

**H.R. 155, LOWER BRULE AND CROW
CREEK TRIBAL COMPENSATION
ACT; H.R. 5511, LEADVILLE MINE
DRAINAGE TUNNEL REMEDIATION
ACT OF 2008; AND H.R. 5710, EAST-
ERN NEW MEXICO RURAL WATER
SYSTEM AUTHORIZATION ACT.**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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LEGISLATIVE HEARING ON H.R. 155, TO PROVIDE COMPENSATION TO THE LOWER BRULE AND CROW CREEK SIOUX TRIBES OF SOUTH DAKOTA FOR DAMAGE TO TRIBAL LAND CAUSED BY PICK-SLOAN PROJECTS ALONG THE MISSOURI RIVER (LOWER BRULE AND CROW CREEK TRIBAL COMPENSATION ACT); H.R. 5511, TO DIRECT THE SECRETARY OF THE INTERIOR, ACTING THROUGH THE BUREAU OF RECLAMATION, TO REMEDY PROBLEMS CAUSED BY A COLLAPSED DRAINAGE TUNNEL IN LEADVILLE, COLORADO, AND FOR OTHER PURPOSES (LEADVILLE MINE DRAINAGE TUNNEL REMEDIATION ACT OF 2008); AND H.R. 5710, TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PROVIDE FINANCIAL ASSISTANCE TO THE EASTERN NEW MEXICO RURAL WATER AUTHORITY FOR THE PLANNING, DESIGN, AND CONSTRUCTION OF THE EASTERN NEW MEXICO RURAL WATER SYSTEM, AND FOR OTHER PURPOSES (EASTERN NEW MEXICO RURAL WATER SYSTEM AUTHORIZATION ACT).

**Thursday, May 8, 2008
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:00 a.m. in Room 1334, Longworth House Office Building, Hon. Grace F. Napolitano [Chairwoman of the Subcommittee] presiding.

Present: Representatives Napolitano, Udall, Lamborn, and Herseth Sandlin.

Ms. NAPOLITANO. The Subcommittee on Water and Power will come to order.

The purpose of today's meeting is to hold legislative hearings on H.R. 155, the Lower Brule and Crow Creek Tribal Compensation Act, introduced by our colleague, Congresswoman Stephanie Herseth Sandlin of Brookings, South Dakota; and H.R. 5511, the Leadville Mine Drainage Tunnel Remediation Act of 2008—and while I am at it, this Committee has consented to have that posted so that there is a better understanding of the issue—introduced by a colleague and member of the Subcommittee, Congressman Doug Lamborn of Colorado Springs, Colorado; and H.R. 5710, the Eastern New Mexico Rural Water System Authorization Act, introduced by our colleague Congressman Tom Udall of Santa Fe, New Mexico.

We welcome our Congress Members, and they should be coming in off and on. Today our acting Ranking Member will be Congressman Doug Lamborn. We welcome our guests, expecting Stephanie Herseth Sandlin, current member of the National Resources Committee, and Congressman Steve Pearce, Ranking Member of Energy and Minerals Subcommittee, and Congressman Tom Udall, a former member of the Natural Resources Committee.

I ask unanimous consent that Congresswoman Stephanie Herseth Sandlin, Congressman Steve Pearce, and Congressman Tom Udall be allowed to sit on the dais and participate in Subcommittee proceedings today. And without objection, Mr. Lamborn, so ordered.

After my statement, I will recognize all members of the Subcommittee for any statement they may have. Any Member who decides to be heard will be heard. Any additional material from witnesses or anybody in the audience may be submitted for the record, or by any other interested party, you will have 10 business days following today's hearing.

The five-minute rule with our timer will be enforced, and you can see it right there. Green is go, yellow start winding it out, and red, I will gavel you softly.

STATEMENT OF THE HON. GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. NAPOLITANO. Today's hearing continues our series of legislative briefings dedicated to the many issues that face the West. H.R. 155, sponsored by Stephanie Herseth Sandlin, deals with the reassessment of tribal compensation due to land inundation.

H.R. 5511 is sponsored by Subcommittee member Doug Lamborn, would provide the Secretary of the Interior with the authority to address serious water contamination programs associated with the Bureau-owned Leadville Mine Drainage Tunnel.

Last, H.R. 5710, the Eastern New Mexico Rural Water Project Act, introduced by Congressman Tom Udall of New Mexico, would authorize the Secretary to help in the design and construction of the Eastern New Mexico pipeline. This pipeline, when constructed, would provide a sustainable water supply to nine communities that currently rely on dwindling groundwater resources.

We look forward to hearing from all our witnesses. Thank you for being here. And I am pleased to yield to my acting Ranking Member, Congressman Doug Lamborn, for his statement.

[The prepared statement of Ms. Napolitano follows:]

**Statement of The Honorable Grace F. Napolitano,
Chairwoman, Subcommittee on Water and Power**

Today's hearing continues our series of legislative briefings dedicated to the many issues that face the west. H.R. 155 sponsored by Rep. Herseth Sandlin deals with the reassessment of tribal compensation due to land inundation. H.R. 5511, as sponsored by subcommittee member Doug Lamborn, would provide the Secretary of the Interior with the authority to address water contamination problems associated with the Bureau owned Leadville Mine Drainage Tunnel. Lastly we will hear a bill introduced by Congressman Tom Udall of New Mexico. H.R. 5710, the Eastern New Mexico Rural Water Project Act would authorize the Secretary to help in the design and construction of the Eastern New Mexico Pipeline. This pipeline when constructed would provide a sustainable water supply to nine communities that currently rely on dwindling groundwater resources.

We look forward to hearing from all witnesses. Thank you all for being here today. I am pleased to now yield to my colleague and friend from Spokane, Washington, Ranking Member Congresswoman Cathy McMorris Rodgers for her statement.

**STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. Thank you, Madame Chairwoman, and I appreciate your holding this hearing today. It is a pleasure to serve as the acting Ranking Member for today.

This is an important day for the citizens of Lake County, Colorado, and for all those who are downstream on the Arkansas River. They deserve to hear how the Federal government intends to correct problems with the Leadville Mine Drainage Tunnel.

The Leadville Mine Drainage Tunnel was originally constructed by the Federal Bureau of Mines in the 1940s and 1950s to facilitate the extraction of lead and zinc ore for the World War II and the Korean War efforts. The Bureau of Reclamation acquired the tunnel in 1959, hoping to use it as a source of water for the Frying Pan Arkansas Project.

Although the tunnel was never used for this project, water that flows out of the tunnel is considered part of the natural flow of the Arkansas River.

With the passage and consequent signing into law of H.R. 429 during the 102nd Congress in 1992, the Bureau constructed and continues to operate a water treatment plant at the mouth of the tunnel. Groundwater levels at the tunnel have fluctuated in recent years. In addition, a collapse in the tunnel has increased the tunnel's mine pool significantly, leading to new seeps and springs in the area.

Current estimates suggest that up to one billion gallons of water may have built up within the mine pool. This is water that is contaminated by heavy metals.

In November 2007, the EPA sent a letter to the Bureau expressing concerns over a catastrophic blowout. And in February of this year, the Lake County Commissioners declared a state of emergency. One of the commissioners, Mr. Mike Hickman, is with us today as a witness.

Another leader in this effort, State Senator Tom Wiens, was unable to be here today, although he wanted to. He has been a tireless worker in helping solve the problem addressed by this bill.

With your permission, Madame Chairwoman, I would like to submit a copy of a letter I received from the Lake County Commissioners dated November 15, 2007, for the record.

Ms. NAPOLITANO. So ordered, without objection.

[NOTE: The information submitted for the record has been retained in the Committee's official files.]

Mr. LAMBORN. We know that the Bureau of Reclamation is completing a task, a risk assessment in this area, and we look forward to reviewing that report when it is done. But many of the problems reported at this site are not new. Legislation addressing this matter and authorizing the Secretary of the Interior to rehabilitate this tunnel dates back to at least 1976.

In response to the request for action from the local community, I worked together with Congressman Mark Udall from Colorado, who is also here today, and we introduced H.R. 5511. This bill would direct the Bureau of Reclamation to relieve water pressure behind certain blockages in the tunnel, permanently manage the mine pool behind any blockage to prevent releases of contaminated water, and eliminate the potential for tunnel failure.

I also note, Madame Chairwoman, that we have two other bills before us today. Mr. Tom Udall of New Mexico has introduced a bill that authorizes Federal participation in the Eastern New Mexico rural water supply system, and Mrs. Herseth Sandlin's bill provides a third round of compensation to two tribes in South Dakota.

I look forward to the testimony on all of these bills before us today, and I thank you again for holding this hearing. And I yield back.

[The prepared statement of Mr. Lamborn follows:]

**Statement of The Honorable Doug Lamborn, Acting Ranking Republican,
Subcommittee on Water and Power, on H.R. 5710**

Thank you, Madame Chairwoman, for holding this hearing. It's a pleasure to serve as the Acting Ranking Republican for today.

Today is an important day for the citizens of Lake County, Colorado. They deserve to hear what the federal government intends to do to correct problems with the Leadville Mine Drainage Tunnel. The Leadville Mine Drainage Tunnel was originally constructed by the federal Bureau of Mines in the 1940's and 1950's to facilitate the extraction of lead and zinc ore for the World War II and the Korean War efforts.

The Bureau of Reclamation acquired the Tunnel in 1959 hoping to use the tunnel as a source of water for the Fryingpan-Arkansas Project. Although the tunnel was never used for the Fryingpan-Arkansas Project, water that flows out of the tunnel is considered part of the natural flow of the Arkansas River. With the passage and subsequent signing into law of H.R. 429 during the 102nd Congress (1992), the Bureau constructed and continues to operate a water treatment plant at the mouth of the Tunnel.

Groundwater levels at the tunnel have fluctuated in recent years. In addition, a collapse in the tunnel has increased the tunnel's mine pool significantly, leading to new seeps and springs in the area. Current estimates suggest that up to 1 billion gallons of water may have built up within the mine pool. In November 2007, the EPA sent a letter to the Bureau expressing concerns over a catastrophic blowout, and in February 2008, the Lake County Commissioners declared a state of emergency. With your permission Madame Chairwoman, I would like to submit a copy of a letter I received from the Lake County Commissioners dated November 15, 2007 for the record.

We know that the Bureau of Reclamation is completing a risk assessment in the area, and we look forward to reviewing that report. But many of the problems reported at this site are not new. Legislation addressing this matter and authorizing the Secretary of the Interior to rehabilitate this tunnel dates back to at least 1976. In response to the request for action from the local community, I worked together with Congressman Mark Udall from Colorado and introduced H.R. 5511. This bill would direct the Bureau of Reclamation to relieve water pressure behind certain blockages in the tunnel, permanently manage the mine pool behind any blockage to prevent releases of contaminated water, and eliminate the potential for tunnel failure.

I also note, Madame Chairwoman, that we have two other bills before us today. Mr. Udall of New Mexico has introduced a bill that authorizes federal participation in the Eastern New Mexico Rural Water Supply system and Mrs. Herseth-Sandlin's bill provides a third round of compensation to two tribes in South Dakota. I look forward to the testimony on all of the bills before us today. I thank you again for holding this hearing.

Ms. NAPOLITANO. Thank you. And I would like to call upon Mr. Tom Udall. He was here first, so, Tom was here first.

