from agriculture for these two counties exceeded \$117 million. The Governor's Office of Planning and Budget economic multiplier data would indicate these farm-gate receipts are the economic engines generating at least \$350 million in our state's economy.

Irrigation water is the lifeblood of agriculture. U.S. Department of Agriculture data shows that future expansion of American agriculture will depend largely upon improved and/or expanded irrigation.

From the beginning of the CUP it was anticipated that south Utah County and east Juab County farmers would be provided CUP water and water infrastructure. Section 202 of CUPCA, one of the sections the Central Utah Water Conservancy District (CUWCD) seeks to amend, authorized \$150 Million for the construction of the Irrigation and Drainage System, or in the alternative \$125 million for the construction of alternate features to deliver irrigation water to lands in the Utah Lake Drainage basin.

The CUWCD is again before Congress seeking authorization to redirect all of that \$125 million outside the Utah Lake drainage. By adding the words "municipal and industrial" as new eligible uses of this money and absent any constraints, the net result is the all-but-certain transfer of water to the urban areas of Salt Lake County.

There are a number of reasons why Utah Farm Bureau believes this committee should reject CUWCD's efforts to deny the Utah Lake Drainage Basin CUP irrigation water and infrastructure:

First, the promises to the Utah Lake Drainage Basin farm families that by paying taxes to CUWCD since 1964 they would receive irrigation water should be kept.

Second, the CUWCD's proposal to change one of the primary CUP purposes by removing water from one area of the project to an entirely new area and for entirely new M&I purposes, by any measure, constitutes a major Federal action under the National Environmental Policy Act (NEPA). The CUWCD as a congressionally mandated quasi-Federal agency, cannot by executive fiat change the purpose of the Central Utah Project without first going through the NEPA process. In fact, by law, CUWCD cannot legally do what it has already done which is to propose legislative changes to Congress prior to preparing an Environmental Impact Statement.

Third, Farm Bureau has some very real concerns over the environmental soundness of transferring water originally intended for the farms of the Utah Lake Basin to Salt Lake County. For example, most of the CUP water used in the Utah Lake Drainage Basin will not be consumed, but rather will flow to Utah Lake, where it can be counted as satisfying a portion of the required Strawberry/Jordanelle exchange. This conserves an equal amount of water in the Enlarged Strawberry Reservoir, which would otherwise have to be released to Utah Lake for the exchange. Literally, the CUP water used in the Utah Lake Drainage Basin can be used at least twice. By contrast, if that same water is instead used in Salt Lake County as

the CUWCD proposes, no portion of it returns to Utah Lake. It can be used only once. Use of the unallocated CUP water in the Utah Lake Drainage Basin is literally more than twice as efficient and productive, and results in a considerably greater CUP yield. We know of no better water reuse and conservation program.

Mr. Chairman, the Utah Farm Bureau urges members of this Committee and the entire Senate to keep the promises made by government leaders to farmers. We respectfully request that this Committee direct the CUWCD and the Department of Interior to comply with NEPA and present an environmental impact statement with proposed changes to section 202 of CUPCA before acting on the proposed changes. At a minimum, please consider earmarking a portion of the \$125 million authorization for irrigation water delivery infrastructure, which is badly needed to allow Utah Lake Drainage Basin farmers to conserve, and more efficiently use their limited water supplies. This is particularly important if those farmers are to be left out of additional CUP irrigation water supplies and could be accomplished by adding language the bill which requires only that a specific portion of such funds "shall" be spent in the Utah Lake Drainage Basin. Thank you for this opportunity to offer this testimony.

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