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H.R. 4708, H.R. 4739 and H.R. 5039

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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H.R. 4708, TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN FACILITIES TO THE FREMONT-MADISON IRRIGATION DISTRICT; H.R. 4739, TO AMEND THE RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PARTICIPATE IN THE DESIGN, PLANNING, AND CONSTRUCTION OF A PROJECT TO RECLAIM AND REUSE WASTEWATER WITHIN AND OUTSIDE OF THE SERVICE AREA OF THE CITY OF AUSTIN WATER AND WASTEWATER UTILITY, TEXAS; AND H.R. 5039, TO DIRECT THE SECRETARY OF THE INTERIOR TO CONVEY TITLE TO CERTAIN IRRIGATION PROJECT PROPERTY IN THE HUMBOLDT PROJECT, NEVADA, TO THE PERSHING COUNTY WATER CONSERVATION DISTRICT, PERSHING COUNTY, LANDER COUNTY, AND THE STATE OF NEVADA.

Tuesday, July 9, 2002
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 2:07 p.m., in room 1324, Longworth House Office Building, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

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

Mr. CALVERT. Good afternoon. The Subcommittee of Water and Power will come to order.

The Committee is meeting today to hear testimony on three bills. H.R. 4708, the Fremont-Madison Conveyance Act; H.R. 5039, the Humboldt Project Conveyance Act; and H.R. 4739, the City of Austin Water Reclamation Authorization Act.

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

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

H.R. 4708 directs the Secretary of Interior to transfer all right, title and interest of the United States in and to all components of the water system operated and maintained by the Fremont-Madison Irrigation District to the District. This title transfer must take place pursuant to a Memorandum of Agreement between the Secretary of Interior and the Fremont-Madison Irrigation District, dated September 13, 2001.

The District will be responsible for administrative costs including any review required under the National Environmental Policy Act incurred during the conveyance process up to $40,000.

Mr. CALVERT. H.R. 5039 provides for the transfer of lands and facilities to the Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada within 2 years of the enactment of this legislation.

H.R. 5039 requires that a report be submitted to Congress if the title transfer does not take place within a specified timeframe. This legislation also directs the Secretary of the Interior to not require any of the entities receiving land or facilities to pay more than $40,000 for administrative and NEPA costs.

Mr. CALVERT. Although unrelated, the next bill we will hear today deals with another important subject for this Committee, water recycling. H.R. 4739 will amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of Interior to participate in the design, planning and construction of a project to reclaim and reuse wastewater within and outside the service area of the City of Austin, Texas, Water and Wastewater Utility.

Mr. CALVERT. The Chairman now recognizes the Ranking Minority Member who is not here, but any opening statement will certainly submit for the record.

Mr. CALVERT. We have several Members who are going to testify, but first, Mr. Doggett, who is the sponsor of H.R. 4739, would like to have an opening statement and introduce his special guests.

[The prepared statement of Mr. Calvert follows:]

Statement of The Honorable Ken Calvert, Chairman, Subcommittee on Water and Power

The subject of Federal facilities title transfer has been of particular interest for this Committee and others throughout the west. Title transfer legislation not only represents a concerted effort to help shrink the Federal Government, but it also

transfer's facilities into the hands of those who can more efficiently operate and maintain them.

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

H.R. 4708 directs the Secretary of the Interior to transfer all right, title, and interest of the United States in and to all components of the water system that are operated and maintained by the Fremont–Madison Irrigation District to the District. This title transfer must take place pursuant to a memorandum of agreement between the Secretary of the Interior and Fremont–Madison Irrigation District dated September 13, 2001. The District will be responsible for all administrative costs incurred during the conveyance process.

H.R. 5039 provides for the transfer of lands and facilities to the Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada within two years of the enactment of this legislation. H.R. 5039 requires that a report be submitted to Congress if the title transfer doesn't take place within the specified time frame. This legislation also directs the Secretary of the Interior to not require any entity to pay more than $40,000 of administrative and NEPA costs when NEPA compliance is estimated to cost $400,000.

Although unrelated, the next bill we will hear today deals with another important subject for this Committee, water recycling. Natural scarcity of fresh water makes the discovery of new and untapped sources of water important to provide for future demand. One source of water that has traditionally been overlooked is recycled water. Recycled water is desirable because there is a constant supply; and, although recycled water is mostly used in irrigation and industry, it also relieves pressure on local streams and aquifers that currently provide water for municipal and industrial use.

The importance of this resource was officially recognized in 1992 by the passing of Public Law 102–575. Title XVI of this law, also known as the Reclamation Wastewater and Groundwater Study and Facilities Act, authorized the Bureau of Reclamation to participate in the construction of five water recycling projects. Since 1992, the Act has been revised to include several other projects.

H.R. 4739 will amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the City of Austin Water and Wastewater Utility, Texas.

Mr. Doggett, you are recognized.

STATEMENT OF THE HON. LLOYD DOGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DOGGETT. Thank you very much, Mr. Chairman. It was my good fortune to serve about 4 years ago on this Committee and I am pleased to be back. I appreciate so much the help in advance of today that your office and the Subcommittee staff particularly has provided us on this piece of legislation. I suppose that it is a little ironic that we are here today at this time talking about water for Austin, Texas.

We are just a little north of the area that has suffered the most severe floods, but today we have more water flowing through the City of Austin than we know what to do with in the Colorado River shed. Fortunately, no houses in it, but we are here to discuss a subject that I know, Mr. Chairman, and other Members of the Committee have expressed great interest on in the past and that is how we make the most effective use of the water we have.

We have many demands as well on water flowing out of the Colorado River shed from all the neighboring areas and are looking for

ways to make the maximum use of the water that we have through recycling projects.

I believe that the City of Austin is already a nationally recognized leader in water resource planning and that this legislation will help our community further the goals of water conservation and sustainable development, goals that are very important to our community, which is particularly sensitive to the environment.

The reclaimed water service that we have now would be supplemented by this project. For the last decade or so, the City of Austin has developed and implemented long-range water protection and conservation plans and with this legislation we would be able to create a partnership between the City of Austin and the Federal Government on this reclamation.

I believe that the legislation, designed with the assistance of your staff, meets the eligibility requirements and the goals established by the Bureau of Reclamation Title XVI programs. We are well aware of the fact that there are many projects out there already, there are many projects in a wide range of areas that the Bureau has that it does not have fully funded.

Our objective today is a realistic one of being sure that the City of Austin and this important project are on the list of those projects to be considered as funds become available in the future.

It is my pleasure, Mr. Chairman, to introduce at this time our Mayor, Gus Garcia. He has a lifelong commitment to our community and a distinguished record of public service. He recently was elected as Mayor and this is his first opportunity, despite many years of involvement in the legislative process, to testify here in Congress.

I believe that he can provide more insight into the importance of this legislation for our community and how it fits into the overall national objectives of seeing that we maximize our water resources.

Thank you.

Mr. CALVERT. The Mayor is recognized. Welcome, Mayor.

STATEMENT OF THE HON. GUSTAVO GARCIA, MAYOR OF AUSTIN, TEXAS

Mr. GARCIA. Thank you, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to appear before you to talk today about House Resolution 4739.

I would also like to thank our Congressman, Lloyd Doggett, for introducing H.R. 4739 and for all his hard work on behalf of the City of Austin.

Like he indicated, my name is Gus Garcia and I currently serve as Mayor of the city with a population of 670,000 and growing every day. The City of Austin offers the best big city life and small town environment.

The City of Austin recognized early on that our high quantity of life would attract growth, thus creating an exceptional challenge in maintaining our unique ambiance. Although we have overcome some difficult obstacles, today Austin is nationally recognized as a leader in sustainable growth management. This is just one of the sustainable growth initiatives that we have in place.

The City of Austin Water Reclamation Project is a sustainable growth initiative that fosters economic development while

minimizing impacts on the environment. It is a city priority and a personal priority of mine.

In my written testimony which was filed with the Clerk of the Committee, I provided background on Austin and its water needs, our efforts to meet those needs and the role that we envisioned for the Bureau of Reclamation's Title XVI in helping to meet those needs.

H.R. 4739 amends the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning and construction of a water reclamation project within the service area of the City of Austin Water and Wastewater Utility.

The City of Austin owns and operates its water and wastewater utility which has approximately 180,000 connections and services about 754,470 water users because our service area is a little bit larger than the city limits.

The utility service area covers 450 square miles and is served by three water treatment plants and three wastewater treatment plans.

If I may divert here for just a minute, we are talking about building a fourth water treatment plant in an environmental sensitive area. The City, I think, would be best served if we could use reclaimed water to serve the needs of our recreational areas and our industrial areas instead of putting another water treatment plant and treating the water to potable and drinking water standards.

With the Lower Colorado River is the source of Austin's water supply, Austin's supplies potable water to approximately 70 percent of the people in the Lower Colorado Basin. Recently, in response to inevitable future water shortages, the Texas Legislature adopted a comprehensive statewide regional water management plan.

Austin's rapid population growth has resulted in a rapidly increased demand for water. During the 1990's, the city experienced a 35 percent growth in population and a 43 percent increase in peak day water demand. The State plan highly recommends water conservation and reuse.

We are going into the months right now when we will have a great deal of demand for our treated water. The City of Austin has joined the statewide conservation effort by expanding its Water Reclamation Program. The expansion of our Water Reclamation system will assist in reducing the needs for additional water treatment plan capacity and help us meet the city's goal of achieving a more sustainable water supply.

Stated another way, the effective use of properly treated effluent conserves this precious resource while reducing the need to use potable water to satisfy needs that can be met by using properly treated effluent.

Currently reclaimed water use is over five millions gallons per day during the summer. Austin has operated its water reclamation program since 1980. In 1992, the City of Austin began planning for citywide expansion by developing a series of master plan documents.

Currently, and throughout the funding process, the city continues to collaborate with the Bureau of Reclamation on those plans.

A significant constraint to implement our water reclamation program, of course, is funding. These funding issues have become more difficult because of the recent economic downturn. I realize that under Title XVI, Federal funding is capped, but the city is prepared and committed to covering the bulk of this cost.

We believe that the City of Austin Water Reclamation Program System expansion fits within the goals and objectives of the Title XVI Program, specifically in the areas of applicability, eligibility, financial capacity, ownership, regionalism, and environmental benefits.

In conclusion, given the national importance of addressing water needs and water quantity, Federal assistance to this program is appropriate and welcome.

I hereby respectfully request that the Subcommittee approve this bill and seek its final passage.

We appreciate your time and support and we thank you again for this is opportunity to testify.

I would be pleased to answer any questions that you may have. Thank you, Mr. Chairman.

[The prepared statement of The Hon. Gus Garcia follows:]

Statement of The Honorable Gustavo Garcia, Mayor, City of Austin, Texas

Chairman Calvert, Representative Smith and members of the Subcommittee, thank you for the opportunity to appear before you today to testify in favor of H.R. 4739. I would also like to thank our Congressman, Lloyd Doggett, for introducing H.R. 4739 and for all of his hard work on behalf of Austin.

My name is Gustavo Garcia and I am the Mayor of Austin, the capital City of Texas. With a population of 670,000 Austin offers the best of big city and small town life. Achieving this balance has not always been easy. The City of Austin recognized early on that our high quality of life would attract growth and that we would have to manage this growth in order to maintain our high quality of life. Though we have had to overcome some difficult obstacles, today Austin is nationally recognized as a leader in sustainable growth that enhances communities, fosters economic development and minimizes the impact on the environment. The City's Water Reclamation Program is one part of that effort. It is a City priority and a personal priority for me.

In my testimony, I will provide background on Austin and its water needs, our efforts to meet those needs and the role that we envision for the Bureau of Reclamation's Title 16 Program in helping to meet those needs.

H.R. 4739

H.R. 4739 amends the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within the service area of the City of Austin Water and Wastewater Utility.

About the City of Austin Water & Wastewater Utility

The City of Austin owns and operates its Water and Wastewater Utility, which has approximately 180,000 residential, multifamily, commercial, industrial, and wholesale connections, with a total number of users of 754,470. The Utility's service area covers 450 square miles and is served by three wastewater treatment plants with a capacity of 130 million gallons/day and three water treatment plants with a peak capacity of 265 million gallons/day. Austin has operated its Water Reclamation Program since the early 80's, providing irrigation water for golf courses. In 1992 the City of Austin began researching, planning and developing an infrastructure system for the city-wide use of reclaimed water.

During this time, the City of Austin has been a leader in water conservation and reuse issues and promotion. While the commendations and awards are many for the Utility's Water Conservation Program, a few stand out:

- The City has repeatedly received the Water Mark award from the American Water Works Association for raising the public level of understanding of water conservation issues as well as their top award for conservation and reuse in the category of a Direct Program for a Large Utility.
- In 1996, the City received the United States Department of the Interior, Bureau of Reclamation Long–Term Conservation Award for Outstanding Conservation Achievements.

About Texas Water Resources

Future water shortages are inevitable in Texas. The Texas legislature has recently adopted a comprehensive statewide water management plan, unique in its approach in developing statewide individual regional plans. The increasing scarcity of new water supplies, the high cost of new water supply development and heightened environmental concerns are the driving force behind the State" plan.

Building on this effort, the Texas Legislature authorized sixteen planning groups to develop regional plans for the development and management of water resources over the next fifty years. These plans identify current and future water demands, water availability, potential water shortages, and potential solutions that address shortages.

The State's regional plan identifies Austin as an area facing a water shortage. Rapid population growth has resulted in rapidly increased water use. During the 1990's, the City experienced a 35% percent growth in population and a 43% percent increase in peak day water demand

Against this backdrop, the City has joined the statewide effort. Expanding Austin's Water Reclamation Program has been one of several measures used to assist in meeting and balancing the water demands on the Lower Colorado River, from which Austin draws its raw water supply. The City of Austin provides potable water for 70% of the people in the Lower Colorado River basin.

The City of Austin Water Reclamation Program

During peak irrigation demands in summer, the reclaimed water use is over 5 million gallons of reclaimed water per day, predominantly for landscape irrigation. An electric power utility will soon be a major customer, and computer microchip manufacturers have expressed an interest in reclaimed water. Other potential customers, such as the University of Texas, are interested in using reclaimed water if distribution lines can be extended to their property. Based on the high quality of the effluent, the major uses for reclaimed water in Austin include irrigation, cooling tower water, manufacturing processes and toilets.

The City has developed a series of master planning documents identifying potential large institutional, industrial, commercial, and recreational customers. The planning documents also identified service areas with necessary extensions on the north side of the City, on the south side of the City, and in a satellite area. Satellite systems are separate from the Utility's infrastructure due to geographical constraints.

The expansion of our water reclamation system will provide a number of benefits. It will assist in buffering the need for additional water treatment plant capacity and help us meet the City's goals in achieving a more sustainable water supply.

Reclamation and Reuse Project—North System Details

In 2000, Austin began implementing the plan that will serve reclamation customers north of the Colorado River with construction of the water reclamation pumping and storage facility at the Walnut Creek Water Wastewater Treatment Plant and transmission main to the central part of town. This phase of the project was completed in the spring of 2002.

The north system extensions consist of 52 miles of transmission mains, four pump stations, and three storage tanks. The North System will be implemented in eight phases. The estimated cost to complete construction of all phases of the North System is $46 million. This estimated cost for the North System does not include the approximately $14 million already spent on the starter system.

These pumping and storage facilities and transmission mains will serve as the backbone to the downtown area, the University of Texas, several golf courses and various high tech manufacturing facilities. Along with other potential large volume customers in the central part and northeast part of town, it is estimated that these customers will use approximately 5.8 to 7.3 billion gallons of reclaimed water per year. The proposed alignment and facility locations for the North System were located to implement the system as larger customers come on line.

Reclamation and Reuse Project—South System Details

The City's Water Reclamation Initiative South System Master Plan identifies potential customers south of Town Lake and the Colorado River and delineates a service area that could be served by the South Austin Regional Wastewater Treatment Plant. The south system extensions consist of 66 miles of transmission mains, four pump stations, and five storage facilities. The estimated cost to complete construction of all phases of this system is $53.4 million.

The plan identified eighty-seven potential large volume customers that could use approximately 2.9 billion gallons of reclaimed water per year. The potential customers include a power generation plant next to South Austin Regional Wastewater Treatment Plant, several high tech manufacturing facilities, golf courses, City parks, and commercial developments.

The proposed alignments of the transmission main and location of the distribution systems were designed in phases to allow for implementation of the system as large customers come on line.

The water reclamation improvements, pumping, and elevated storage facility at the South Austin Regional Water Treatment Plant are currently in the final design phase and are not part of the phasing described in this section. The estimated cost for the water reclamation part of the improvements at the plant is approximately $5 million.