STATEMENT OF THE HON. TOM UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. UDALL. Well, thank you. Thank you very much, Chairwoman Napolitano and Ranking Member McMorris Rodgers, who isn't here, and also the acting Representative Lamborn. Thank you for holding this hearing on H.R. 5710, the Eastern New Mexico Rural Water System Authorization Act.

There has long been a recognized need for a reliable and safe supply of potable water for Eastern New Mexico. After years of drought and ever-increasing population growth, this water supply project is now absolutely critical for the continued economic well-being of Curry, Roosevelt, and Quay Counties in Eastern New Mexico.

The Ogallala Aquifer currently provides 100 percent of the municipal and industrial water supplies, and the vast majority of agriculture water for communities in East Central New Mexico. However, both the quantity and quality of this groundwater reserve have declined severely in recent decades. It is estimated that these groundwater supplies will not be able to sustain current use in the next decade, and may be functionally depleted within 25 years.

For 45 years water users in Eastern New Mexico have worked to develop an alternative source of municipal water that will be sustainable into the future. The Eastern New Mexico Rural Water System Authorization Act is the result of years of research, of consultation, of planning, and of negotiation, the legislation supported by the communities involved, the State of New Mexico, and by the entire New Mexico delegation.

I applaud the efforts of the authority of the state, and of the counties and cities involved in this project. They have worked expeditiously and effectively to finalize the studies, and plan how to move forward with this project.

The establishment of the Eastern New Mexico rural water system is essential to the socioeconomic survival of communities in Eastern New Mexico. H.R. 5710 echoes the ongoing efforts of the eight cities and counties participating in the project. These communities are working to establish innovative approaches to conserving water, both agriculturally and domestically. They are part of a

movement in the West to recognize the limitations of this precious resource, and to work within these limitations to build strong communities.

Again, I thank Chairwoman Napolitano and Ranking Member McMorris Rodgers and acting Ranking Representative Lamborn for holding this important hearing, and also welcome David Lansford, who is the former Mayor of Clovis. He is on the panel here. He is also, David is the Chairman of the Eastern New Mexico Rural Water Authority, and he has been a real leader in this process, and has worked in, tirelessly, I think, in his years of public service to see that this is accomplished.

And I think we also have the current mayor in the audience here, Gayla Brumfield, who is in the back there, that just waved. And she also, we are having a seamless hand-off here between former mayor and the current mayor, and all the community working together. So it is wonderful to have both of you here today.

And thank you again, Chairwoman Napolitano.

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

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

Chairwoman Napolitano, Ranking Member McMorris-Rodgers, and members of the Subcommittee,

Thank you for holding this hearing on H.R. 5710 the Eastern New Mexico Rural Water System Authorization Act.

There has long been a recognized need for a reliable and safe supply of potable water for eastern New Mexico. After years of drought and ever-increasing population growth, this water supply project is now absolutely critical for the continued economic well-being of Curry, Roosevelt and Quay counties in eastern New Mexico.

The Ogallala aquifer currently provides 100 percent of the municipal and industrial water supplies and the vast majority of agricultural water for communities in east-central New Mexico. However, both the quantity and quality of this groundwater reserve have declined severely in recent decades. It is estimated that these groundwater supplies will not be able to sustain current use into the next decade, and may be functionally depleted within 25 years.

For 45 years, water users in eastern New Mexico have worked to develop an alternative source of municipal water that will be sustainable into the future. The Eastern New Mexico Rural Water System Authorization Act is the result of years of research, of consultation, of planning, and of negotiation. The legislation supported by the communities involved, the state of New Mexico, and by the entire New Mexico Delegation.

I applaud the efforts of the Authority, of the state, and of the counties and cities involved in this project. They have worked expeditiously and effectively to finalize the studies and planning necessary to move forward with this project.

The establishment of the Eastern New Mexico Rural Water System is essential to the socio-economic survival of communities in eastern New Mexico. While vital to New Mexico, H.R. 5710 is just one piece in the larger puzzle of water resources in the arid west. States and communities must work to address water scarcity with conservation efforts, with new technology, and with negotiation of water rights. H.R. 5710 echoes the ongoing efforts of the 8 cities and counties participating in the project. These communities are working to establish innovative approaches to conserving water both agriculturally and domestically. They are part of a movement in the west to recognize the limitations of this precious resource and to work within these limitations to build strong communities.

Again, I thank you Chairwoman Napolitano, Ranking Member McMorris-Rodgers, for holding a hearing on this important piece of legislation.

Ms. NAPOLITANO. You are very welcome, sir. Mr. Mark Udall.

**STATEMENT OF THE HON. MARK UDALL, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF COLORADO**

Mr. UDALL. Thank you, Madame Chairwoman. I will be brief. I wanted to thank you for holding this important hearing. This is of real interest to not only Lake County and Leadville, but anybody who lives along the Arkansas River.

I want to also welcome the two Coloradans that are here with us today, Martha Rudolph and Commissioner Hickman. Thank you for traveling a long way to be with us.

My colleague, Congressman Lamborn, has really explained the reason for our legislation. I want to fully associate myself with his remarks. And we intend to find a solution. We intend to find a solution as quickly as possible.

I look forward to your testimony. I will have some questions when you finish. Thanks again for being here.

I yield back, Madame Chairwoman.

Ms. NAPOLITANO. Thank you, Mr. Udall. We will proceed to hear from our witnesses. We only have one panel for all the three bills, and the witnesses will be introduced before they testify. And after we hear from the panel, we will begin questions.

I would like to tell you, I am sorry to be the bearer of not-so-good news, we will have votes in about maybe five or 10 minutes. And it will be almost 40 minutes before we return, because there are a number of bills that we have to go vote on. So we beg your indulgence, and thank you very much for your patience.