Reclamation and Reuse Project—Satellite System Details

Annexation of an area in the northwest part of town has given the City of Austin an opportunity to provide reclaimed water to an area that is several miles from the north system service area. Two existing wastewater package treatment plants, which are stand-alone facilities, currently serve this area. A third package plant is located approximately 2 miles further to the northwest and is in an area that will be annexed in 2003. Package plants are self-sustaining plants, separate from the main Utility system. The City of Austin is planning to use these three package plants as satellite facilities to provide reclaimed water to parkland, two golf courses, and residences in the area.

Austin has already constructed approximately seven miles of residential service lines to serve approximately 600 residences. The cost of constructing the service lines is approximately $4.3 million. Additional costs will be incurred to upgrade the package plants, additional transmission mains, and a storage facility. The estimated cost for those improvements range from $3 to $5 million. This residential water project will be a pilot program to evaluate reclaimed water use for residential irrigation.

Water Reclamation Initiative
Major Components

Cost in millions of dollars

Service Area	Project Completed or Funded	Future Projects	Total Project Cost	Funding Shortfall
Early System Improvements	$4.0		$4.0	
North	$14.0	$46.2	$60.2	$53.5
South	$5.0	$53.5	$58.5	$46.2
Satellite	$4.3	$5.0	$9.3	$5.0
Total	$27.3	$104.7	$132.0	$104.7

Financial Constraints Facing Austin's Water Reclamation Program

A significant constraint to implementing our water reclamation program is funding. This constraint has been compounded further by the recent economic downturn, which has hit Austin particularly hard. Austin's economy is strongly influenced by the high tech industry, which went into recession earlier and deeper than other parts of the economy. In a metropolitan area of approximately one million people, we have lost in excess of 20,000 jobs in the high tech sector alone. The impact has spread into other areas and affects our ability to proceed with beneficial programs such as water reclamation and reuse.

I realize that under the Title 16 Program, Federal funding is capped and that the City will have to cover the bulk of these costs. The City is prepared and committed to doing so. However given the national importance of addressing water needs and water quality, Federal assistance with this project is appropriate and welcome.

Bureau of Reclamation's Title 16 Program

The Bureau of Reclamation operates a well-respected water reclamation program, referred to as the Title 16 Program, designed to improve efficiency in the use of water resources in urban areas. Section 1602 of Public Law 102–575 establishes broad goals for the Bureau of Reclamation in administering the Title 16 Program. These goals include:

- Identifying opportunities for reclamation and reuse of municipal wastewater,
- Investigating those opportunities and,
- Providing a cost-share opportunity for an appraisal and feasibility study and for the design and construction of permanent facilities to reclaim and reuse municipal wastewater.

The City of Austin's Water Reclamation Program fits well within these broad goals. The City has identified and is in the process of investigating, through a preliminary master plan, opportunities for reclamation and reuse of municipal wastewater. Throughout the funding process, the City will continue to collaborate with Bureau of Reclamation on those plans. Based on the results of the investigations, the City will request financial assistance from the Bureau of Reclamation in the design and construction of infrastructure to reclaim and reuse the municipal wastewater.

In addition to conforming to the general goals of the Title 16 Program, the City of Austin's Water Reclamation Program meets the following specifics for the Title 16 Program:

Applicability—Austin is located in Texas, which is one of the seventeen western states under the Bureau of Reclamation's jurisdiction.

Eligibility—Austin is a municipality and therefore capable of entering into a cost-sharing agreement with the Bureau of Reclamation.

Financial capability—Austin has dedicated revenue sources through water and wastewater user fees and has demonstrated financial capabilities as evidenced by the investment grade rating of its bonds.

Ownership—The City of Austin will hold title to the facilities and be responsible for their operation and maintenance.

Regional perspective—Austin's Water Reclamation Program is consistent with state authorized regional water supply plans for the Colorado River.

Environmental benefits—Austin's Water Reclamation Program assists in buffering the need for additional water treatment plant capacity and helps us meet the City's goals in achieving a more sustainable water supply.

Conclusion

H.R. 4739 will provide Federal authorization for the City of Austin to formally enter the Bureau of Reclamation's Title 16 Program. We have developed a large-scale phased project for the reclamation and reuse of municipal wastewater in the Austin area and believe that the project fits within the goals and objectives of the Title XVI program. I hereby respectfully request that the Subcommittee approve H.R. 4739 and seek its final passage. We appreciate your time and support.

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

Mr. CALVERT. Thank you, Mayor. If you will please remain there, we will have a couple of opening statements on two other bills we have before us and then we will be hearing from Commissioner Keys. Thank you.

Mr. CALVERT. Next, Mr. Simpson, sponsor of H.R. 4708, will have an opening statement on his legislation.

Mr. Simpson, you are recognized.

STATEMENT OF HON. MICHAEL K. SIMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SIMPSON. Thank you, Mr. Chairman, for holding this hearing on H.R. 4708, the Fremont-Madison Conveyance Act. I would also like to take this opportunity to thank Mr. Jeff Raybould, President of the Board of Directors of the Fremont-Madison Irrigation District for making the trip from Idaho today.

H.R. 4708 would require the Secretary of Interior to convey title of portions of the district, namely the crosscut diversion dam, the crosscut canal and the Teton Exchange Wells currently under the control of the Bureau of Reclamation of the Fremont-Madison Irrigation District.

The district has managed these facilities since their creation and by all accounts has done an excellent job of maintaining and operating them. I'm confident they will continue to be excellent stewards of these facilities once ownership is transferred and conveyance of this title is in the best interest of the users, the Federal Government and the environment.

Over the past few months, representatives of the district have worked with local citizens, agricultural producers and the Bureau of Reclamation and conservation groups to create a transfer agreement that would be acceptable to all interested parties. I commend them on all of their hard work and look forward to my work with them in the coming weeks as this bill moves through the legislative process.

Mr. Chairman, I would like also to ask unanimous consent to submit two letter of support. The letters are from The Honorable Dirk Kempthorne, Governor of the State of Idaho and from the Idaho Water Users Association.

Mr. CALVERT. Without objection, it is so ordered.

Mr. SIMPSON. Thank you. That concludes my remarks.

Mr. CALVERT. I thank the gentleman.

Mr. CALVERT. Mr. Gibbons, the sponsor of H.R. 3059, you are recognized to give your opening statement.

STATEMENT OF HONORABLE JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Thank you very much, Mr. Chairman. I want to thank you and express my appreciation to the Subcommittee for holding this hearing on such short notice.

At the outset, Mr. Chairman, if I could, I would also like to welcome two distinguished Nevadans who have come a long way to attend this hearing as well, Mr. Bennie Hodges who is the manager of the Pershing County Water Conservation District, and Mr. Bob Gibson, a member of the Pershing County Water Conservation District Board of Directors.

I would like to thank and welcome a fellow pilot, Mr. Keys, who is attending here on behalf of the Bureau of Reclamation, and of course, the distinguished guest from the Washington, D.C. area, Mr. Steven Malloch, who representatives Trout, Unlimited.

Mr. Chairman, this legislation, H.R. 5039, would direct the Secretary of Interior to convey certain title to an irrigation project in the Humboldt Project property in the Humboldt Project, Nevada, to the Pershing County Water Control District and the State of Nevada and to Lander and Pershing Counties respectfully.

The Pershing County Water Conservation District will receive Rye Patch Reservoir along with specific lands around the reservoir and title for acquired pasturelands. The State of Nevada will receive all the withdrawn lands above the high water mark at Rye Patch to be added to existing State park and withdrawn lands in

the Humboldt Sink area and in the Lander County area to be managed as wetlands.

This bill will protect and enhance, I believe, the public benefits in this area because all lands conveyed to the State will be used for recreation, wildlife habitat, wetlands, resource conservation measures pursuant to the agreement between the State and the Pershing County Water Conservation District.

Lander County will receive title to designated pasturelands and Pershing County will acquire land immediately adjacent to Derby Airport for maintenance and future expansion purposes.

Over the past 5 years, the Pershing County Water Conservation District has undergone an extensive consensus-based process with Federal Government, the counties and the State of Nevada. They have also conducted outreach with local representatives of the environmental organizations and as a result of public comments received through scoping meetings and in other venues, the Pershing County Water Conservation District has continued to reformulate their proposal in a sincere attempt to address all concerns.

Mr. Chairman, I would admit that it has been a tough process and they should be recommended for their efforts in this effort. Mr. Chairman, this bill ratifies agreements between the Bureau of Reclamation and the Pershing County Water Conservation District, the State and the counties.

It has the support of the Governor of Nevada, the Humboldt River Basin Water Authority and the Counties of Lander and Pershing in Nevada.

The Department of Interior and the Bureau of Reclamation are on record as supporters of transferring title to local entities. This is the third, and hopefully final attempt to obtain title to the Humboldt Project facilities since it has repaid to the taxpayers its original project loan from the government back in 1978 when the Pershing County Water Conservation District operates and maintains the project and its constituents are the sole beneficiaries of the project and local control, therefore, Mr. Chairman, is the logical choice.

This Subcommittee has reviewed a number of title transfer bills in the past. I believe this legislation is in the best interests of the public and is consistent with other bills we have favorably reviewed already. I urge expeditious consideration in the House this year.

Again, Mr. Chairman, thank you for working this bill into your Subcommittee's very busy schedule.

I would be happy to address any questions.

Statement of The Honorable Jim Gibbons, a Representative in Congress from the State of Nevada

Mr. Chairman, thank you for considering H.R. 5039 the Humboldt Project Conveyance Act. I want to express my strong appreciation to the Subcommittee for holding this hearing on such short notice.

At the outset I would like to welcome Bennie Hodges, manager of the Pershing County Water Conservation District (PCWCD) in Lovelock, Nevada and Bob Gibson a member of the PCWCD Board of Directors. I also want to welcome fellow pilot, Commissioner Keys of the Bureau of Reclamation and our distinguished guest from Trout Unlimited.

My legislation, H.R. 5039, would direct the Secretary of the Interior to convey title to certain irrigation project property in the Humboldt Project, Nevada, to the Pershing County Water Control District, the State of Nevada, and to Lander and Pershing Counties.

The Pershing County Water Conservation District will receive the Rye Patch Reservoir along with specific lands around the reservoir and title for acquired pasture lands.

The State of Nevada will receive all of the withdrawn lands above the high water mark at Rye Patch to be added to existing State Park and withdrawn lands in the Humboldt Sink area and in Lander County to be managed as wetlands.

All lands being conveyed to the State will be used for recreation, wildlife habitat, wetlands, or resource conservation pursuant to the agreement between the State and the PCWCD

Lander County will receive title to designated pasture lands and Pershing County will acquire lands immediately adjacent to Derby Airport for maintenance and future expansion purposes.

Over the past five years, the PCWCD has undergone an extensive, consensus-based process with the Federal Government, the Counties and the State of Nevada. They have also conducted outreach with local representatives of environmental organizations.

As a result of public comments received through scoping meetings and in other venues, PCWCD has continued to reformulate their proposal in a sincere attempt to address all concerns. They should be commended for their efforts.

Mr. Chairman, this bill ratifies agreements between the Bureau of Reclamation and PCWCD, the State, and the Counties. It has the support of the Governor of Nevada, the Humboldt River Basin Water Authority, and the Counties of Lander and Pershing.

The Department of the Interior and BOR are on record as supporters of transferring title to local entities.

This is the third and hopefully final attempt to obtain title to Humboldt Project facilities since it repaid its original project loan back in 1978. PCWCD operates and maintains the Project and its constituents are the sole beneficiaries of the Project. Local control is the logical choice.

This Subcommittee has reviewed a number of title transfer bills in the past. I believe that this legislation is consistent with other bills we have favorably reviewed already and I urge expeditious consideration in the House this year.

Again, Mr. Chairman, thank you for working this bill into your Subcommittee's very busy schedule.

I will be happy to address any of the Committee's concerns.

Mr. CALVERT. I thank the gentleman.

At this time I would like to ask unanimous consent that Congressman Gibbons be given permission to sit on the dais.

Without objection, it is so ordered.

Mr. Doggett, after our questions with the Mayor, if he chooses to come sit on the dais, you certainly may also. Without objection, it is so ordered.

First our questions for the Mayor and then we will introduce Commissioner Keys.

I am certainly very interested, Mayor, in Title XVI, being from California. We have probably more than any other State has successfully used Title XVI. There is a very similar situation in my part of Southern California, an arid region, not enough water, and certainly we feel the effects of a long-term drought.

I hope we have a solution soon, but not the same way you all are finding a solution. Hopefully, just a little bit of rain would do just fine.

I understand your interest. I was going to ask, have you or the City of Austin worked with the Bureau of Reclamation before on this type of program?

Mr. GARCIA. We have a very good relationship with the regional office and intend to continue working with them. It is enormously important for us to have that kind of partnership because we are in it for the long term.

If we are to build a sustainable community, we need to do this. We need to do it not just to make it sustainable, but also to keep the rates for our ratepayers down. We don't need to be building any more water treatment plans to provide water that can be supplied by the wastewater treatment plants.

Like I said, this fourth treatment plant will be built in an environmental sensitive area. We don't want to do that with that tremendous cost and we don't think it is in our best interest.

So, we hope to continue working with the Bureau and strengthening our partnership, yes.

Mr. CALVERT. I appreciate that. I know my friend, Mr. Gibbons, to my right probably I should say the State with the most success in water reclamation is the State of Nevada, even though when you go to Las Vegas and you see the Bellagio Hotel and all the wonderful water features there, they are using recycled water and they do it very well.

Mr. GIBBONS. Mr. Chairman, in Nevada we have enough whiskey for drinking, but water is for fighting.

Mr. CALVERT. That quote started with Mark Twain in California. We understand that very well.

Mr. GIBBONS. He was a resident of Nevada.

Mr. CALVERT. He was a resident of California, too, for a while. The Indians wouldn't let him in in those days.

Are there any other questions for the Mayor?

There are none. You have a very good project here. Certainly, I think most of us from the West are very supportive of water reclamation projects. So, we wish you well. If you would like to stay to listen to the Commissioner, I'm sure he might have some things to say you might want to have your Member of Congress ask questions about.

Now, we are going to recognize John W. Keys, our Commissioner, Bureau of Reclamation, who will have comments on all three bills before us today.

Commissioner, since you are going to testify on all three bills, normally we would limit your statement to 5 minutes, but if you take a little extra time that's OK. We appreciate your coming to visit our Committee and with that, Commissioner, you are recognized.

STATEMENT OF JOHN W. KEYS, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF AGRICULTURE.

Mr. KEYS. Mr. Chairman, it is a pleasure to be here. Is there any particular order you would like to address these?

Mr. CALVERT. No. You can just take them as you see them.

Mr. KEYS. Mr. Chairman, it is a pleasure to be here today to offer testimony on H.R. 4708 first, the Proposed Fremont-Madison Conveyance Act. H.R. 4708 would transfer title to the Cross Cut Diversion Dam and Canal, the Teton Exchange Wells and the Idaho Department of Water Resources Permit 22-7022 for those wells to the Fremont-Madison Irrigation District.

The Cross Cut Diversion Dam and Canal are paid out facilities with their irrigation assessments completed in 1979. The legislation provides for the payment for the Teton Exchange Wells and

the Idaho permit for those wells currently valued at about$278,000, based upon an outstanding balance to be paid by the district.

Mr. Chairman, the Bureau of Reclamation has worked closely with the Fremont-Madison Irrigation District over the last few years to work through the issues involved with the title transfer for the facilities and the permit. I personally was working with them when I was regional Director there in reclamation and my people have worked with them very closely since.

We are very close to agreement on all of the issues in 4708. While there are still a couple of those to solve, the department could support H.R. 4708 with a couple of technical modifications.

First, Section 3(a) of 4708 provides or requires the district to pay the administrative costs of the title transfer process and related activities, including the costs of any National Environmental Policy Act issues that have to be covered.

Section 3(a) also limits the district's contributions toward this administration cost to $40,000. In September 2001, Reclamation and the District signed a Memorandum of Agreement, which called for each party to pay 50 percent of costs associated with applicable procedural requirements of NEPA, ESA, and Endangered SpeciesAct and other State and Federal laws.

We agree that it is appropriate to share the cost of compliance with all of these laws. The MOA also calls for the District to pay for applicable surveys, title searches, facility inspections and development of a quitclaim deed or other legal documents for that transfer.

Section 3(a) is not clear on which of those activities are covered or subject to the $40,000 limitation. We believe that the Memoranda of Agreement signed by both of us should be honored and the limitation eliminated.