All of your submitted prepared statements will be entered into the record, and all witnesses are asked to kindly summarize the highpoints of your testimony. And please limit your remarks to five minutes. The timer will be used. And if you hear me tapping or looking at you, you kind of know that I am trying to have you speed it up.

It also applies to all questioning. A total of five minutes for questions, including responses, applies to our members. If there are any additional questions, we will have a second round, if time permits.

And for our first panel, we have Mr. Robert Quint, Director of Operations, the Bureau of Reclamation here in Washington, D.C., to testify on all three bills.

Mr. Quint.

**STATEMENT OF ROBERT QUINT, DIRECTOR OF OPERATIONS,
BUREAU OF RECLAMATION, WASHINGTON, D.C., ACCOMPANIED BY ELIZABETH SUTHERLAND, DIRECTOR OF THE
ASSESSMENT AND REMEDIATION DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.**

Mr. QUINT. Good morning, Madame Chairwoman, members of the Subcommittee. I am pleased to provide the Department of Interior's views on the three bills before the Subcommittee today.

I would also like to add that I am accompanied by Elizabeth Sutherland, Director of EPA's Assessment Remediation Division.

First, H.R. 155 would increase the compensation for the Lower Brule and Crow Creek Indian Tribes for their loss of lands and cultural resources as a result of the Pick-Sloan Missouri Basin Project. The intent of the bill is to put the compensation provided to the tribes on par with the compensation provided to similarly

situated tribes that received compensations for losses of the Pick-Sloan Project along the Missouri River.

The Department does not support H.R. 155. However, we agree with the General Accounting Office's 1991 and 2006 opinions stating that the question of whether additional compensation should be provided to the tribes is a policy decision for the Congress. If the Subcommittee has detailed questions about this bill, the Department may be best suited to respond to them for the record.

Next, H.R. 5511 would direct Interior to implement portions of the remedy selected by the Environmental Protection Agency for the California Gulf Superfund Site. The Administration cannot support H.R. 5511. However, I can report to the Subcommittee that Reclamation and EPA are aggressively taking action to address any immediate risk.

Public safety dictates every action Reclamation and EPA take at the Leadville Mine Drainage Tunnel, and we have an emergency action plan for the tunnel that has been in place since 2001. Reclamation is making every effort to make a science-based determination regarding whether there is an elevated public safety risk below the tunnel, and Reclamation's ongoing risk assessment, begun in November 2007, is aimed at understanding how the complex geology and extensive subsurface mine passages affect the quantity and quality of the drainage water inside. The results are expected in June of this year.

In the meantime, our agencies are committed to the following. EPA will complete a removal action that is underway, including construction of a relief well, pump, and pipeline to transport water to Reclamation's treatment plant. Reclamation will operate and maintain the treatment plant, relief wells, pump, and pipeline, and if necessary, based on the risk analysis, improve the treatment plant to handle increased flows of water as a result of the EPA removal action.

In addition to these actions, Reclamation and EPA are evaluating long-term solutions, and will have a better understanding of the long-term safety requirements once the risk analysis is completed.

We are working to develop a permanent solution, and we will submit proposed legislation if any legislative authority is needed to implement it.

And finally, H.R. 5710, the Eastern New Mexico Rural Water Project Act, would authorize the rural water project for several Eastern New Mexico municipalities. Reclamation is working with the State of New Mexico and the local parties on studies for this evolving project over the years. Since 1998, Congress has provided \$1.76 million for the planning and technical assistance, of which more than \$1.2 million has been transferred directly to the City of Clovis for the work on this project.

Reclamation has previously expressed concerns with the adequacy of the conceptual design report, and posed some critical questions that needed to be considered before construction should proceed. Much progress has occurred, and Reclamation continues to work with the local entities to develop answers to those concerns.

The Administration is concerned about this project's high Federal cost of \$327 million, and for this reason cannot support this bill at this time.

This concludes my statement. I will be pleased to answer any of your questions. Thank you.

[The prepared statements of Mr. Quint follow:]

**Statement of Robert Quint, Director of Operations, Bureau of Reclamation,
U.S. Department of the Interior, on H.R. 155**

Good morning Madam Chairwoman and members of the Subcommittee. I am pleased to be here today to present the views of the Administration on H.R. 155, the "Lower Brule and Crow Creek Tribal Compensation Act." For the reasons I will discuss today, the Administration does not support this bill.

H.R. 155, if enacted, would increase the compensation for the Lower Brule and Crow Creek Tribes for their loss of lands and cultural resources as a result of the Pick-Sloan Project. The intent of the legislation is to put the compensation provided to the Lower Brule and Crow Creek tribes (Tribes) on par with the compensation provided to similarly situated tribes in the region that received compensation for losses resulting from the Pick-Sloan water project along the Missouri River. The Lower Brule and Crow Creek Tribes received compensation for these losses under legislation enacted in 1996 and 1997 discussed later in this testimony. Without further analysis, it is not clear why the compensation already provided should not be considered adequate. However, we will be happy to work with the sponsor of the bill and the Tribes to determine if in fact there was an inequitable calculation regarding the original size of the trust funds that have been established.

The original statutes providing compensation for these two Tribes were the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 105-132), and the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 104-223). Pursuant to these bills, two funds, the Crow Creek Fund and the Lower Brule Fund, were created in the U.S. Treasury. The interest from these funds is used to compensate the Crow Creek and Lower Brule Sioux tribes for damages to their reservations and economies as a result of water infrastructure development. The original authorized sizes for the Lower Brule Fund and the Crow Creek Fund were \$39,300,000 and \$27,500,000, respectively. Enactment of H.R. 155 would increase the maximum size of each fund, with additional deposits to be derived from the sale of electric power from the Pick-Sloan Missouri Basin program. If this bill is enacted, the size of the Lower Brule Fund and the Crow Creek Fund would be increased to \$129,822,085 and \$69,222,084, respectively.