Section 2(a) of H.R. 4708 requires that the title transfer be completed no later than the termination date of the MOA, which is September 13, 2003.

Section 2(d)(1) states the transfer be completed as soon as practicable. We would appreciate some clarification of which of those we should live by.

Mr. Chairman, we have worked closely with the District to complete this title transfer with the technical modifications necessary mentioned. The department and Reclamation could support passage of H.R. 4708.

At this time, I would like to take the opportunity to compliment District Board Chairman Jeff Raybould and their Executive Director, Dale Swenson for their good work and commitment to working with us and with other parties in the basin to do the transfer properly.

I would also like to thank Congress Simpson, Congressman Otter, Senator Crapo, Senator Craig and their staffs for their cooperation in this thing. It has been excellent working with all of them.

That concludes the statement on H.R. 4708.

[The prepared statement of Mr. Keys on H.R. 4708 follows:]

Statement of John W. Keys, III, Commissioner, Bureau of Reclamation, U.S. Department of the Interior

Mr. Chairman, my name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on H.R. 4708, the Fremont Madison Conveyance Act, which directs the Secretary of the Interior to transfer title of certain Federal owned facilities, lands and permits to the Fremont–Madison Irrigation District (District).

The facilities under consideration for transfer in H.R. 4708 the Cross Cut Diversion Dam and Canal, the Teton Exchange Wells and the Idaho Department of Water Resources permit number 22–7022 are associated with the Upper Snake River Division, Minidoka Project and the Lower Teton Division, Teton Basin Project, respectively, and are located near Rexburg in eastern Idaho. The facilities under consideration for transfer are used exclusively for irrigation purposes and have always been operated and maintained by the District. While the Cross Cut Diversion Dam and Canal are paid-out by the District, the legislation provides for a payment for the Teton Exchange Wells, which are currently valued at $277,961, based upon the outstanding balance to be repaid by the District.

Mr. Chairman, over the last few years, we have been working very closely with the District and numerous other local organizations including the Henry's Fork Foundation, a local conservation and sportsmen's organization, to work through the issues on the title transfer for the features, lands and water rights associated with this project. Over the last year, we have made great progress in narrowing the scope of the transfer to meet the District's needs, protect the interests of the other stakeholders, and ensure that the transfer does not negatively impact downstream contractors of the integrated Snake River system. While I believe that we are very close to agreement on this legislation, H.R. 4708, as drafted, creates some problems and concerns, which I will address in my statement. However, with the technical modifications outlined below, the Department could support H.R. 4708.

Background

Individuals, organizations, Federal, States and local agencies interested in the Henry's Fork of the Snake River have a very impressive history of collaboration and cooperation through the Henry's Fork Watershed Council (Council) a grassroots community forum whose goal is to encourage management of the Henry's Fork Basin in a socially, economic and environmentally sustainable manner. When the District first raised the idea of title transfer, the Council dedicated its March, 1999, meeting to this issue. This included presentations by the District and Reclamation and fostered open discussions with any and all groups or individuals who had comments or concerns.

Subsequently, the District and the Henry's Fork Foundation, along with the Land and Water Fund of the Rockies engaged in a series of negotiations to develop a mutually acceptable proposal. While that process did not result in a concrete proposal, it did lead to some consensus on the facilities to be transferred that are included in this legislation. It also led to the removal of the Grassy Lake and Island Park dams from the transfer proposal about which many local organizations had serious concerns.

Accordingly, in September, 2001, Reclamation and the District signed a memorandum of agreement (Contract No. 1425–01–10–3310) (MOA) which expires on September 13, 2003, and is referenced in H.R. 4708. This agreement lists the facilities to be transferred, delineates the respective responsibilities to complete activities necessary for the title transfer such as arrangements for the sharing of costs, valuation of the facilities to be transferred, and responsibilities associated with compliance with Federal and State laws.

We have, however, identified some concerns and technical issues which I would like to raise for the Committee's consideration:

Cost Share Requirements

First, Section 3(a) of H.R. 4708 requires the District to pay the administrative costs of the conveyance and related activities, including the costs of any review required under NEPA, but limits their contribution to no more than $40,000. This language is both unclear as to what is or is not included as "costs," nor is it in accordance with the MOA that FMID should pay the 50% of costs associated with applicable procedural requirements of the NEPA, ESA, and other applicable state and Federal laws required.

We agree that it is appropriate to share the costs of compliance with Federal laws, as was agreed upon in the MOA. We also believe that the recipients of title transfer should cover those costs that are associated with the real estate transaction resulting from the title transfer. In this vein, the MOA states that the District would pay

for applicable activities such as surveys, title searches, facility inspections, and development of a quit claim deed or other legal documents necessary for completing the transfer. Unfortunately, H.R. 4708, as drafted, is unclear on this point.

To address these ambiguities, we suggest that H.R. 4708 reference the MOA's treatment of costs or reiterate the manner in which the distribution of costs were addressed in the MOA. Given the amount of work that went into developing the MOA, its applicability under H.R. 4708 for implementation of the transfer, and the fact that it has been agreed upon and signed by representatives of both Reclamation and the District, referencing the MOA on these issues would provide an equitable, clear and consistent resolution to our concern.

Conveyance Deadline and Report

Section 2(a) of H.R. 4708 requires that the title transfer be completed no later than the termination date of the MOA (September 13, 2003). However, Section 2 states that the transfer be completed "as soon as practicable after the date of enactment and in accordance with all applicable law." These provisions appear inconsistent as Section 2(a) designates a required date certain for completion, while Section 2(d)(1) states that it be completed "as soon as practicable,"

Further, Section 2(d)(2) requires that the Secretary submit a report to Congress within one year of the date of enactment if the transfer has not been completed in that time frame. This provision seems somewhat arbitrary and could potentially delay the transfer from the September 13, target date while the report is being prepared.

To address our concerns with inconsistent deadlines and reporting requirements, I suggest that the legislation be modified to require that the transfer be completed "as soon as practicable after the date of enactment" and the reporting requirement in H.R. 4708 be modified to require a report to Congress be completed only if the title has not been transferred by September 13, 2003 the expiration date of MOA referenced in the legislation. In this manner, the requirements are made clear and consistent, and no report to Congress would be necessary if the facilities are transferred by the MOA's expiration date.

Conclusion

In conclusion, Mr. Chairman, I believe we have worked closely with the District and a great deal of progress has been made. I would like to take this opportunity to compliment District Board Chairman Jeff Raybould and their Executive Director, Dale Swenson, for their diligence and commitment in working with us and the other interested entities of eastern Idaho on the issues surrounding this transfer. I would also like to thank Congressman Simpson, Congressman Otter and their staffs for their cooperation. With the technical modifications mentioned above, I believe the Department could support passage of this legislation.

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

STATEMENT OF JOHN W. KEYS, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF AGRICULTURE

Mr. KEYS. Mr. Chairman, H.R. 4739 would authorize the Secretary of the Interior to participate in the planning, design and construction of and land acquisition for the City of Austin, Texas Water Reclamation Project. This work would be accomplished under Title XVI of the Reclamation Project's Authorization and Adjustment Act or Public Law 102-575.

Mr. Chairman, to date, 25 specific projects have been authorized under the Title XVI Program. Congress has provided funding to plan or construct 19 of these 25 authorized projects.

In addition, under the general authority of Title XVI, funding has been provided to identified and investigate 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 project in the absence of

feasibility studies to determine whether these projects warrant Federal funding.

The Department also opposes H.R. 4739 because authorizing new construction projects under Title XVI is likely to place an undue burden on Reclamation's already tight budget. Today we have been unable to provide full funding amounts to all but four of the water reclamation and reuses projects presently authorized by Title XVI.

At current funding levels, it will take Reclamation more than 10 years to complete funding of the 25 already-authorized projects.

Finally, the Department opposes enactment of H.R. 4739 provision authorizing land acquisition prior to completion of a feasibility study. Federal contributions for land acquisition should await the outcome of a feasibility study.

Mr. Chairman, it should be noted that Reclamation recently began working with the City of Austin on an appraisal study of this project. The appraisal study should be completed in about a year. A feasibility study, if recommended as a result of the appraisal study, has authority under the existing provisions of Title XVI of P.L. 102–575.

We recommend continuing this cooperative study to prepare the necessary analysis and evaluations of the project prior to Congressional authorization of construction for the project.

In summary, Interior strongly encourages local and water recycling efforts and is engaged in numerous water reuse and recycling projects around the West. However, as stated, the department cannot at this time support authorizing the new construction request.

[The prepared statement of Mr. Keys on H.R. 4739 follows:]

Statement of John Keys, III, Commissioner, Bureau of Reclamation, U.S. Department of the Interior

My name is John Keys and I am the Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to present the views of the Department of the Interior (Department) on H.R. 4739, concerning the City of Austin water reclamation project in the State of Texas.

H.R. 4739 would authorize the Secretary of the Interior (Secretary) to participate in the design, planning, and construction of, and land acquisition for, the City of Austin water reclamation project in the State of Texas. The authority provided in H.R. 4739 is an amendment to the Reclamation Projects Authorization and Adjustment Act, (Public Law 102–575), which limits the Federal share of project costs to 25 percent of the total project costs and restricts the Secretary from providing funding for the operation and maintenance of this project. While the Department strongly encourages local water recycling efforts, 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 fiscal year 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 P.L. 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.

It should be noted that the Department, through the Bureau of Reclamation, has recently begun working with the City of Austin on an appraisal study of this proposed project. The appraisal study should be completed in less than one year from now. A feasibility study, if recommended as a result of the appraisal, has authority under the existing provisions of P.L. 102–575, Title XVI and would also be contingent upon funding availability. We recommend continuing these cooperative studies to prepare the necessary analyses and evaluations of the project prior to Congressional authorization for construction.

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 H.R. 4739 authorizing land acquisition prior to completion of a feasibility study. Federal contributions for land acquisition should await the outcome of a feasibility study.

In summary, the Department strongly encourages local water recycling efforts, and is engaged in numerous water reuse and recycling projects around the West. In fact, the Department has recently begun an appraisal study of the project described in H.R. 4739. However, for the reasons provided above, the Department cannot, at this time, support authorizing this new construction request.

Thank you for the opportunity to comment on H.R. 4739. This concludes my statement and I would be happy to answer any questions.

STATEMENT OF JOHN W. KEYS, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF AGRICULTURE

Mr. KEYS. Mr. Chairman, H.R. 5039, the Humboldt Project Conveyance Act would transfer title to Rye Patch Dam and Reservoir and all acquired lands under and adjacent to the dam and reservoir and all acquired lands below the high water mark to the Pershing County Water Conservation District. The District has agreed to maintain a 3,000-acre foot minimum pool in the reservoir for maintenance and fisheries protection.

Withdrawn lands above the high water mark in the vicinity of the reservoir would be transferred to the State of Nevada to be managed for recreation, wildlife habitat, wetlands and resource conservation.

Approximately 23,000 acres of land in the Battle Mountain Community Pasture will be transferred the District, while about 1100 acres of the Battle Mountain Community pasture would be transferred to Lander Certify.

Finally, one and a half sections or 960 acres of land around Derby Airport which Pershing County has leased from Reclamation would be transferred to the county.

Humboldt Project Facilities are paid out; the payments being completed in 1978. Their safety of dams obligation for Rye Patch Dam repairs will be paid out later this year or next year.

Mr. Chairman, let me commend the district for the extensive amount of work that they have done to develop some very important and complicated agreements between the many parties involved. However, while the department supports enacting legislation to enable these agreements to be implemented, we cannot support H.R. 5039 as introduced.

I would hasten to add that we think with a few technical corrections we could support that bill. In handling details for the transfer of the Humboldt Project facilities, Reclamation in Pershing County Water Conservation District have finalized or are finalizing a Memorandum of Agreement to articulate rules and responsibilities for completing all of the necessary activities, necessary for this transfer.

A number of problems with H.R. 5039 must be addressed for Interior to support the legislation. First, Section 4(F) limits the amount of administrative costs and costs associated withNational Environmental Policy Act compliance.

Under this section the District, Lander County and Pershing County costs are limited to $40,000. This amount is not based upon any estimate of costs that we are aware of for this project. We recommend that any cost limitation require the United States and the receivers of the transfer to each pay 50 percent of the total cost.

Section 4(g) states that the State of Nevada shall not be responsible for any payments or cost under this section. Interior feels that the State should pay for these lands that they will receive, in other words, fair market value, and that the States should share in paying the administrative and NEPA costs for the title transfer.

In our written comments we have also covered some concerns that we have with conveyance deadlines, a report to Congress on the transfer and future obligations and benefits to the Humboldt Project and the United States.

Mr. Chairman, the transfer of the Humboldt Project Lands and the Project facilities to Pershing County Water Conservation is a good transfer. We look forward to working with them to complete this process.

This concludes my oral statements. I would certainly be glad to answer any questions you might have on any of the three.

[The prepared statement of Mr. Keys on H.R. 5039 follows:]

Statement of John W. Keys, III, Commissioner, Bureau of Reclamation, U.S. Department of the Interior

Mr. Chairman, my name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on H.R.5039, the Humboldt Project Conveyance Act, which directs the Secretary of the Interior to transfer title of the Federal owned facilities, and lands associated with the Humboldt project to the Pershing County Water Conservation District (District), Pershing County, NV, Lander County, NV and the State of Nevada (State) pursuant to a series of agreements reached between these entities.

First, let me commend the District for the extensive amount of work that they have done to develop some very important and complicated agreements between dif-

ferent parties. However, while the Department supports enacting legislation to enable these agreements to be implemented, we cannot support H.R. 5039 as introduced.

Background

The Humboldt Project is located in northwestern Nevada on the Humboldt River and was authorized in 1933. Construction of Rye Patch Dam, the centerpiece of the Humboldt project was completed in 1936. In 1976, it was raised to 78 feet high which expanded its capacity to 213,000 acre feet of water. Rye Patch Reservoir is 21 miles long stretching from Rye Patch dam north to the Callahan Bridge near the town of Imlay. The Pershing County Water Conservation District assumed full operations and maintenance responsibility for the project in 1941 and they have managed it ever since.

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The Humboldt Project Conveyance Act proposes to transfer title to all the lands and facilities associated with the Humboldt Project in Nevada. The terms, conditions and details of the transfer are spelled out in a series of agreements including a Memorandum of Agreement (MOA) between the District and Lander County; a Conceptual Agreement between the District and the State; and a Letter of Agreement between the District and Pershing County. In addition, the legislation references a MOA between the District and Reclamation, which is not yet completed and is still being finalized. This MOA will articulate the respective roles and responsibilities for completing all the necessary or required steps including responsibilities for compliance with the National Environmental Policy Act (NEPA) and other applicable Federal and state laws, and responsibilities for other activities necessary to complete the transfer.

The agreements referenced in H.R. 5039, if authorized for implementation, would transfer the Dam, reservoir, and all acquired lands under and adjacent to the dam and reservoir and all acquired lands below the high water mark to the District. In addition, the District will maintain a 3,000 acre foot minimum pool in Rye Patch Reservoir for maintenance and fisheries protection.

Withdrawn lands above the high water mark in the vicinity of the reservoir would be transferred to the State of Nevada to be managed for recreation, wildlife habitat, wetlands and resource conservation.

Approximately 23,000 acres of land in the Battle Mountain Community Pasture (BMCP) will be transferred to the District, while approximately 1,100 acres of BMCP land in the vicinity of the town of Battle Mountain will be transferred to Lander County. Finally, one and one-half sections of land around Derby Airport, which Pershing County has leased from Reclamation, will be transferred to the County.

Concerns with H.R. 5039

While we support implementation of the terms and conditions of the transfer, as embodied in the various agreements summarized above, there are a number of problems with H.R. 5039, as presently drafted.

Cost Limitations

While H.R. 5039 clearly addresses many of the cost-related issues, there are two areas of significant concern on this matter:

1) Section 4(f) limits the amount of administrative costs and costs associated with compliance with the National Environmental Policy Act (NEPA). Under this section, the District, Lander County and Pershing County costs are limited to $40,000. The $40,000 figure is not based upon any estimate of costs that we are aware of for this project. The entities receiving title to the lands and facilities of the Humboldt Project are receiving the benefits of title and should share in the actual costs associated with the transfer. In order to address this concern, I recommend that any cost limitation should reflect that the United States pays no more than 50 percent of the total costs.

2) Section 4(g) states that the State of Nevada shall not be responsible for any payments or costs under this section. This would include payment for the withdrawn lands (Section 4(b)), and, if a value is determined by an appraisal—administrative costs (Section 4(c)), costs associated with compliance with NEPA (Section 4(d)), and real estate costs, such as the cost of boundary surveys (Section 4(e)).

The Department has three concerns associated with Section 4(g). First, since the State of Nevada is receiving title to withdrawn lands, it is appropriate they be expected to pay for these lands. These are public domain lands that were withdrawn for the construction and operation of the Project whose value was not incorporated into the District's repayment obligation, and thus, have never been paid for. It is

Reclamation's policy, that such lands be professionally appraised pursuant to Federal standards of appraisals, and should reflect fair market value. While in many cases lands that are below the water mark, underneath dams and other facilities, and those reserved for recreation, wetlands, and wildlife management are appraised at no or little value, they are still subject to an independent appraisal. It is important that such an appraisal take place to protect the financial interests of the United States.

Second, since the State is receiving these lands, they should share equally in the NEPA and administrative costs and should bear the real estate costs associated with these lands as is proposed for all the other recipients of lands and facilities in this bill.

Third, the language of Section 4(g) is very unclear as to how the State's share of the costs associated with this Section would otherwise be distributed since sections 4(c) and 4(e) require payment in equal shares and Section 4(d) requires payment of the real estate transaction costs by the "entity receiving title." Given this language, several important questions arise. Are the State's share of otherwise equally shared costs distributed to all of the remaining parties, or are these costs to be absorbed by Reclamation? Either interpretation results in an inequitable distribution of costs and will create confusion, controversy, and inevitably a delay in implementation.

Public Benefits or Windfall Profits

As presently drafted, Section 4(g) requires that the State manage the lands transferred to them for recreation, wildlife habitat, wetlands or resource conservation. However, it goes on to suggest that the State could change that use and then make the "payments pursuant to the Act" or the lands could revert to the District who could then change the use as it sees fit. The Department maintains the legislation should ensure that the public benefits are preserved regardless of whether they are managed by the State, as currently envisioned in H.R. 5039 and in the Letter of Conceptual Agreement between the County and the State. However, if ownership of the lands is sold by the State or reverts to the District and is then sold, the United States should share in any financial windfall that is received. We further note that wile the legislation in its current form appears to contemplate the preparation of a NEPA analysis of title transfer, the suggestion in Section 4(g) that the use of lands could change after transfer greatly complicates the preparation of an analysis of potential environmental impacts (beneficial or adverse) under NEPA, and may make invite legal challenge to such an analysis.

In order to address the above concerns, we recommend that Section 4(g) be deleted.

Conveyance Deadlines and Report

The next area of concern is related to the arbitrary and somewhat confusing deadlines proposed in H.R. 5039.

Section 3(a) requires the Secretary to convey title to the lands and facilities no later than two years after enactment. While it is our hope that all of the steps and agreements required under this legislation are completed in that time, two years is an arbitrary and potentially unrealistic timeframe.

In most cases where title transfer has been completed quickly, a good deal of the necessary work for the transfer such as preparation of the environmental documentation (NEPA compliance), cultural resources, hazardous materials and boundary surveys, preparation of legal documentation or other actions that are required, had been completed, or at least was initiated, prior to the legislative process. While the District has made a great deal of progress in completing the MOAs and other agreements, additional steps necessary have not yet begun, nor have there been extensive discussions about what might be required. This timetable, together with the funding limitations previously mentioned, could also create significant obstacles to the preparation of a NEPA analysis, and may also invite further legal challenges. This makes it difficult to meet the proposed two-year goal.

Further, Section 3(c) requires that Secretary submit a report to Congress within 18 months of enactment if the conveyance has not been completed. This time frame also seems arbitrary and could actually delay the transfer, since resources needed to complete the transfer would be drawn away to prepare the report.

To address our concerns, I suggest the legislation be modified to require the transfer be completed "as soon as practicable after the date of enactment" and then require a report to Congress as to the status of the conveyance, any obstacles to completion of conveyance and the anticipated date of conveyance, if the transfer is not completed in two years. This has been the language successfully used in other

authorized title transfers to both ensure accountability and to keep Reclamation and the other entities moving forward in a positive manner.

Future Obligations and Benefits

The Department is also concerned that the legislation does not clearly articulate the obligations and benefits that will exist and be available after the transfer.

One of the primary benefits to the entities receiving title is the ability to operate independently of Reclamation law. Conversely, one of the primary benefits of title transfer to Reclamation is to limit its liability and any financial exposure as it relates to the projects to be transferred. In most of the transfers that have been enacted into law, there has been a provision clearly articulating that the project being transferred is no longer a Federal project, that the recipients of title are no longer subject to Reclamation law and that they are no longer eligible for Reclamation programs that are available to Federal contractors.

Such a provision should be added to H.R. 5039 to clarify this separation and to clearly articulate the understanding of both parties as to what is expected in the future in this regard.

In addition, Section 8 of the bill provides that any conveyance would not abrogate any provision of any contract executed by the United States relating to any person's right to use water. This raises a significant issue that may require additional clarification: If the right of water users to use Humboldt Project water is based on water right contracts entered into with the United States, the obligations of the United States vis-á-vis the delivery of project water will need to be clarified in light of the proposed de-federalization of the Project. Reclamation cannot reasonably be required to maintain its obligations to deliver project water once title, management, and operation of Humboldt Project facilities passes out of Federal ownership and control.

Conclusion

In closing, Mr. Chairman, let me commend the District, Lander County, Pershing County, and the State for their hard work to come to agreement on terms of the transfer that are embodied in the agreements referenced in the legislation. With the technical modification mentioned above, I believe the Department could support passage of this legislation.

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

Mr. CALVERT. Thank you, Commissioner. Please explain what you are doing at the Bureau to expedite and encourage transfers to take place?

Mr. KEYS. Mr. Chairman, we have a process together that we work very closely with any irrigation district that wants to take title to their project. We encourage every irrigation district to look at their facilities to see if it would be advantageous to them to do that.

We have a framework that starts working which them on a ground level to evaluate, to assess, to see all the facilities that need to be transferred and it leads all the way up to Congressional authorization.

Mr. CALVERT. Now, you don't see any issues in the two transfer bills that are being recommended today that would prohibit such a transfer from taking place, do you?

Mr. KEYS. Mr. Chairman, on the contrary, we think these have been done in the correct way. With a few changes, we could certainly support both of them.

Mr. CALVERT. I would certainly encourage all the parties to work with you to expedite this where we can get this to full Committee as soon as possible so we can get these bills accomplished. I am sure that would satisfy both of the Members here.

On the water reclamation project, as you know, my interest in water reclamation and certainly the City of Austin, as I mentioned earlier, that we have a similar climate, in spite of what has happened in Texas recently.

These water reclamation projects throughout the West are necessary. I would ask you, what is the total amount of unfunded Title XVI projects that you have right now that have been authorized?

Mr. KEYS. Mr. Chairman, it is right around $100 million.

Mr. CALVERT. Obviously, from my perspective and I think for the West, there was a story this weekend about New Mexico and what is happening in that State with the lack of water. Certainly, as you know, throughout the West, certainly Nevada, certainly Arizona, I can't think of one State in the West that is not interested in a reclamation project, and certainly now in the Southwest.

We need to probably work together to get additional funds available for these reclamation projects.

Mr. KEYS. Mr. Chairman, I said that the total authorized up to now is over $100 million. To be specific, it is $340 million.

Mr. CALVERT. That is being a lot more specific.

Mr. KEYS. With the right kind of funding, it would take us somewhere between 10 and 20 years to get those that are already authorized done.

Mr. CALVERT. And it is absolutely necessary. I will tell you, as you well know again, the difference we are having in California and throughout the West.

What have you done to work with the City of Austin on this project?

Mr. KEYS. Mr. Chairman, we have an area office in Austin. They have recently begun an appraisal level study of the wastewater recycling project that this bill would authorize, but it is at an appraisal level. Appraisal level study is to take a quick look to see if the project has merit and should go ahead.

With the right recommendation from there, it goes to a feasibility study. We have authority under Title XVI to go ahead with the feasibility study and we have the funds to do that. A year from now when that appraisal level study is done, if it recommends going into the feasibility, we can go right on into the feasibility study without further authorization.

Then the feasibility study would probably take another year to a year and a half and then we would come back for authorization for construction.

Mr. CALVERT. I just want to make one final point. As you know, we have a bill that we hope to pass on the floor, CalFed, soon. I have talked with Senator Domenici and others in the West that are very interested in doing a western water bill for needed western water projects.

When I say "the west," I certainly mean the southwest and throughout the United States. It is a considerable number. I know that in these times of budget austerity that we are concerned about that, but these types of projects are absolutely necessary for the economic vitality of this nation.

So, we will hopefully be able to help you out on the funding side of this in the future.

Mr. KEYS. Mr. Chairman, we would be more than happy and would look forward to working with you on that. The realities of the reclamations budget within Interior is that it is fairly flat. It being flat, we still operate and maintain our projects, do the stuff to keep everything up.

We have the Title XVI portion of that. That, in most cases, is just a pass-through. We like to do the feasibility studies ahead of time with the cities and so forth, so that we can be part of it to be sure that that money is getting its best use. We would certainly be willing to work with you to do that.

Mr. CALVERT. I thank the gentleman.

Mr. Doggett.

Mr. DOGGETT. Thank you, Mr. Chairman. Thank you for your testimony, Mr. Keys. It is my understanding that your concern about funding levels has caused you to raise these concerns about other pieces of legislation like this in the past. You are not singling out the City of Austin or its project. This is a generalized concern that you have, isn't that correct?

Mr. KEYS. Mr. Chairman, Mr. Doggett, that is exactly right. We have testified consistently since I have been in office on that very issue.

Mr. DOGGETT. And we appreciate the cooperation we have already gotten from your staff in Austin, as well as here. I just want, for the record, to make it clear that we are not trying to get the cart ahead of the horse here. We recognize that the appraisal and the feasibility study have to occur first.

Since three of every four dollars that would be used for this project will come from City of Austin taxpayers and ratepayers, we are not about to embark on construction or anything unless the appraisal and feasibility study suggests those are the way to go.

Our goal with this legislation was to get our legislation and authorization for all of this in place so that given the amount of competition from around the country, we would be in line in the event that working cooperatively with you the appraisal and feasibility study suggest, as we believe they will, that they are big advantages to the city, certainly to our technology industry where we think that the average semiconductor plant, say like Samsung in Austin, might save $1 million or $1.5 million by using this reclaimed wastewater at lower rates as well as for our parks and our school district and the like, that we can all be helped.

So, hopefully, we can continue to work together. I would like to see this legislation approved to expedite that process, but we realize it is going to be a long term project and we need to work with you and the Committee to get the funding necessary to accomplish this objective here and in other parts of the country.

Thank you, Mr. Chairman.

Mr. CALVERT. Thanks, gentlemen.

Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman. First of all, I would agree with your analysis that the bill as introduced has some flaws in it that need to be worked out, certainly with regard to cost-sharing issues. I think we can work those out between both the Pershing County Water Conservation District counties, et cetera.

I suppose working with you we could expect to have within the next couple of weeks, if we work out the agreement, work out the concerns that you have, some assurance that we could be back here with a finalized version of this bill once we have worked out those concerns with the bill.

Mr. KEYS. Mr. Chairman, and Mr. Gibbons, we would certainly do that. We feel that the corrections that are necessary are fairly minor to make. They have a big impact, but they are easy to make in the legislation itself.

Mr. GIBBONS. With that, Mr. Chairman, I will yield back the balance of my time and thank the witness and thank you for having me, Bill.

Mr. CALVERT. I thank the gentleman.

Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. Thank you, Mr. Keys, for being here and for your testimony. I appreciate it very much. You have a difficult job to do with limited resources and we appreciate that.

Relative to 4708, there are a couple of issues that you raised, one being the dates, one being mentioned as soon as practicable and the other being September 13, 2003. We can resolve those pretty easily. I think it means as soon as practical before September 13, 2003. That is how I would read that, but we can make that language very clear, I am sure.

The second one was something else dealing with the cap on the amount that the district would have to pay of $40,000, There has been precedents set in other legislation on transfers where they have set the cap on what a district would have to pay. Do you have any idea what those amounts are, if $40,000 would cover it?

Mr. KEYS. Mr. Chairman, Mr. Simpson, the $40,000 figure is a magic figure that floats around Idaho.

Mr. SIMPSON. A lot of magic floats around Idaho.

Mr. KEYS. Yes, the semaphore was not unnoticed there. In working with other districts, we worked out an estimate of what it would take to do the title transfer process in NEPA. In another case half of that was about $40,000. That seems to be a magic number right now.

What I would tell you is that I don't anticipate a lot of extra cost, but the total is more than $80,000. Certainly we have no source of funds for more than our half of that share. We would just expect the district to pay their portion of that.

Mr. SIMPSON. When you say "more than $80,000," are we talking $340 million as opposed to $100 million? I am just kidding.

Mr. KEYS. No, sir. I don't have a good estimate for it, but certainly my people would work with Dale Swenson to be sure that that is not excessive.

Mr. SIMPSON. I appreciate it. I thank you for being here today and for your support of the legislation. We will work with you to be sure we can make some adjustments so that all of us can agree on the legislation as it moves forward.

Thank you.

Mr. CALVERT. I thank you the gentleman.

I certainly thank you, Commissioner, for once again coming to our Committee and sharing your time with us.

If there are no further questions, you are excused.

The next panel we have before us is Mr. Jeff Raybould, Chairman, Board of Directors, of the Fremont-Madison Irrigation District; Bennie Hodges, Manager of the Pershing County Water Conservation District; and Steven Malloch, Counsel, Western Water

Project, Trout Unlimited, and I believe he is also testifying on behalf of the Henry's Fork Foundation.

Just to remind the witnesses, we have a 5-minute rule. You will see an indicator. When the yellow light comes on, that means you have 1 minute to close up the statement. When the red light comes one, that is 5 minutes and the time is up. We appreciate your trying to stay within that timeframe so we have time for questions.

With that, Mr. Raybould, you are recognized for 5 minutes.

STATEMENT OF JEFF RAYBOULD, CHAIRMAN, BOARD OF DIRECTORS, FREMONT-MADISON IRRIGATION DISTRICT

Mr. RAYBOULD. Thank you, Mr. Chairman, Members of the Subcommittee. My name is Jeff Raybould, I am the Chairman of the Board of Directors of the Fremont-Madison Irrigation District. I am here to testify in support of H.R. 4708.

Mr. Chairman, Fremont-Madison saw title transfer as an opportunity for the water users in our area to have an increased water supply, to have some modest savings in the operation and maintenance costs of our district and also to have provide better consequence in the river.

Early one when we decided that we wanted to pursue title transfer, we went hand in hand with the Bureau of Reclamation to the Henry's Fork Watershed Council which is an organization of 70 agency and organizations that meet on a regular basis to discuss the needs of the watershed.

We let everyone know what our intentions were. After that we held public meetings so that people could give their input. At the conclusion of this part of the process, the Henry's Fork Foundation came forward and thought that perhaps we could develop a dialog with them on how we might move forward with this transfer and not only enhance our water supply, but help improve the consequence on the Henry's Fork.

They also brought in Bruce Driver of the Land and Water Fund of the Rockies as an advisor to help them chart a course that they thought the environment community would approve of.

All the while this was going on it was not done under the cover of darkness as some have suggested. We give the watershed counsel regular updates. We had a special workshop within the watershed counsel to discuss this specific title transfer proposal.

In the end the Henry's Fork Foundation and the other local stakeholders could not support a transfer of all of our facilities. They were concerned about the ownership of Island Park Reservoir in particular, and also Grassy Lake moving from Federal ownership to local ownership.

So, at this point in time, evaluating all the comments we had obtained over a two to 3 year period and all the discussions we had had with various groups, we decided to limit the scope of the transfer that we would request from the Bureau of Reclamation to their cross-cut diversion dam, the cross-cut canal and the Teton Exchange wells. These items were all on the table to begin with.

There was very little negative comment about the possibility of those being transferred to Fremont-Madison Irrigation. With the input that we had received over this period of time, we decided to

go forward with legislation. We looked at various ways of doing it and have brought this bill, 4708 to you today.

There are some concerns about what might happen if there is additional development of ground water because of this transfer. I know the Department of Water Resources will look at that very closely. Fremont-Madison Irrigation has agreed to put a mitigation plant in place that would mitigate for any impacts from additional development.

We believe that this is in the interest of the watershed. We think that providing more water to our water users undoubtedly will leave more water in the river, more carryover in Island Park Reservoir for use for whatever purposes it might be needed for.

Mr. Chairman, this is a good transfer. We have worked well with the Environmental Committee over the years and would like to have an opportunity to see this legislation move forward.