When the Congressional Budget Office (CBO) scored a similar bill, S. 374, in 2006, it estimated that there would be an increase in direct spending of \$169 million over a ten year period if the bill had been enacted. This direct spending would result from the increase in the size of the funds provided for under this legislation and also the likely reclassification of the funds from budgetary to non-budgetary because the bill would extinguish any future claims by the Tribes against the federal government related to the Pick-Sloan Missouri River Basin Program upon full funding of the trust funds.

This concludes my testimony. I will be happy to respond to any questions you may have.

Thank you.

**Statement of Robert Quint, Director of Operations, Bureau of Reclamation,
U.S. Department of the Interior, on H.R. 5511**

Madam Chairwoman and Members of the Subcommittee, I am Bob Quint, Director of Operations for the Bureau of Reclamation. I am pleased to be here today to present the Administration's views on H.R. 5511, the "Leadville Mine Drainage Tunnel Remediation Act of 2008." We recognize the intense public interest in the Leadville Mine Drainage Tunnel issues addressed by this bill, and support the goals of this bill of ensuring public safety and accomplishing the expeditious and efficient cleanup of the California Gulch Superfund site. The Administration cannot support H.R. 5511 at present because we have not yet determined what further actions are needed to provide a long-term solution.

That being said, I can report to the Subcommittee that Reclamation and EPA are aggressively taking action to address any immediate risk.

In view of the recent concerns of rising groundwater and mine pool levels, EPA and the Bureau of Reclamation, in coordination with the State of Colorado, are now conducting removal actions. This work commenced in February 2008 and includes two major activities. First, EPA installed a pumping system in the Gaw mine shaft and has been pumping at a rate of 450 gallons per minute since late February. This

action may lower water levels in the mine pool. In addition, it appears to have diminished seeps and springs that had recently appeared in the lower California Gulch. Second, EPA is taking steps to drill a relief well into the LMDT to lower the level of water in the LMDT and mine pool. EPA plans to have the relief well, pump and pipe to the LMDT installed and ready to operate in Summer of 2008.

Both the Department of the Interior and the U.S. Environmental Protection Agency (EPA) have a long history in this area. The Leadville Mine Drainage Tunnel (LMDT) is located in central Colorado, and was originally constructed by the Bureau of Mines from 1943 to 1952. It was intended to de-water portions of the Leadville Mining District to facilitate the extraction of lead and zinc ore for the WWII and Korean War efforts. Reclamation acquired the LMDT in 1959 with the intention of using the tunnel as a source of water for the Fryingpan-Arkansas project, though water rights issues precluded using the tunnel effluent as a water source. Water that flows out of the tunnel is considered part of the natural flow of the river.

In 1975, EPA issued a National Pollutant Discharge Elimination System (NPDES) permit to Reclamation because the LMDT effluent contains heavy metals. In 1991 Reclamation completed construction of a water treatment facility at the LMDT portal—the plant treats the effluent flowing from the LMDT to the standards in the NPDES permit.

EPA listed the California Gulch Site on the National Priority List (NPL) in 1983. The 18-square-mile area was divided into 12 areas designated Operable Units (OU). The Leadville Mine Drainage Tunnel (LMDT) is located beneath OU6, which covers approximately 3.4 square miles in the northeastern quadrant of the Site. The Bureau of Reclamation owns the LMDT, which is hydrologically connected to OU6. Reclamation does not own or operate any sources of contamination on the surface of OU6 (i.e., waste rock or tailings) or any portion of the surface itself. The objective of OU6 is to control surface sources of contamination. Specifically, the objectives are to control erosion of mine waste rock and deposition into local water courses; control leaching and migration of metals from mine waste rock into surface water; control leaching of metals from mine waste rock into groundwater; and prevent direct unacceptable exposures to elevated concentrations of contaminants in the soil and waste rock. EPA is the lead agency to address hazardous substances at the California Gulch NPL Site, including OU6 in particular.

As part of the implementation of the OU6 remedy, EPA collects surface runoff from mine waste piles and discharges that surface runoff into the Marion Shaft, where it moves through the mine workings to the Leadville Mine Drainage Tunnel. This water is seasonal and totals approximately 3 to 5 million gallons a year. However, the volume of surface water diverted by EPA to the LMDT is less than 1% of the 550 million to 750 million gallons of water Reclamation treats annually. EPA pays Reclamation for the treatment of that water at the Reclamation Treatment Plant. The chemistry of the water draining from the LMDT to the Reclamation treatment plant is very different from the chemistry of the water found on the surface of OU6. It has proven to be possible, however, for the Reclamation plant to treat limited amounts of waters from OU6 under agreements with EPA.

Currently, groundwater levels have continued to fluctuate near the LMDT. Reclamation is working to assess the threat level to public safety through a detailed risk analysis. Reclamation has already increased the rate at which water from the LMDT is pumped, treated, and discharged into the Arkansas River. Since February 15, Reclamation has established capability to increase water treatment at the treatment facility by over 80% and today is able to process water at a rate of nearly 2,100 gallons per minute (gpm) from the LMDT (or 4.8 cubic feet per second). The natural rate of drainage from the tunnel is 1,487 gpm, or 3.4 cfs, which amounts to 2,500 acre feet annually.

Public safety dictates every action Reclamation takes at the LMDT, and Reclamation has had an Emergency Action Plan for the LMDT and water treatment facility since 2001. Water level indicators and other warning systems near the LMDT are tied into the water treatment plant's auto-dialer for employees, and an audible warning system was installed in 2002 to alert the Village at East Fork residents in the event of an emergency. The system plays an alert message in Spanish and English.

Reclamation is making every effort to make a science-based determination regarding whether there is an elevated public safety risk below the LMDT. Reclamation's ongoing risk assessment, begun in November 2007, is aimed at understanding how the complex geology and extensive subsurface mine passages affect the quantity and quality of drainage water inside. The results are expected in June of this year.

Interior and EPA, at the highest levels, are committed to the following:

- EPA will complete the removal action that is underway, including the construction of a relief well, the pump and pipeline to transport water to Reclamation's treatment plant.
- Reclamation will operate and maintain the treatment plant, relief wells, pump and pipeline, and if necessary based on the risk analysis, improve the treatment plant to handle increased flows of water as a result of the EPA removal action.

In addition to these actions, Reclamation and EPA are evaluating long-term solutions and will have a better understanding of long-term safety requirements once the risk analysis is completed. We are working to develop a permanent solution to any safety problem and we will submit proposed legislation if any legislative authority is needed to implement this solution on a long-term basis.

The Administration cannot support the specific language in H.R. 5511 at present because we do not yet know what additional specific safety measures and funding requirements may be needed. Once the EPA relief well is completed in June and water can be pumped from the LMDT, any immediate risk should be alleviated and more information about the needs for ensuring the safety of the tunnel and long-term water treatment options can be assessed. It is possible that the particular solution provided for in section 1(b)(2) of H.R. 5511, which requires implementation of the OU6 remedy selected by the Administrator of the Environmental Protection Agency in 2003, may turn out not to be necessary. Further, maintenance and/or repair of the LMDT as prescribed in section 1(b)(4) of the bill may be unnecessary because of other actions that could be taken to better ensure public safety. Reclamation is currently conducting a risk assessment that can be used to shed more light on what further mitigating actions may be advisable at the site. Reclamation and EPA look forward to working with the Congress and the State of Colorado to find the best long-term outcome for the citizens of Leadville.

This concludes my written remarks. We would be pleased to answer any questions from the Subcommittee.

Statement of Robert Quint, Director of Operations, Bureau of Reclamation, U.S. Department of the Interior, on H.R. 5710

Madam Chairwoman and Members of the Subcommittee, I am Robert Quint, and I am the Director of Operations at the Bureau of Reclamation. I am pleased to be here to provide the Department of the Interior's views on H.R. 5710, the Eastern New Mexico Rural Water Project Act. The Department cannot support H.R. 5710.

Reclamation has been working with the state of New Mexico and local parties on developing concepts for the Eastern New Mexico Rural Water Project since Congress authorized feasibility studies in 1966. Reclamation has participated in a number of studies on this evolving project over the years. Since 1998, Congress has provided \$1,763,000 for planning and technical assistance, of which more than \$1.2 million has been transferred directly to the City of Clovis, acting as the fiscal agent for the local communities, for work on the project. The FY 2008 omnibus appropriation includes \$246,000 for the Project.

The proposed Eastern New Mexico Rural Water Project would provide a sustainable water supply for the eastern New Mexico municipalities of Clovis, Elida, Grady, Melrose, Portales, and Texico, as well as Curry and Roosevelt counties and Cannon Air Force Base. The area currently depends entirely on a groundwater source that is diminishing in both quantity and quality. The currently envisioned project would supply 16,400 acre-feet per year. The water would be delivered through a pipeline from Ute Reservoir, which was built by the State of New Mexico in 1963 as a water supply source for eastern New Mexico, and would cost approximately \$436 million to construct, with \$8.2 million in annual operations and maintenance costs.

In 2004, Reclamation testified on legislation (H.R. 4623) to authorize construction of the Eastern New Mexico Rural Water Supply Project. During that hearing, Reclamation cited concerns with the adequacy of the Conceptual Design Report to support authorization and identified some critical questions that needed to be answered before construction should proceed, such as whether all economically viable alternatives had been considered, whether design and construction costs were consistent with comparable projects, and whether the communities that would be sharing project costs had an accurate estimate of how much those costs might be. Reclamation also expressed concerns with the proposed cost sharing formula, which assumed an 80% federal share for construction of the project. The federal cost share in the new legislation (H.R. 5710) is 75%.

In the intervening years, a Reclamation "Oversight Committee" has been assisting the Eastern New Mexico Rural Water Authority (Authority) and their consultants in developing a more complete and thorough feasibility report.

A "Preliminary Engineering Report" prepared for the Authority by their consultant that was submitted in December 2006 represents significant progress toward a feasibility-level analysis. Reclamation is continuing to work with the Authority as they further develop the proposed project's design, cost estimates, financing plan, and environmental analysis.

The Authority is working with their consultant to take the design and associated cost estimate to the feasibility level. Feasibility-level cost estimates are based on information and data which is sufficient to permit the preparation of preliminary layouts and designs used to estimate each kind, type, or class of material, equipment, and labor necessary to complete a project. A second consultant has been selected by the Authority to work on National Environmental Policy Act compliance. A third consultant for the Authority is working on a detailed plan for financing the project.

As stated above, the most recent cost estimate for construction, as prepared last year by the Authority's consultant, is \$436 million, with an estimated annual operation and maintenance cost of \$8.2 million. The local communities would pay 100% of the operation, maintenance, and replacement costs.

Reclamation is committed to working with its customers, States, Tribes, and other stakeholders to find ways to balance and provide for the mix of water resource needs in the future. The Administration is concerned, however, about becoming the primary source of funds for these types of projects. Because of this project's high cost, with a federal cost share of \$327 million, and because this project would compete with ongoing work by Reclamation in New Mexico and across the west, the Department cannot support H.R. 5710. However, we are working with the Authority and the State to bring the project to a point where a feasibility determination is possible.

This concludes my statement, and I am happy to answer any questions the Subcommittee may have.