I thank you for your time and I would be happy to answer any questions you might have.

Mr. CALVERT. I thank the gentlemen.

[The prepared statement of Mr. Raybould follows:]

Statement of Jeff Raybould, Chairman of the Board of Directors, Fremont–Madison Irrigation District

Mr. Chairman, Members of the Subcommittee, I am Jeff Raybould, Chairman of the Board of Directors of the Fremont–Madison Irrigation District (FMID) in Idaho. I am here to testify in support of H.R. 4708.

This legislation would require the Secretary of the Interior to convey certain facilities to our District pursuant to the Memorandum of Agreement with the Bureau of Reclamation. These facilities include: the Cross Cut Diversion Dam, the Cross Cut Canal and the Teton Exchange Wells.

FMID was created under the laws of the State of Idaho in 1935 to enter into a repayment contract with the United States Bureau of Reclamation for the construction of Island Park Dam, Grassy Lake Dam and the Cross Cut Diversion Dam and Canal. The forty year repayment contract was paid out in 1979 by the spaceholders of FMID.

FMID provides a supplemental water supply to approximately 1,500 water users irrigating approximately 200,000 acres associated with the original Island Park and Grassy Lake projects as well as the failed Teton Dam project. Forty canal companies existed prior to the creation of FMID. The canal companies supply the natural flow water (primary water supply) to lands of their stockholders. They also conduct their own operation and maintenance. Most of the lands served by FMID are also lands of the canal companies. The FMID uses these canal companies to deliver storage water.

In 1993, FMID and the Henry's Fork Foundation, a local environmental group, helped form the Henry's Fork Watershed Council which is a grassroots community forum that uses a non-adversarial, consensus-based approach to problem solving and conflict resolution among citizens, scientists, and agencies with varied perspectives.

FMID originally submitted a resolution to the Bureau of Reclamation, requesting transfer of title from Reclamation to FMID of Island Park Dam, Grassy Lake Dam, Cross Cut Dam and Canal and the Teton wells. FMID worked closely with the Henry's Fork Foundation to develop a consensus on how title for all these facilities could be transferred. In the course of this effort, there was no opposition to title transfer of the Cross Cut Dam and Canal and the Teton wells from any representative of the Watershed Council, including the Henry's Fork Foundation and the Greater Yellowstone Coalition. As a result of these consultative discussions, FMID has decided at this time to only go forward with seeking title to the Cross Cut Dam and Canal and the Teton wells.

The Cross Cut Dam is located on Henry's Fork of the Snake River which diverts water into the Last Chance and Cross Cut Canals. It is a concrete gravity weir with a structural height of 17 feet and a total length of 457 feet. It was completed in 1938. The Cross Cut Canal begins at the Cross Cut Dam. The canal is approximately 7 miles long with a capacity of 600 cubic feet/second (cfs) at the head.

The canal diverts storage water from the Henry's Fork near Chester and conveys it to the Teton River. In addition to conveying storage water to users on the Teton River, the canal also conveys natural flow water to some of the lands within the Fall River Irrigation Company system. A portion of the Cross Cut Canal was constructed through the already existing Fall River Canal. FMID has operated and maintained the canal since it was built. FMID and Fall River jointly employ a canal manager to address operation and maintenance needs.

Five Teton Exchange Wells were constructed by the Bureau of Reclamation in the early 1970's as part of the Lower Teton Division. They were designed to provide groundwater in exchange for water storage in Teton Reservoir. Failure of the Teton Dam in June, 1976 made the constructed wells the only supplemental water source available to irrigate the lands affected by the Teton Dam failure.

In 1977, FMID and the Bureau entered into a contract to allow the use of the wells as a backup water supply in drought years. This contract provides for the use of wells, pumps, motors and appurtenant facilities over a 25 year period.

Water from the five wells is pumped into the lower Henry's Fork system to augment supplemental irrigation water supply for FMID in dry years. FMID pays for all operation, maintenance and replacement costs.

FMID has conducted extensive outreach with local entities in response to the proposed title transfer and we will continue to do so as the process moves forward. We would like to address three concerns that have recently been raised by local environmentalists:

(1) First, the only facilities authorized for transfer are the Cross Cut Dam and Canal and the Teton Wells. Island Park and Grassy Lake Dams are not included.

(2) Second, it has been suggested that additional conservation flows be designated for the Henry's Fork. This should not be a condition for title transfer, but we will continue to work with all local stakeholders to address this issue.

(3) Third, the Secretary is required to complete all actions as required under the National Environmental Policy Act. At the request of local environmental groups, the Bureau of Reclamation has already initiated this process. The ultimate level of review will be determined in accordance with this law.

This concludes my remarks. Thank you for allowing me to appear before your Subcommittee today. I would be pleased to answer any questions you might have.

Mr. CALVERT. Our next witness is Mr. Hodges, Pershing Water Conservation District. You are recognized for 5 minutes.

STATEMENT OF BENNIE HODGES, MANAGER, PERSHING COUNTY WATER CONSERVATION DISTRICT

Mr. HODGES. Mr. Chairman and Members of the Subcommittee, I am the manager of the Pershing County Water Conservation District and with me today I have fellow Board member, Bob Gibson.

We are here in support of H.R. 5039, the Humboldt Project Conveyance Act. This legislation will require the Secretary of the Interior to convey facilities to our district pursuant to agreements with the Bureau of Reclamation, Pershing County, Lander County and the State of Nevada.

To fully understand this, this is a kind of complex project. I have to kind of go back and give just a little bit of an overview on this on how this and how this came about. In the late 1920's, the irrigators in the Lovelock Valley, which is about 90 miles east of Reno, realized that being on the bottom end of the Humboldt System, the Humboldt River System as an unreliable river system.

They already had two small reservoirs that they were operating off of, but they weren't sufficient. They didn't store a sufficient amount of water for a sustained water supply. So, in the early 1930's they went to the Bureau of Reclamation with a proposal that what is now present day Rye Patch Reservoir, to build a reclamation project there.

The Bureau of Reclamation came to Rye Patch and looked at it and they said, this is a good site. This was work as a good place for a reservoir, but you don't have enough water rights and water-righted ground to pay the construction costs and pay future O&M costs.

So, the members of the irrigation district started working up stream cutting east through Winnemucca and Lander County. They got into Lander County and they bought two ranches up there. They signed the agreement to buy them. They were ranches of 30,000 acres, the Meyalduz and the Philippini Ranch.

They went back to the Bureau of Reclamation and said, with these acquired ranches, do we have enough land and water, mainly water, to justify the construction of a reclamation project? And the Bureau said, yes, they do.

In 1934, contracts were signed that the Bureau would loan the District the money to pay for the ranches and also to build Rye Patch Reservoir. In 1936 Rye Patch Reservoir was completed and in 1978 the repayment on the cost of the private ranches that were purchased and the construction costs of Rye Patch was repaid by the irrigation district.

Now, we have operated and maintained Rye Patch Reservoir since 1941. We have grazed on the two ranches that we purchased through the Bureau of Reclamation. We have grazed our cattle up there since 1953. So, we have operated and maintained our project for quite a long time, as you can see.

The constituents of the district have always felt that especially the acquired lands that are within the project, the acquired lands being the lands that the constituents of the district bought and paid for, they should have title to them.

Starting in 1995, we started working with the Bureau of Reclamation's guidelines and framework for title transfer. In the course of doing that, we have had scoping sessions in Elko County, Lander County, Lovelock, Reno, and Carson City.

Through oral and written testimony, we have issued response and negotiated with the State, Pershing County, Lander County and the Bureau of Reclamation. We feel that we have a win-win situation put together for the State of Nevada, Pershing County and Lander County and many of the other entities involved.

If this legislation is introduced and passed, we will have environmental issues and happenings that do not exist to this day. The State of Nevada would receive over 5800 acres to create a wetlands in the heart of our community pasture.

There would be a 3,000 acre-foot minimum pool for the fisheries at Rye Patch that they don't have today. They would own the ground that the State park sits on at Rye Patch Reservoir now, enabling them to receive increased funding from the Nevada legislature as they have to lease that now. The legislature doesn't like to give them much month on leased ground.

In short, I think this is a very doable project. Some points I would like to leave with the Committee on this is the constituents of the district bought and paid for the withdrawn lands and they have felt that they have always title to them, 100 percent of the cost.

Again, it is a win-win situation for the State of Nevada, and all the local governments involved. If this legislation is passed, it will ensure that agriculture in the Lovelock Valley would exist in the future as it does now. It will also ensure that the State of Nevada receive lands for State parks, a wetlands, and a wildlife management area.

That concludes my statement.

Mr. CALVERT. I thank the gentleman.

[The prepared statement of Mr. Hodges follows:]

Statement of Bennie Hodges, Manager, Pershing County Water Conservation District

Mr. Chairman, Members of the Subcommittee, I am the manager of the Pershing County Water Conservation District (PCWCD). With me today, is PCWCD Board Member Bob Gibson. We are here to testify in support of H.R. 5039, the Humboldt Project Conveyance Act.

This legislation would require the Secretary of the Interior to convey facilities to our District pursuant to various agreements with the United States Bureau of Reclamation (Reclamation), State of Nevada, and the Nevada Counties of Lander and Pershing.

PCWCD is a quasi political agency of the State of Nevada.

1. Brief History of the Humboldt Project and the Pershing County Water Conservation District

The lands served by PCWCD are located in a high desert valley at an elevation of 3,900 feet. The valley lies some ninety miles east of Reno, just above the Humboldt Sink, which is the terminus of the Humboldt River.

Emigrants following the California Trail used the lower river area in what is now Pershing County to rest with their livestock before attempting to cross the dreaded Forty Mile Desert. Before long, the increasing local population of emigrants and miners fueled a significant demand for agricultural products in the area.

In the early 1900s, several irrigators banded together to construct the Pitt Taylor Reservoirs, located upstream of Lovelock, Nevada. However, these reservoirs were not of sufficient capacity and served only part of the irrigated area that now makes up PCWCD. In addition, the reservoirs suffered from a lack of available water during dry years.

As the settlement of the Humboldt Basin progressed, the amount of water available at the lower end of the system continued to decrease. Water use on lands in the upper reaches of the river basin was increasing at a rapid rate, which created shortages for lower basin water users.

In response to the problem, the Nevada State Engineer ordered a general adjudication of the Humboldt River system in 1923, designating the Sixth Judicial District Court in Winnemucca as the decree court. In 1931, Hon. George A. Bartlett issued a final decree establishing the water rights for the Humboldt River Basin. The Bartlett Decree was immediately subjected to judicial challenges that were resolved through the issuance of the "Edwards Decree" in 1934. Together, these decrees are commonly referred to as the Humboldt River Decree. The Humboldt River adjudication was finalized by order of the Nevada Supreme Court in 1938, when it affirmed the Humboldt River Decree, halting all future challenges. Lovelock irrigators who were last on the Humboldt River had confirmed decreed water rights.

The issuance of the Bartlett Decree in 1931 established some order on the river and opened the way for Lovelock Valley irrigators to build a new water storage project to augment their decreed water supply. The Lovelock Irrigation District had been organized in 1926 for the primary purpose of exploring possible storage sites on the Humboldt River. However, after the Bartlett Decree was entered these efforts intensified. To facilitate the construction of such a project, the District reorganized as a quasi political entity under the Nevada Irrigation District Act and changed its name to the Pershing Water Conservation District.

In the early 1930s PCWCD began negotiations with Reclamation for the construction of the Humboldt Project. Funding for the Project was approved in August 1933 when the Public Works Administration allocated $2 million for construction. Presidential approval of the Project was given via letter dated November 6, 1935.

After studying several locations for reservoir construction, PCWCD and Reclamation decided on the present site of Rye Patch Reservoir. However, to make the project feasible, PCWCD needed to acquire supplemental water rights for the

project. To this end, PCWCD sought out willing sellers upstream of the reservoir site. PCWCD's directors located several willing sellers in Lander County, and in January 1934, PCWCD entered into purchase agreements with several ranch owners in the Battle Mountain and Valmy areas. In total, PCWCD contracted to acquire over 30,000 acres of land and appurtenant water rights from two large ranches just outside Battle Mountain and additional water rights from nearby properties for a contracted acquisition of 49,670 acre feet.

After PCWCD successfully located and contracted for the necessary supplemental water rights, PCWCD's directors decided to proceed with the project. PCWCD entered into a repayment contract with Reclamation for the construction of Rye Patch Dam on October 1, 1934. The contract provided for the full repayment of all project related construction and acquisition costs over a forty year period.

In late 1934, to facilitate the transfer of the water rights to PCWCD lands, PCWCD assigned its rights under the ranch and water right purchase agreements to the United States Government. In early 1935, the United States concluded the transactions when it purchased the land and water rights PCWCD had put under contract. The purchase price for these lands and water rights were then made a part of PCWCD repayment obligation to Reclamation.

Construction of Rye Patch Dam began in January 1935, and was completed in January 1936, with a designed capacity of 170,000 acre feet. Due to the drought conditions and legal problems with the Pitt Taylor Reservoirs, Rye Patch was not initially filled to full capacity.

In the early 1940s, with all water transfers completed, legal problems solved and operating methods established, PCWCD assumed the operation and maintenance of the Humboldt Project including Rye Patch Dam and the purchased lands in Lander County. Since that time, PCWCD has assumed all costs resulting from the day to day operations and maintenance of the entire Humboldt Project.

Over the years, PCWCD entered into other contracts with Reclamation. One contract was for the rehabilitation and betterment of the Battle Mountain Collection System and another contract was for the rehabilitation of Rye Patch Dam. These contracts, as with the original construction contract, called for repayment by PCWCD for all funds expended by the United States for project costs. Over the years, PCWCD has satisfied each of these repayment obligations.

In the early 1990s, Reclamation determined that some modifications to Rye Patch Dam would be necessary to protect the integrity of the actual dam structure. This work was completed in 1996 and Rye Patch Reservoir was filled to its present capacity of 213,000 acre feet. PCWCD recently made its last payment to Reclamation for its portion of the modification costs.

PCWCD has, with the guidance of Reclamation, successfully maintained and operated the Humboldt Project for over fifty years. In these fifty years, PCWCD kept pace with the changing aspects of its operation by updating its equipment and methods. The project has stabilized water supplies, increased productivity of agricultural land within PCWCD, employed managers and consultants experienced in irrigation systems and grazing, provided recreational opportunities, and expanded the tax base for Pershing County and the State of Nevada.

2. Humboldt Project Overview

As stated, the Humboldt Project is located in Northwestern Nevada on the Humboldt River. The project collects and stores Humboldt River water in Rye Patch Reservoir for the irrigation of 37,504.62 acres of farm land in and around Lovelock, Nevada. The Project facilities are operated and maintained in conjunction with the non Federal portions of the irrigation system PCWCD in Lovelock

Project Lands

The Project lands consist of a total of approximately 76,000 acres of withdrawn and acquired land.

Withdrawn Lands

Approximately 46,000 acres were withdrawn from the public domain by Reclamation in 1934–1935. Of this total, 32,000 acres are located within the Humboldt Sink, and 14,000 acres are located along the perimeter of and beneath Rye Patch Reservoir.

Acquired Lands

The remaining 30,000 acres of Project land consists of acquired lands primarily located near Battle Mountain, Nevada. From 1934–1935 Reclamation purchased two ranches totaling 30,065 acres with water rights, and the water rights of five other ranches, all of which were located in the vicinity of Battle Mountain, Nevada, approximately 150 miles upstream from Lovelock, Nevada. These lands are presently

leased to PCWCD and used by PCWCD patrons as a community pasture. In 1934, Reclamation also purchased a ranch and water rights under the future site of Rye Patch Reservoir portions of which are leased by Reclamation.

Project Water Rights

Concurrently with the acquisition of the water rights from these private lands, PCWCD submitted several water right transfer applications to change the place of use to the Lovelock Valley farm lands. Ultimately as a result of transfer proceedings before the State Engineer, the State Engineer issued a series of orders transferring a total of approximately 49,670 acre feet of water to the Lovelock Valley lands for use within PCWCD.

Rye Patch Reservoir

Rye Patch Dam and Reservoir, located on the Humboldt River about 26 miles upstream from Lovelock, stores the flow of the river for diversion to the irrigated lands in the Lovelock area. The dam was completed and began storing water in 1936. The reservoir is 21 miles long and has a capacity of 213,000 acre feet. The operation and maintenance of the Project were transferred from Reclamation to PCWCD in 1941. There are 37,504.62 water righted acres within PCWCD. PCWCD contains 40,983 acres in total.