Ms. NAPOLITANO. Thank you, Mr. Quint. I would like to move on to H.R. 155, Herseth Sandlin, the Hon. Michael Jandreau, Chairman of the Lower Brule Sioux Tribe from Lower Brule, South Dakota.

**STATEMENT OF THE HON. MICHAEL JANDREAU, CHAIRMAN,
LOWER BRULE SIOUX TRIBE, LOWER BRULE, SOUTH DAKOTA**

Mr. JANDREAU. Madam Chairman, members of the Committee, thank you very much for the invitation to appear before you this morning.

My name is Mike Jandreau. I have been the Chairman of the Lower Brule Tribe for 29 years. With me today is the newly elected Chairman of the Crow Creek Tribe, Mr. Brandon Sazue, and also the members of my Tribal Council and some staff members, plus our Legal Counsel in town, Mr. Marshall Marz.

I would like to express my appreciation to Rep. Herseth Sandlin for her introduction of this bill, for the Lower Brule and Crow Creek. As you may know, this legislation has been developed over many years. The bill passed three times before the Senate. It was again reported by the Senate Indian Affairs Committee, and the 109th Congress, after the bill was reported in the 109th Congress. However, Chairman McCain of the Indian Affairs Committee asked GAO for a report on the legislation. A mathematical error was discovered. The amount of the compensation was reduced; and the bill was reduced from \$186 million to \$129 million, or by \$57 million. The Crow Creek amount was reduced by \$36 million, from \$105 million to \$69 million.

A new Section 5 was added, making it clear as to the Lower Brule and Crow Creek legislation, that this bill would be full and final compensation for those River claims. In addition, it stated that if any other further compensation was for the rest of the tribes

along the Missouri, then Lower Brule and Crow Creek would not participate. It also made certain that Section 5 of H.R. 155 would not be a precedent beyond the Missouri River Basin Program.

Further, I believe in addressing the request that we are here for the third time, I do not believe that the concept of the final asking price that was used by GAO is appropriate to our situation. While normally it is an indication of good will, we find that there was no appeal; that it was a take-it-or-leave-it situation that we found ourselves in. And that the legislation that was initially passed, there was no process allowed to the tribes to adequately determine the true extent of our loss.

Consequently, we have went forward on these two occasions, both Crow Creek and Lower Brule, to seek compensation for the ongoing use of our water right for the development of electricity, for the ongoing inundation and what is suffered by the tribes as a result of that.

In 1996 and 1997, when the trust funds were enacted, the capitalization was considered an inter-governmental transfer of funds. As a result, the capitalization was not scored as a cost to the United States. Specifically, the report said the deposit to trust funds would be an inter-governmental transfer, and there would be no net outlays associated with it.

Since Senate Report 105-46 at 18, H.R. 155 would amend the enacted trust funds, and should therefore use the same CBO methodology.

And so thank you very much for the opportunity.

Ms. NAPOLITANO. You have time to wrap up, sir.

Mr. JANDREAU. I would like to say, in wrapping up, that this legislation is vitally important to the Lower Brule and the Crow Creek Tribes to regain a quality of life that was so severely taken away from the tribes in the 1950s and 1960s. Thank you.

[The prepared statement of Mr. Jandreau follows:]

**Statement of The Honorable Michael Jandreau,
Chairman, Lower Brule Sioux Tribe**

Chairwoman Napolitano, Members of the Committee, thank you very much for the invitation to appear before you this morning. I am Chairman Michael Jandreau of the Lower Brule Sioux Tribe. I have been Chairman at Lower Brule for 29 years. With me today is Chairman Brandon Sazue of the Crow Creek Sioux Tribe, members of our Tribal Council, and our Legal Counsel, Marshall Matz. Chairman Sazue was just installed in his new position two days ago, on May 6th.

I would like to express my appreciation to Representative Herseth Sandlin for introducing the Lower Brule and Crow Creek Compensation Act, H.R.155. We are well served in South Dakota by Ms. Herseth Sandlin. Senators Thune and Johnson have introduced a companion bill in the Senate.

As you may know, the legislation before you today has been developed over the course of many years. An earlier version of the bill passed the Senate three times in the 108th Congress and was again reported by the Senate Indian Affairs Committee in the 109th Congress. After the bill was reported in the 109th Congress, however, Chairman McCain then asked the GAO for a report on the legislation. A mathematical error was discovered and the legislation before you was modified in several important ways:

- The amount of compensation was reduced. For Lower Brule the amount in the bill was reduced from \$186 million to \$129 million, or by \$57 million. The Crow Creek amount was reduced by \$36 million, from \$105 million to \$69 million.
- A new Section 5 was added to the bill making it clear that as to Lower Brule and Crow Creek this legislation would be full and final compensation. If additional legislation were enacted for all other Missouri River Tribes it would not include any additional amount for our two Tribes.

- Section 5 also makes it clear that H.R. 155 would not be a precedent beyond the Missouri River Basin Program.

Madam Chairwoman, the Flood Control Act of 1944 may have been good for the United States, but it has been devastating for Missouri River Tribes. The Tribes of the Northern Great Plains are, by and large, the poorest Tribes in the United States. We have gaming but we are located so far from any population center that gaming it is not a major profit center for our Tribes. Farming is much more important to the economy of Lower Brule than gaming. Several of our farm products are then sold nation wide under our Tribal brand name. Our popcorn is marketed under the brand name "Lakota Popcorn".

Several years ago, in partial compensation for the damage caused by Pick-Sloan, the Congress did enact two Infrastructure Development Trust Funds, one for Lower Brule (Public Law 105-132) and one for Crow Creek (104-223). We have used these funds to the best advantage of our Tribes. Meetings were held with our elders and other Tribal members to establish priorities and many critical projects have been undertaken. But we have only scratched the surface of what needs to be done to bring Tribal life and our Tribal economies into the mainstream of American life.