Rye Patch Reservoir provides for the usual types of water based recreation such as boating and fishing. Facilities such as campsites and boat ramps have been developed and are operated under the administration of the Nevada Division of Parks. Fishing for trout and warm water species is managed by the Nevada Division of Wildlife.

Toulon and Humboldt Sink

Reclamation withdrew lands within the Humboldt Sink to avoid the responsibility of flood damage which might occur due to project operations. Approximately 18,000 acres of land in the Humboldt Sink has been managed by the Nevada Division of Wildlife (NDOW) under a Management Agreement since 1957. The current agreement was signed on January 6, 1988 and is set to expire in 2013. NDOW administers these lands for wildlife management and grazing purposes.

3. Title Transfer Efforts

Since September 1997, PCWCD has followed the title transfer framework in an effort to obtain title to the Humboldt Project located in the Humboldt River basin in northern Nevada. This is PCWCD's third attempt to obtain title to the Humboldt Project facilities since it repaid its original project loan in 1978. PCWCD operates and maintains the Project, and its constituents are the sole beneficiaries of the Project.

Since 1997, PCWCD has been engaged in ongoing communication and negotiation with Reclamation, the State of Nevada, Lander County, Pershing County and various public interest groups regarding title transfer. With the assistance of Reclamation, PCWCD held scoping meetings at four locations in the State: Battle Mountain, Lovelock, Carson City and Reno. These scoping meeting were followed by the receipt of comments from various individuals and groups that were addressed by Reclamation and PCWCD. Out of these scoping meeting and comments there occurred ongoing discussions resulting in agreements that addressed the areas of concern.

4. Areas of Concern

In December 2001, Tina Nappe and Dave Stanley of the Lahontan Audubon Society and Rose Strickland of the Toiyabe Chapter of the Sierra Club expressed a variety of concerns to the State of Nevada:

a. Water: As a part of the title transfer a portion of the Humboldt Project water rights should be transferred from Lovelock farmers for upstream use to establish an Argenta Marsh and downstream for use in the Humboldt Sink because the water rights are publicly owned. Money for the purchase of these water rights should be legislated. Legislation should not be passed until water is secured for the Argenta Marsh.

District Response: The Humboldt Project purchased ranches with their appurtenant water rights and under the State process transferred the appurtenancy to private lands described within PCWCD's boundaries allowing for intermediate storage of these rights within Rye Patch reservoir. While water is publicly owned in Nevada, the right of use obtained by the transfer of the water rights is not. Therefore, neither Reclamation nor PCWCD owns the right of use to the transferred water rights that were perfected almost 60 years ago to PCWCD landowners. The ownership of these water rights are with the appurtenant landowners. At most, PCWCD/

Reclamation have a trustee relationship with these landowners to deliver Humboldt River water including water stored in Rye Patch reservoir to them.

Through the title transfer process, PCWCD agreed to transfer to the State approximately 6,000 acres of acquired lands that it paid for through its Reclamation repayment contract for the creation of a wetlands. PCWCD notes that the State has generated funds from outside sources to purchase water rights for the Stillwater wetlands in the Fallon, Nevada area and that there are water rights for sale on the Humboldt system that the State could purchase to create an Argenta Marsh on some or all of the 6,000 acres as water is available. If the State or the United States is going to establish a wetland park for the public, the appropriate public funds should be used.

b. PCWCD cooperation for wetlands development: NDOW should have flexibility to use its water rights where ever it chooses, and PCWCD should participate in that effort.

District Response: NDOW presently holds water rights in PCWCD. Under Nevada law, transfers in place of use can take place; however, the water must be used as the transfer describes. NDOW and PCWCD are working together to establish a delivery canal to transport NDOW's water rights to the Toulon Sink Wildlife Area. To further assist NDOW's Wildlife Area, PCWCD's drain water rights have been allowed to flow to both the Toulon and Humboldt Sinks. All excess Humboldt River water flows to the Humboldt Sink.

c. Publicly owned lands (withdrawn) should be retained: Reclamation should retain ownership until these lands are inventoried. Flood and recreation uses should be addressed. An Environmental Impact Statement should be required. Nevada should initiate a planning process.

District Response: All transferred lands will be evaluated through completion of the NEPA process prior to transfer. Those entities receiving title to specified lands will be required to pay the associated NEPA, administrative, and transfer expense. Since the State will receive approximately 24% of the acquired lands in Battle Mountain and approximately 50% of the Rye Patch lands, Nevada will be the second largest financial participant in the NEPA environmental decision process.

d. PCWCD Funding: After transfer to the State, PCWCD should pay the State to manage the State Parks, to purchase water for wetlands, to develop wetlands plans, and to manage wildlife lands.

District Response: PCWCD has no statutory authority to collect assessments from its patrons for payment to the State for such purposes. PCWCD patrons who use the pasture pay only for pasture operations. As part of the title transfer, PCWCD is requesting no reimbursement from the State for the lands to which the State seeks title.

e. PCWCD should not receive title: In the alternative, PCWCD should be required to enter into a conservation easement over project lands.

District Response: If title is not transferred to PCWCD, the State, and to Lander and Pershing Counties, title will remain with the United States. Unless legislated by Congress (which may be incongruent with the Reclamation Act), it is unlikely that the United States could burden its ownership with a conservation easement.

5. Agreements/Legislation

After almost five years of negotiations, PCWCD entered into agreements with the State of Nevada, Lander and Pershing Counties. As of June 25, 2002, PCWCD approved execution of a Memorandum of Agreement (MOA) with Reclamation that followed the Nampa–Meridian MOA earlier executed by Reclamation. Other agreements are summarized as follows:

State Agreement

a. Rye Patch (withdrawn lands): Under the State's agreement with PCWCD, the State will continue its operation of recreational facilities at Rye Patch. PCWCD agreed to transfer title to these withdrawn project lands to the State. In addition, PCWCD agreed to transfer title of all withdrawn lands, approximately 7,000 acres, above the high water mark around Rye Patch Reservoir to the State to support the State's recreational use. Further, PCWCD agreed that it would maintain a minimum pool of 3,000 acre feet at Rye Patch Reservoir to support aquatic and wildlife.

b. Community Pasture (acquired lands): PCWCD also agreed with the State to transfer title to approximately 5,800 acres of acquired lands within the community pasture to the State for conversion to a wetlands park along the Humboldt River near Battle Mountain.

c. Wildlife Area (withdrawn lands): Project lands lying below the agricultural lands of PCWCD and at the terminus of the Humboldt River are also to be

transferred to the State by agreement. This transfer of approximately 20,000 acres will facilitate the State's continued maintenance of the wildlife area within the Toulon and Humboldt Sink.

Lander County Agreement

Because the acquired lands of the community pasture lie close to Battle Mountain, the county seat for Lander County, the Lander County agreement allows for title of approximately 1085 acres of these acquired lands to be converted for public use as: (1) a livestock event center (135 acres approximately), (2) an industrial park (920 acres approximately), (3) an expanded sewage treatment facility (165 acres approximately), and (4) a primitive park recreation area with associated parking (31 acres approximately).

Pershing County Agreement

The City of Lovelock which is the county seat of Pershing County uses a portion of the withdrawn Humboldt Project lands lying below PCWCD agricultural lands for Derby field, a municipal airport. Thus, the agreement with Pershing County provides that the lands presently used for a municipal airport and some expansion of this facility will be transferred to Pershing County. This transfer would include approximately 960 withdrawn acres on the northern portion of the Humboldt Sink

6. Conclusion

This concludes my remarks. Additional information can be found at http://waterlaw.com/Title/Handbook.htm. We would be pleased to answer any questions you might have.

STATEMENT OF STEVEN MALLOCH, COUNSEL, WESTERN WATER PROJECT, TROUT UNLIMITED, HENRY'S FORK FOUNDATION

Mr. CALVERT. Mr. Malloch, you are recognized for 5 minutes.

Mr. MALLOCH. Thank you, Mr. Chairman. My name is Steve Malloch. I appear today on behalf of both Trout Unlimited and the Henry's Fork Foundation.

Trout Unlimited preserves, protects and restores North America's trout and salmon fisheries and their watersheds. We have about 130,000 members in 450 chapters nationwide with about 2,002 in Idaho and 850 in Nevada.

The Henry's Fork Foundation is an Idaho conservation organization whose 2,000 members work to protect the Henry's Fork Watershed.

I thank you for citing Mark Twain's aphorism about whiskey, water and fighting. It is obligatory in every one of these hearings. In some parts of the West, however, people are on a 12-step program and are working on anger management.

Transfer reclamation project can go either way. A win-lose fight or win-win cooperation. Gaining ownership of reclamation projects is a significant win for water contractors. Our problems with the transfer bills before the Committee today are that they represent some missed opportunities for the environment and in some cases, loses.

Trout Unlimited and the Henry's Fork Foundation agree with the premise that the Federal Government need not own all of the 600-plus reclamation projects. The approach to transfer we advocate has four points:

First, that transfers should enhance the public benefits of the project and help restore the associated rivers and ecosystems. Title transfer really makes sense only if the human and environmental systems associated with the water projects are made better because of the transfer.

Second, some water and power projects should remain Federal. The projects that play critical roles in watersheds and river management for public purposes should remain Federal. Further, where public benefits cannot be ensured and enhanced in a transfer, the project should remain Federal. We don't see any particular problem with that with either of these projects as long as the public benefits are ensured and enhanced.

Third, water users are not entitled to project ownership transfers, a new benefit to be negotiated and for which consideration is appropriate. Under reclamation laws, water users are not entitled to project ownership. Paid out does not mean paid for. If water owners are given a new benefit, ownership and control of the facilities, the quid pro quo should be fixing some of the problems that the projects have created, enhancing the public benefits.

Fourth, a decision to transfer projects should not be made until the consequences of the transfer are understood and the terms of the transfer are determined. We suggest that Congress require environmental review and facility-specific transfer plans be completed prior to legislation.

I will comment primarily on H.R. 4708. To understand the interest of Trout Unlimited and the Henry's Fork Foundation, you have to know that TU's members voted the Henry's Fork as the best fishing in the country. They ranked Henry's Fork No. 1 in Trout America's guide to 100 best trout streams.

Anglers are not the only beneficiaries of this fishery. The regional economic benefit of only a portion of the Henry's Fork Fishery was estimated in '99 to be in excess of $5 million a year. Henry's Fork and TU's chapters have a long and productive history or working with FMID on Henry's Fork issues, including title transfer.

Through the Henry's Fork Water Shed Council and one-on-one, we appreciate that FMID faces a serious problem with drought year reliability of its reclamation water supply, because the fishery faces the same problems. Unfortunately, dry years are all too common and typically occur two to 3 years out of every ten.

Every water user on the Snake River, including the fishery, faces the same set of problems. The centerpiece of the bill is the transfer of a partially developed well field, the Teton Exchange Wells. While the plans originally called for 45 wells totally 670 CFS, only five have been drilled.

Our immediate concern is that additional water extraction from the ground water system may have adversely affected Henry's Fork. Our fundamental concerned is one of missed opportunity. The Henry's Fork needs a drought plan that addresses the need of the agricultural community, the angling interests and the river, the ecological needs of the river.

Trout Unlimited and the Henry's Fork Foundation requests that the current legislative proposal be deferred while the various stakeholder groups are convened to work out a 12-step solution.

To conclude, our goals should be to improve the benefits we all derive from western water resources. To be satisfied with the status quo in a deteriorating and increasingly complicated system is not enough. To slide backwards is even more unfortunate.

Congress should only transfer reclamation projects when it leads to systems, both human and ecological, which are stronger and healthier and more resilient.

Thank you.

Mr. CALVERT. I thank the gentleman.

[The prepared statement of Mr. Malloch follows:]

Statement of Steven Malloch, Counsel, Western Water Project, Trout Unlimited, Inc.

Mr. Chairman, my name is Steven Malloch. I appear on behalf of both Trout Unlimited (TU) and the Henry's Fork Foundation (HFF) in testifying about H.R. 4708, the Fremont–Madison Conveyance Act.

Trout Unlimited's mission is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. Trout Unlimited is a private, nonprofit organization with 130,000 members in 450 chapters nationwide. There are approximately 2,000 TU members in Idaho, many of whom enjoy the diverse and outstanding fishery resources of the Henry's Fork watershed. I work with TU's Western Water Project, which focuses on water quantity issues around the West. Across the West, even in normal water years, but especially in drought years like this one, rivers routinely are drained dry a condition that is disastrous for fish, anglers and local economies that depend on water-based recreation.

Today I also appear on behalf of the Henry's Fork Foundation, an Idaho conservation organization whose 2,000 members are dedicated to protecting the Henry's Fork watershed. The HFF mission is to "understand, protect, and restore the unique values of the Henry's Fork River while doing so in the context of mutual respect for others that live and work in the watershed to ensure solutions are sustainable." A letter on H.R. 4708 from HFF is attached as an exhibit to this testimony.

Introduction

It seems that citing Mark Twain's hoary aphorism about whiskey, water and fighting is required in every hearing about western water, because there is a measure of truth in it. But in some parts of the West, people have grown up, and gotten beyond the endless opportunities for fighting. Instead, they are working together to solve problems, rather than simply win a round. Mr. Chairman, one example you know well is in California, where the compromise reached in the CALFED process was a victory of accomplishment over acrimony.

In Idaho, a group of stakeholders on the Henry's Fork of the Snake River, acting through the Henry's Fork Watershed Council, have a remarkable history of collaboration and compromise on difficult resource issues extending back for two decades. The Henry's Fork Foundation and the Fremont–Madison Irrigation District (FMID) are leaders in the Watershed Council. Trout anglers have greatly appreciated this progress because the Henry's Fork is justifiably famous for its remarkable trout fishing with large numbers of huge, fat, and, unfortunately, smart wild rainbow trout. TU members voted it the best fishing in the country, and ranked it number one in TU's Guide to America's 100 Best Trout Streams. Anglers are not the only beneficiaries of this fabulous fishing. An economic study funded and completed by the HFF and published in Intermountain Journal of Sciences in 2000 estimated the regional economic benefit of only a portion of the Henry's Fork fishery to be in excess of $5 million per year.

The issues the HFF and FMID have worked through with other Watershed Council members have sometimes been tough. Upstream of the main fishing section of the Henry's Fork is Island Park Reservoir, a part of the Bureau of Reclamation's Minidoka Project, and a principal water supply for FMID. In 1992, Reclamation drew down Island Park Reservoir—to the point that 50,000 tons of sediment were released, blanketing the river with silt and causing a disaster for aquatic life and the fishery. When the possibility of again drawing down the reservoir and releasing silt loomed last year due to drought conditions the HFF, FMID, Trout Unlimited and Reclamation reached agreements that avoided repeating that problem.

That history of successful collaboration has not yet, however, been extended to transferring title to Bureau of Reclamation facilities. The Henry's Fork Foundation and the Fremont–Madison Irrigation District (FMID) had prolonged, substantive and productive negotiations regarding an earlier title transfer proposal for Island Park Reservoir and the various ways a transfer could serve to protect the fishery resource while still meeting the irrigation community's needs. Trout Unlimited was a strong public and private supporter of those efforts. That the effort foundered is proof of just how complex and potentially contentious this transfer of public re-

sources into the hands of irrigation districts is, both on the Henry's Fork and elsewhere.

Transfer Policy Approach

Trout Unlimited and the Henry's Fork Foundation agree with the premise that the Federal Government need not own all of the 600-plus Reclamation projects. However, spinning off parts of the Reclamation system to non-federal ownership makes policy sense only if the transfers protect and enhance the public benefits associated with the projects. America's taxpayers, people in the East, West, South, and North, paid for these projects. Only if a transfer of ownership serves to increase the public benefit and to solve the pressing problems in managing the West's water for economic needs as well as environmental, recreational, and aesthetic purposes, should it be accomplished.

The approach we advocate has four main points:

Transfers should enhance the public benefits of the project and the associated river system.

Our fundamental position is that title transfers make sense only if the human and environmental systems associated with the water projects are made better because of transfer. During most of the long history of western water projects, environmental damage was simply taken as a matter of course, with predictable results. One can hardly consider a major water project now without stumbling over an endangered species issue.

We can take Twain's approach and continue a century and a half of fighting eventually somebody may win, but more likely the fighting will simply continue. Or we can take the modern approach and ensure that an action, in this case transfer of ownership, that benefits one set of interests, water users, also enhances the public benefits of the project and the associated river system.

Some Federal water and power projects should remain Federal.

Projects that play critical roles in watershed and river management for public purposes or are important to interstate, international, or treaty obligations should remain Federal. Some projects are simply too important to be able to adequately condition the transfers. For example, projects such as Hoover Dam/Lake Mead and Glen Canyon Dam/Lake Powell simply should remain Federal.

As a corollary to the first principle, where public benefits cannot be ensured and enhanced in a transfer, because adequate terms cannot be crafted or the recipient will not accept the conditions, the project should remain Federal.

Water users are not entitled to project ownership; transfer is a new benefit to be negotiated and for which consideration is appropriate.

Under the Reclamation laws, water users are in no sense entitled to project ownership when they complete their capital repayment obligations. The law and history are unambiguous on the point. "Paid out" does not mean "paid for."

Under Reclamation law, agricultural water users are obligated to pay only pennies on the dollar of the costs for Reclamation projects. While water districts may argue they are due ownership when they complete payments, there is no legal claim that those payments built equity. In fact, because the projects were almost entirely subsidized with public funds, the argument in favor of enhanced public benefits is much stronger than any argument in favor of water user ownership. If water users are given a new benefit ownership and complete control of the facilities—the quid pro quo should be enhanced public benefits.

A decision to transfer a project should not be made until the consequences of transfer are understood and the terms of transfer determined.

Because water projects affect so many interests, the terms of the deal determine whether a transfer is in the public interest. Congress requires that water projects proposed for construction be evaluated, and at least the general outline of the project determined, before considering projects for authorization. Congress should do no less in disposing of projects in which it has already invested the taxpayers' money.

We suggest that Congress require environmental review and facility-specific transfer plans that set the terms and conditions be completed prior to legislative action. As a less attractive alternative, Congress could authorize transfers while also directing the Secretary of the Interior to condition transfers in order to protect and enhance the public benefits. The appropriate time for legislation and the language used in that transfer legislation has been an issue since the topic of granting ownership to water users first arose. When transfers are directed before environmental review has been completed Congress is deprived of a thorough analysis of the

transfer issues and Interior's ability to seriously consider the "no action" alternative is eliminated. Similarly, when transfer is directed before the terms of the deal are worked out, Interior's ability effectively to condition the transfer to protect the public interest and enhance public benefits is greatly reduced, if not eliminated.

Please note that conservation organizations are not alone in their concern about terms and prior review. The Western States Water Council whose members are appointed by Western governors arrived at very similar conclusions in twice adopting a position on transfers of Federal water and power projects. In 1995, and again in 1998, the WSWC adopted a position on transfers that sets out their concerns with third party impacts, public costs and benefits, the change in applicable laws, and the need for a strong role for states. They urge Congress and the Administration to adopt a process and develop criteria and guidelines for project-by-project review of transfer proposals, with significant state involvement. (See Position No. 209 at http://www.westgov.org/wswc/transfer.html). Trout Unlimited and the Henry's Fork Foundation agree with this position.

H.R. 4708

HFF and TU appreciate that FMID faces a serious problem with the drought year reliability of its Reclamation water supply because the fishery faces the same problem. The principal reservoir FMID relies upon is Island Park, part of Reclamation's Minidoka Project, and the subject of the prior title transfer effort. During the last two drought years, FMID has only been allocated 62% and 42% of Island Park Reservoir storage because of the senior rights of other Minidoka Project contractors. Unfortunately, these dry years are all too common, and typically occur two or three years out of every ten. Every water user on the Snake River and the Minidoka project, including the fishery, faces the same set of problems.

The centerpiece of this bill is transfer of a partially developed well field—Teton Exchange Wells and the associated State of Idaho water permit 22–7022. While the permit envisioned 45 wells totaling 670 cfs of water, only five wells have been drilled, providing approximately 81 cfs. FMID has stated its intent to firm its water supply by drilling new wells and making more extensive use of the well field.

Our immediate concern is that additional water extraction from the ground water system will have a deleterious effect on the Henry's Fork River and aquatic resources. The location of the new wells, the amount of water pumped from the existing and new wells, the type and location of delivery systems, location of water use, and return flows all have implications for fish and wildlife resources. We understand that other water users have concerns about possible injury to their rights as well. Despite TU's and HFF's longstanding relationship with FMID, we must oppose this legislation because of the uncertain, but likely, impact further development of this well field would have on the Henry's Fork aquatic resources.

Our more fundamental concern is one of missed opportunity. The Henry's Fork needs a drought plan that addresses the needs of the agricultural community, the angling interests that now are a significant part of the local economy, and the ecological needs of the river. H.R. 4708 represents an approach to water problems from the last century, one that Mark Twain would recognize. The Henry's Fork needs an approach based on collaboration, communication, and a philosophy of shared pain and shared gain. Additional use of the Teton Exchange Wells may be an integral part of that approach to making an already stressed water system work more effectively and provide greater benefits to all the users.

TU and the HFF request that the current legislative proposal be deferred while the various stakeholder groups are convened to see if there might be an alternative that meets everyone's needs. Such talks could be sponsored and facilitated by the Idaho congressional delegation and include everyone who has a stake in the outcome from Twin Falls upstream. The members of the Henry's Fork Watershed Council have demonstrated that they can be effective and work productively if given the opportunity. Missing this opportunity to encourage creating an effective drought management plan would be moving in the wrong direction.

We have the following specific comments on H.R. 4708:

1. Section 2(a) directs transfer of the facilities by a date certain. Directing transfer limits, and may eliminate, the ability of the Secretary to effectively negotiate terms and conditions in response to the eventual NEPA and ESA process, reducing the value of a review process subsequent to legislation. Directing a transfer is appropriate in legislation after the environmental review is complete, and the terms of the transfer have been set through negotiation. Prior to reaching that point, a much better result is likely if the transfer is authorized, but not directed.
2. Section 2 creates some ambiguity in the facilities to be conveyed. Section 2(a) describes the facilities to be transferred specifically as the Cross Cut Diversion

Dam, the Cross Cut Canal, and the Teton Exchange Wells. However, subsection (c) of Section 2 is broader and includes broader language describing the transfer of all United States rights, title, and interest "in the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained" by FMID. We understand that FMID may operate other facilities beyond those specified in Section 2(a). Therefore, we suggest that the facilities to be transferred be identified in Section 2(c) specifically and not generally.

3. Section 3 specifies the cost to FMID of the transaction and the facilities. We reiterate the common sense position set out above that "paid out" does not mean "paid for." The asset value to the taxpayer of the transferred facilities has not been established and should be in the course of a thorough review of the transfer proposal and development of a drought management plan; after determining that value, a reasonable price can be set. We also are concerned that Section 3(a) in limiting the transaction costs to FMID may be setting a cap on any mitigation or environmental enhancement costs that could be required as part of the transfer. Until that assessment is done, the environmental costs cannot be quantified and should not be capped.
4. Section 4, concerning the Teton Exchange Wells, makes clear that FMID would receive not just the five wells it has been using, but also the permit for 40 additional wells and approximately 589 cfs of additional water. The heart of our concern is the transfer of this permit, and the possible development of some or all of the additional diversions, with attendant effects on aquatic resources.
5. Section 5 calls for NEPA analysis to be performed after Congress directs transfer. This process seriously limits the scope of NEPA review (by essentially eliminating the no transfer alternative from serious consideration) and greatly limits the ability of the Secretary to require terms and conditions that protect public resources. We suggest that at a minimum the legislation or legislative record make clear that NEPA analysis is to consider thoroughly the effects of development of the Teton Wells.
6. Section 7 is intended to legitimize use of Reclamation water on land not currently eligible for that water. Water spreading is a significant issue around the West that has typically been resolved, as in this case, by legitimizing what amounts to use of water contrary to law. While we do not have information about this particular situation, we note that the effect of this section is to expand the number of acres legally eligible for irrigation in a basin chronically short of water.

H.R. 5039

Trout Unlimited and the Henry's Fork Foundation have not been directly involved with the Humboldt Project, subject of a transfer proposal in H.R. 5039. Trout Unlimited notes that many of the same issues we raise in comments on H.R. 4708 are also at issue in H.R. 5039. Transfer of the Humboldt Project is, if anything, even more complicated because it includes a major reservoir, public recreation lands, and a desert marsh that serves an important ecological function. As a matter of policy, the transfer approach outlined above should apply to the Humboldt Project as well.

Conclusion

Congress and Reclamation are far from solving the problem of how, when and under what conditions to transfer ownership of Federal water projects. In part, this is because each project is different, with different users, beneficiaries, and environmental issues. Therefore, the appropriate terms and conditions for transfer will differ from project-to-project as well. We suggest that the best approach parallels that which Congress follows when authorizing water projects. Congress should require facility specific transfer plans that develop the issues and find solutions before legislation is enacted. Just as with feasibility studies for new projects, results are best when the questions are asked, the public is involved, and the answers are found early in the process. And as recent revelations about the Corps of Engineers practices show, even that process is subject to flaws.

The development that we find most appealing is that in some areas water users and conservation organizations are now actually talking to one another about how to manage rivers for their mutual benefit. We are very optimistic that common ground can be found in many, if not most cases. The wisest of the Reclamation contractors appreciate their rights and responsibilities as stewards of vital natural resources, just as conservationists appreciate the contributions of water users.

Congress' goal should be to improve the benefits derived from the enormous Federal investment in western water resources. To be satisfied with the status quo in a deteriorating and increasingly complicated system, is not enough. Congress

should only transfer Reclamation projects when it leads to human and environmental systems that are stronger, healthier and more resilient. We oppose H.R. 4708 and H.R. 5039 because they do not meet that test.

July 3, 2002

The Honorable Mike Simpson
1440 Longworth House Office Building
Washington, D.C. 20515

The Honorable Mike Crapo
111 Russell Senate Office Building
Washington D.C. 20510

Re: H.R. 4708—Fremont–Madison Conveyance Act

Dear Congressman Simpson and Senator Crapo:

The Henry's Fork Foundation (HFF) sends this letter on behalf of our approximately 2000 members who are dedicated to protecting the Henry's Fork watershed. The HFF mission is to "understand, protect, and restore the unique values of the Henry's Fork River while doing so in the context of mutual respect for others that live and work in the watershed to ensure solutions are sustainable." In the context of both protecting the magnificent Henry's Fork fishery and mutual respect for others who live and work in the watershed, we submit the following comments regarding H.R. 4708.

As you are undoubtedly aware, the HFF has collaborated on difficult resource issues for the past decade with the Fremont–Madison Irrigation District (FMID) and other stakeholders in the Henry's Fork watershed. We were the only conservation group—local, state, regional, or national—willing to sit down and have substantive talks and negotiations regarding earlier title transfer legislation involving Island Park Reservoir and the various ways to protect the fishery resource while still meeting the irrigation community's needs.

With the collaborative nature of our past involvement in title transfer issues in mind, the HFF wants to reiterate once again our position regarding the transfer of title of Federal reclamation dams, canals, or any other type of irrigation works in the Henry's Fork watershed. The HFF believes that any type of title transfer legislation should have an environmental component to ensure that the Henry's Fork fishery resource is not only protected but also enhanced.

The HFF also wants to emphasize that we are cognizant of the dry year water issues for the irrigation community in the Henry's Fork watershed. Recent conversations with Dale Swensen and FMID have helped frame these issues. The fact that the irrigation district—based on Minidoka Project storage and operations—has only been allocated 62% and 42% of Island Park Reservoir storage during the last two drought years is illustrative of the need for supplemental irrigation water for FMID users. Further, such dry year realities emphasize the nexus between water storage rights (i.e., who actually owns the water) in the upper Snake River Basin and Federal Bureau of Reclamation (BOR) operations during such years. In other words, during a dry year or drought cycle reduced stream flows during the winter months are inexplicably tied to broader system-wide BOR Minidoka Project operations and reservoir carryover, and not FMID rights or operations. These are classic dry year dilemmas that occur as foreseeable events almost every decade for a 2–3 year period.

But fishery needs during drought years and cycles mirror those of the irrigators. The impact of such low flow years on the fishery resource in the Henry's Fork watershed is undeniable. Such impacts have been documented by numerous studies funded and carried out by the HFF and Idaho Department of Fish and Game (IDFG) highlighting the connection between low flows and the loss of spawning and rearing habitat, juvenile mortality, year-class strength, the loss of macrophyte habitat, and overall stream health. There is also the chance—depending on project operations—that Island Park Reservoir will reach such low levels that unnaturally high levels of sediment will be released downstream. These are enormously significant fishery concerns, but there is an economic fall-out as well. An economic study funded and completed by the HFF and published in the Intermountain Journal of Sciences in 2000 estimated the total annual value of the Henry's Fork fishery only between Island Park Dam and Hatchery Ford at $5,012,509.

So with these dry year irrigation and fishery needs in mind, the HFF provides the following comments regarding a piece of legislation that aims to only provide for one piece of the overall economic well-being and no mention of the ecological

health of the Henry's Fork watershed. We have tried to break our concerns with the title transfer legislation into two specific categories. First, the HFF has a number of specific concerns regarding the current proposals and we have outlined those comments below. Second, we have some other policy and resource related concerns specific to the portion of the title transfer legislation pertaining to the Teton Wells. Finally, the HFF would like to reiterate some of the fishery resource needs in the Henry's Fork watershed, and advocate that the Idaho congressional delegation take the lead in getting a number of diverse stakeholders together to design a mutually agreeable and long-term solution to drought year problems in the upper basin.

Specific Comments Regarding H.R. 4708

The "shall" language contained in Section 2 leaves the Secretary no flexibility regarding the transfer of the Federal assets described in the bill based on further environmental or any other type of analysis. This establishes bad precedent, doesn't give the Federal Government the necessary flexibility to avoid possible impacts to other water user contacts or obligations or the environment, and predetermines a course of action that may not be in the public interest.

Section 2(a) ("Conveyance of Facilities") describes the Federal facilities to be transferred very specifically as the Cross Cut Diversion Dam, the Cross Cut Canal, and the Teton Exchange Wells. However, subsection (c) of Section 2 includes broader language describing the transfer of all United States rights, title, and interest "in the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained" by FMID. Despite the key phrase "water distribution and drainage system," the language of subsection 2(c) is unnecessarily broad and could be read to include other Federal project works. It is imperative to tighten up this language in light of past title transfer proposals that have included both Island Park and Grassy Lake Dams. Therefore, the HFF proposes that section 2(c) be amended to specifically identify included facilities as only those that are appurtenant to or associated with the Cross Cut Diversion Dam, Cross Cut Canal, and Teton Exchange Wells and operated or maintained by FMID.

The HFF does not have any specific comments regarding the language in Section 4 (Teton Exchange Wells). However, see the section below for our comments regarding the extraordinarily important resource issues concerns associated with the future use of the Teton Exchange Wells. In addition, the FMID has stated both in meetings and in public statements that the use of additional wells will be capped at approximately 80,000 acre/feet to provide supplemental water for its users. However, there is no explicit cap of the proposed additional use in the legislation.

Section 5 of the proposed legislation should be expanded to identify specific issues to be assessed and analyzed in the NEPA process. Such issues include the possible impacts to existing surface and groundwater rights, diminished flows in the Henry's Fork between the point where water is diverted to fill the Cross Cut Canal and where well discharges would enter the river, and other impacts to temperature and other water quality parameters and aquatic habitat in the lower Henry's Fork watershed.

The Teton Exchange Wells

The Teton Exchange Wells and the current and possible future water use associated with State of Idaho water permit 22–7022 provide the centerpiece for the proposed title transfer legislation. The original permit for these wells envisioned 45 wells totaling 670 cfs of water. However, to date only five wells have been drilled, providing approximately 81 cfs. During last year's drought season, the FMID used these wells to provide approximately 26,000 acre/feet of water to their users. The HFF concerns regarding the use of the Teton Exchange Water echo those of other stakeholders such as IDFG and the Upper Snake River Cutthroats Chapter of Trout Unlimited. From our perspective there are more questions than answers regarding the transfer of these wells.

These concerns include regulatory issues pertaining to the relationship between the future use of additional wells and the current moratorium on new groundwater permits in the Upper Snake River Basin, the conjunctive management of surface and groundwater use in the State of Idaho, and aquifer recharge. Most importantly from a river health standpoint, the use of the additional water could have a deleterious effect on the Henry's Fork River. The location of the new wells, the amount of water pumped from the existing and new wells, the type and location of deliver systems, location of water use, and return flows all have implications for fish and wildlife resources. Finally, there has been very little substantive talk regarding the use of some of the well water as an exchange mechanism to provide water during strategic time periods in the Henry's Fork system from Henry's Lake downstream and benefit fish and wildlife resources.

The Henry's Fork Fishery

Perhaps the biggest disappointment regarding the current title transfer legislation is that there was no attempt to include broader stakeholder representation to develop a global remedy—i.e., a drought management plan—to meet not only FMID needs but also those of the fishery. Neither the HFF nor the Henry's Fork Watershed Council has been part of this process. We have been forced into a corner regarding our stance on the current proposal; that is not where we prefer to be. The HFF made a commitment years ago to work whenever possible with irrigators and others in the watershed to develop innovative solutions to difficult natural resource problems. We remain committed to this type of approach.

At the same time, perhaps the most important resource issue for the HFF's constituency now and for the foreseeable future will be water. We have yet to solidify a long-term drought response plan in the Henry's Fork watershed that adequately protects the fishery and aquatic resources. This void includes the lack of statutory, regulatory, or negotiated mechanisms to guarantee that sediment events are avoided, minimum winter flows established, and late-summer water quality effects remedied. Therefore, in addition to our consistent approach to collaboration in the watershed, the HFF also remains committed to finding creative solutions to the aforementioned water and fishery issues.

Conclusion

The HFF would like to request that the current legislative proposal be delayed while the various stakeholder groups are convened to see if there might be an alternative that meets everyone's needs. The Idaho congressional delegation could help sponsor and facilitate talks that should include everyone who has a stake in the outcome from Twin Falls upstream. The HFF believes it is the ultimate irony that the Federal Government spends millions of dollars annually on a hatchery driven anadromous salmon and steelhead fishery in the lower river while some of the world's greatest wild and native trout fisheries—Idaho fisheries—dry up every ten years. The current title transfer approach should be broadened to include a more comprehensive fix to drought year water issues. We believe that legislation can be developed that meets everyone's needs.

The HFF appreciates the opportunity to comment regarding the proposed legislation and the important water use and natural resource issues addressed therein. Please don't hesitate to call our office with any questions or comments.

Sincerely,

Scott B. Yates
Interim Executive Director

Mr. CALVERT. Mr. Raybould, why has the district proposed to put a cap on the administrative and NEPA costs associated with the title transfer for FMID?

Mr. RAYBOULD. Mr. Chairman, we believe that there needs to be some certainty into what those costs will be. I guess I was a little surprised when Mr. Keys said he didn't think he could do it for $80,000.

We have already begun the NEPA process and it appears to us that it is going to be a relatively uncomplicated NEPA. The other work that has been done to date hasn't been too costly. We have had to deposit monies with the Bureau to have that work performed.

We believe it can be done for $80,000 or less. If there is a cap in the legislation, it probably will be done for $80,000 or less.

Mr. CALVERT. Well, could you work with the Department to see if you can't get that issue resolved prior to our full Committee markup which, I hope, is pretty soon? That apparently is an issue that we need to deal with.

Mr. RAYBOULD. Mr. Keys is a reasonable man and so are the local people. I am sure that we can come to some kind of agreement on that.

Mr. CALVERT. I would appreciate that.

Mr. Hodges, how are you working with the Department of Interior on the issues as far as this legislation is concerned? Is it moving along pretty well?

Mr. HODGES. Mr. Chairman, could you repeat that question?

Mr. CALVERT. On various issues. It seems like $40,000 is a number worth mentioning here. You might mention that or any other concerns.

Mr. HODGES. OK. We have had some concerns on some issues.

Mr. CALVERT. Any technical issues or anything like that. We can get these resolved very quickly, I hope.

Mr. HODGES. Yes, but we have already been exposed to the dilemma of administrative costs. We have some real concerns there. We have recently completed a Safety of Dams Project with the Bureau of Reclamation and the construction portion of the project was $3.1 million, however the administration cost of the project was $4.4 or $4.5 million.

So, when you have admin costs exceeding construction costs, that may raise some concerns with us. That is kind of what is fueling our concerns on the administrative cost of the title transfer.

Mr. CALVERT. I see. That is quite a number for administrative costs. Well, obviously, if there is not a large discrepancy in the amounts of money for these NEPA and other associated costs, if we can come to the resolution from the Committee's perspective where we can get a relatively trouble-free markup as we move down this road is what all of us would like to have.

Mr. HODGES. I agree. My thoughts concur with Mr. Raybould, too. We don't think that the NEPA process and the admin costs are going to be as high as what the Bureau is predicting. We think we can work it out.

Mr. CALVERT. I appreciate that.

Mr. Gibbons.

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

Mr. Hodges, again, welcome. You would agree that the Pershing County Water Conservation District is willing to pay a share of these costs whether it be for administrative costs, the NEPA costs, the real estate transfer costs, et cetera.

Mr. HODGES. Absolutely.

Mr. GIBBONS. And you would agree that you could work with the Bureau of Reclamation on resolving their concerns.

Mr. HODGES. Absolutely.

Mr. GIBBONS. Do you have any suggestions that you would make with regard to resolving some of the concerns about transfer costs within this bill that we have already presented and introduced?

Mr. HODGES. Well, transfer costs associated with the district or transfer costs also associated with the State, Congressman?

Mr. GIBBONS. Both.

Mr. HODGES. The district has always recognized that they would pay their fair share. Lander County has always recognized and so has Pershing County recognized that they would have to pay their costs associated with the project.

We thought the State was on board with that until about 2 days before the bill was introduced. What we have been talking about and playing with is what if we good a different approach to keep this legislation alive?

What if the water district was to pick up the administrative cost, the NEPA cost and some of the fair market value cost on the withdrawn lands on certain portions of the project just to keep this legislation moving and at any time in the future if the State feels that they have the money and they want to repay us just for the NEPA and costs associated with the title transfer for the lands that they had originally wanted, they could repay us back those costs and we would give them the lands that were already marked in the legislation.

Mr. GIBBONS. So, we could put in the bill language recognizing your agreement with the State or a potential agreement with the State to exchange some kind of property for value once you have paid it.

Mr. HODGES. I think we can do that, Congressman.

Mr. GIBBONS. Mr. Malloch, I know that you are from Washington, D.C. Have you ever been out to the Humboldt Project?

Mr. MALLOCH. I actually spent, in a prior life before I became a lawyer and a lobbyist, if that's what I am, I was a hydrologist. I have spent about 6 months in that part of Nevada, more up in the Elko area, but basically, every desert valley in Nevada that you can reach by road I've been to, and a number that you really shouldn't try to reach.

Mr. GIBBONS. Well, then we share a similarity. I was a hydrologist for the Federal Water Master in my prior life before becoming a lawyer. I can understand your position on this. My concern is, of course, that this project needs to go forward and one of the real issues here, of course, is the benefit to the public.

Now, we have got new wetlands that are going to be created by the State of Nevada on this transferred or withdrawn land, et cetera, which was going to, of course, improve wildlife habitat which is a concern of your organization's. I would suppose that your agency or your organization supports those concepts.

Mr. MALLOCH. Well, we absolutely support the concept that in the case of a transfer reclamation project there should be some real benefit and in this particular case, creation of some wetlands protecting it, enhancing the wetlands, is a very real public benefit and we appreciate that that is one of the things that is the purpose of this project.

We understand that there are some real concerns that have been brought up today about who is going to pay, whether that really will happen.

Mr. GIBBONS. Well, those are concerns that you are not a party of. The payment is between the Bureau of Reclamation or the Federal Government and the beneficiaries of the project who have already paid that. I think we have already agreed that we are going to pay the fair market value for it.

Mr. MALLOCH. I want to make sure that that happens and as I understand the state of the negotiations, it's a little bit in doubt right now. If that gets resolved, then I'm going to be much happier with the bill.

Mr. GIBBONS. OK, because without this bill there will be no wildlife habitat restoration, there will be no wetlands, there will be no resources conservation areas. In your familiarity with that area you understand the importance of that. So, it is important that we

get your organization to support this bill, because without your support or without this bill there will be none of the benefits that you sit here and describe to us as the reasons why you are here.

Mr. MALLOCH. I very much would like to see all of the issues get lined up and be in a position where we can support the bill publicly and wholeheartedly. That would be a very positive outcome.

I had a very informative conversation with Mr. Hodges earlier today and I hope that we can be in that position.

Mr. GIBBONS. Thank you. Thank you, Mr. Chairman.

Mr. CALVERT. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. I appreciate you all being here today. Thanks, Jeff, for coming out from Idaho. I know it is not the best weather in the world to be out here, but I appreciate your being here.

As you heard, some of the comments from Trout Unlimited were relative to these transfers ought to be of public benefit and also to the irrigation district that is receiving this. Are there environmental benefits that are going to occur by this transfer to the Fremont-Madison Navigation District?

Mr. MALLOCH. Mr. Chairman, Congressman Simpson, there is not a specific environmental benefit that I can quantify, but we believe that if we manage the system properly in years when there is plenty of water, if we come up with a managed recharge plan at that time will add water to the aquifer and then draw that water back out through these ground water wells during dry periods, that it is going to put more water in the river.

Now, less the small amount of that water that is consumptively used by our crops, it is going to provide more water in the system. There is a great likelihood that the carryover in Island Park Dam will be greater than it otherwise would be, so we won't need to impound as much water during the storage season and we will be able to have more water for winter flows.

A lot of this, you just have to use some common sense and realize that more is better than less, in my opinion.

Mr. SIMPSON. I know you have been working on this for quite some time, in face, ever since I was first elected 4 years ago, this is one of the first issues that we sat down and talked about. How long have you been working on it? With what local groups have you been working to address this?

Mr. MALLOCH. Mr. Chairman, Congressman Simpson, it has been a long time. I would have to go back to a calendar and see, but I believe it has been about 4 years, maybe not quite that long. We have worked within our Henry's Fork Watershed Council. It is an organization that we put together in the watershed to deal with these issues.

Within that group, the Henry's Fork Foundation has been the primary environmental group that has wanted to sit down and have discussions about how we could improve the watershed. The bulk of our time has been spent with them. We have also met with the greater Yellowstone Coalition, members of Idaho Rivers United, and the local Trout Unlimited people, as well as our own agricultural groups in the area.

Mr. SIMPSON. Thank you. Mr. Malloch, you mentioned one of your concerns was the potential of additional wells being drilled and so forth. Is that right? Did I get that right?

Mr. MALLOCH. It is not so much that that is a concern, FMID has stated its intent to develop additional water supplied by drilling more wells, if they can. Our question is: What are the consequences of additional groundwater pumping on the aquatic resource? That is a very real concern and the State of Idaho would have to deal with that as well.

Mr. SIMPSON. Those are permitted through the State of Idaho, though?

Mr. MALLOCH. They are.

Mr. SIMPSON. Those questions would be addressed when they went to seek a permit to drill additional wells; would they not?

Mr. MALLOCH. The impact on other water users would be addressed and we want to make sure that impact on the aquatic resources would be adequately addressed as well.

Mr. SIMPSON. But the State of Idaho would do that according to State law, not this legislation or anything else. I mean you could oppose those well permits of whatever at the State level should you feel that those impact on other aquatic issues and so forth?

Mr. MALLOCH. I can, absolutely. I would like to address one other thing that Mr. Raybould point out. We think that there is a real win-win solution here, too. As he points out, if they obtain more water, if they drill more wells, there will be more water in the system, a change from ground water to surface water, potentially.

What we want to make sure is that the system is healthier as a result, not just that water users get additional water, but in fact the ecological system is healthier and from our own parochial interests that the fish flows are healthier as well.

We think that there is a real win-win here, but that we are going to have to work through some of the complicated issues that Mr. Raybould alluded to.

Mr. SIMPSON. I appreciate that and I appreciate your pointing out that Henry's Fork is one of the top, premier trout streams in the country. It brings a heck of a lot more fishermen out there and puts a lot more stress on the river, but nevertheless, it is.

Mr. MALLOCH. Catch and release, catch and release.

Mr. SIMPSON. I didn't get during the first part of your testimony, did you submit the Henry's Fork Foundation appendix that you had to your testimony as part of the record?

Mr. MALLOCH. I believe I did. It is part of the printed record.

Mr. SIMPSON. Part of the printed record?

Mr. MALLOCH. Yes.

Mr. SIMPSON. Because there is one part of it that I do have to take exception with, well, several of them, but one part particularly. It says, "Perhaps the biggest disappointment regarding the current title transfer legislation is that there was no attempt to include broader stakeholder representation to develop a global remedy, i.e., drought management plan, to meet not only FMID, but also those of the fishery."

"Neither the Henry's Fork Foundation or the Henry's Fork Watershed Council has been part of this process. We have been forced

into a corner regarding our stance on the current proposal. That is not where we prefer to be."

I almost find that—I don't know if "offensive" is too strong a word or not, but I think it needs to be responded to if it is going to be part of the official record because I have seen the irrigation district and the meetings that they have had with these different organizations and to suggest that they haven't been part of the process of developing this legislation, I think, is outrageous.

So, as long as this letter is part of the record, I wanted a response to that in the record. So, I appreciate it.

Mr. MALLOCH. May I respond briefly?

Mr. SIMPSON. Sure.

Mr. MALLOCH. The Henry's Fork Foundation and the FMID had a very long and intense negotiation over a title transfer that was broader than this. It included Island Park Reservoir, Grassy Lake and that effort ultimately foundered for a variety of reasons. FMID took the least controversial parts of that proposal, the cross-cut canal diversion and these Teton wells and encapsulated it into the legislation you have here.

My understanding is that FMID, and I was not, obviously, a direct participant, my understanding is that FMID did keep a number of entities in Idaho, including the Henry's Fork Foundation, apprised of what they were doing, but there was not sort of the negotiation and really getting in and wrestling with the problems that I think really needs to happen.

Perhaps Henry's Fork Foundation and Trout Unlimited are responsible for not engaging adequately. Perhaps FMID shares some responsible as well.

Mr. SIMPSON. I appreciate that version of it also. I do know that there was controversy relative to the Island Park Reservoir, the dam and Grassy Lake Dam and consequently, during that time it seemed that all the rest of the legislation, all the rest of the bills, seemed to be OK. Nobody had a problem with that. But they had two specific problems. That was Grassy Lake and Island Park.

When they dropped that out, then we found problems other places that weren't a problem before dropping those out. Sometimes this is a process of attrition more than anything else.

Do you have a version on that, Mr. Raybould?

Mr. RAYBOULD. Well, Mr. Chairman, Mr. Simpson, I would just like to say that we did not intentionally keep anyone out of this process. Our door was open. Our phone was on the hook. They were aware that we were going to proceed with this limited transfer.

Discussions we had with the Executive Director of the Henry's Fork Foundation were open and we were very candid with him about what our intentions were.

Mr. SIMPSON. Well, I appreciate that and let me just say in conclusion that there is nobody that cares more about the fisheries than Henry's Fork and I do and the irrigators do that also fish a heck of a lot and that people all over this country do. So, we do want to maintain that and I'm sure that the members of the Fremont-Madison Irrigation District feel the same way about it.

I appreciate your testimony today.

Mr. CALVERT. Thank you. Are there any further questions for this panel?

If not, this panel is excused. We thank you for your coming out to Washington, D.C. and testifying.

The Members of the Subcommittee may have some additional questions for the witnesses and we will ask for you to response to those in writing.

The hearing record will be help open for these responses until July 23, 2002.

If there is no further business, I thank the Members and this hearing is adjourned.

[Whereupon, at 3:23 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record on H.R. 4708 by Norman M. Semanko, Executive Director and General Counsel, Idaho Water Users Association, follows:]

June 21, 2002

Subcommittee on Water and Power
House Committee on Resources
1522 Longworth House Office Building
Washington, DC 20510

Re: H.R. 4708—Fremont–Madison Conveyance Act

Dear Mr. Chairman:

This letter is provided on behalf of the Idaho Water Users Association (IWUA) in support of H.R. 4708, the Fremont–Madison Conveyance Act. IWUA represents more than 300 irrigation districts, canal companies, water districts, public water suppliers, municipalities, hydropower interests, aquaculture companies, agri-businesses and individuals. We are dedicated to the wise and efficient development and use of water resources. IWUA represents over two million acres of irrigated land and is affiliated with both the National Water Resources Association and the Family Farm Alliance. IWUA is proud to count Fremont–Madison Irrigation District among its many members.

IWUA has strongly supported previous title transfer legislation for its members, including Burley Irrigation District and Nampa & Meridian Irrigation District. Of course, both of these bills were approved by Congress and signed by the President. We commend Representative Simpson for introducing H.R. 4708 and Representative Otter for cosponsoring the bill. We strongly urge your Subcommittee to give the legislation favorable consideration.

IWUA adopted the attached resolution at its Annual Conference in January, 2002, expressing support for Fremont–Madison's proposed title transfer. We request that this letter of support and IWUA's resolution be included in the official hearing record as the Subcommittee considers the bill. Thank you.

Sincerely,

NORMAN M. SEMANKO
Executive Director and General Counsel

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