It was very painful for me to read the popular book, *The World is Flat*, and realize that the United States is outsourcing jobs to China and India when many American Indian reservations have an unemployment rate over 80% and a third world standard of living. Our health statistics do not exist anywhere else in the United States of America.

The Lower Brule and Crow Creek Compensation Act would enable our two Tribes to move forward with health care, justice programs, education, transportation, broadband, and our many other needs. It is for this reason that we are prepared to accept H.R. 155 as full and final compensation.

Finally, let me address the issue of cost. There is a modest cost to the bill; the exact cost will depend on the prevailing interest rate. My best estimate is that the bill will cost approximately \$6 million per year, \$30 million over five years or \$60 million over ten years. Lower Brule would have its trust fund increased by \$90.5 million and Crow Creek would have its trust fund increased by \$41.7 million for a total of \$132.2. At five per cent interest (5%) it would cost the federal government approximately \$6 million per year.

In 1996 and 1997, when the trust funds were enacted, the capitalization was considered an inter-governmental transfer of funds. As a result the capitalization was NOT scored as a cost to the United States. Specifically, the Senate Report said: "the deposit to the trust fund would be an intragovernmental transfer and there would be no net outlays associated with it". Senate Report 105-146, at 18. H.R. 155 would amend the enacted trust funds and should therefore use the same CBO methodology.

Further, we ask that the Committee consider the modest cost of this legislation in the context of history and the revenue that is being generated each year by Pick-Sloan Program for the United States.

The Missouri River Valley, the longest in the country, drains one-sixth of the United States. The Flood Control Act of 1944, creating the Pick-Sloan Missouri River Basis Program included the construction of six dams, four of which are in South Dakota. (Gavins Point runs between South Dakota and Nebraska.) Two of these dams, Fort Randall and Big Bend flooded the Lower Brule and Crow Creek Reservations.

According to the Bureau of Reclamation, the Program was "designed to benefit the entirety of the Missouri River Basin" by providing hydroelectric power, flood control measures, navigational improvement, irrigation and recreational opportunities. "The Pick-Sloan Missouri River Project has provided an accumulated \$2.3 billion in flood control benefits from 1950 to 1999" declares their web site.

The power plants at the dams have a total capacity of producing 2.5 million kilowatts of electricity. The sale of this electricity produced \$437 million in 2006. Over ten years, that is \$4.4 billion in direct revenue to the federal government (over and above the flood control benefits). We are asking for \$60 million, or less than a 1.5% of the revenue.

The Tribes that had their land taken to build the dams and their water used to produce the electricity do not share in these proceeds. The legislation before you today is intended to compensate our two Tribes and finally provide some degree of fairness to what has happened. We believe that the Congress should look at the modest cost of our bill, \$6 million per year, in this context.

In short, the United States took our best land and our water (under the Winters doctrine) to produce electricity. The United States then sells the electricity. None of the proceeds from the sale of the electricity generated with our water on the lands that were Tribal lands goes to the Tribes. There is no division or splitting of the

proceeds. Adding insult to injury, the Tribes are then charged for the electricity that we use. The Pick Sloan project may have been good for the country but it was not good for Lower Brule or Crow Creek.

This is fundamentally wrong! Further, we are not talking about injustices that were committed against Indian people in the 1860's. We are talking about this year, 2008. It is time to correct the record and enact legislation that compensates our Tribes fully and fairly for the land that has been lost and the resources taken.

Thank you very much for your consideration. I would be pleased to answer any questions.

Ms. NAPOLITANO. Thank you very much for your testimony. We have probably about 10 minutes, so we will go on to our next witness, if you don't mind. Do you want to go ahead and introduce?

Mr. LAMBORN. Yes. I am pleased to introduce from Colorado, Martha Rudolph, who is the Director for Environmental Programs with the Colorado Department of Public Health and Environment out of Denver.

Welcome.

STATEMENT OF MARTHA RUDOLPH, DIRECTOR FOR ENVIRONMENTAL PROGRAMS, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, DENVER, COLORADO

Ms. RUDOLPH. Thank you. Chairwoman Napolitano and members of the Subcommittee, I would like to thank you today for the opportunity to express Colorado's support for H.R. 5511, the Leadville Mine Drainage Tunnel Remediation Act of 2008.

For many years, Colorado has urged the Bureau of Reclamation to take responsibility for the repair and maintenance of the Leadville Mine Drainage Tunnel, and to participate in the implementation of the selected remedy for the California Gulch Superfund Site to protect the Arkansas River.

The Bureau has steadfastly declined to take on this responsibility. H.R. 5511 would change this, and would require the Secretary of the Interior, through the Bureau of Reclamation, to repair and maintain the structural integrity of the LMDT, the tunnel, and to participate in the California Gulch Superfund Remedy.

During World War II and Korean War, strategic metals mined in the Leadville area were needed for the war effort. To support this effort, the Bureau of Mines constructed the Leadville Mine Drainage Tunnel to provide continuous drainage of the mines in the Leadville mining district.

In 1959 the Bureau of Reclamation acquired ownership of the tunnel, hoping to acquire water rights associated with the mine drainage, but not wanting to take on any responsibility for the repair or maintenance of the tunnel. Despite its stated preference that it not be responsible for the tunnel, the Bureau constructed a water treatment plant at the mouth of the tunnel, and began to treat the mine drainage in 1979, pursuant to a national pollutant discharge elimination system permit issued to the Bureau by the EPA.

An unfortunate legacy of the intense mining in the Leadville area is its impact on another valuable resource: the Arkansas River. The headwaters of the Arkansas River originate near Leadville. The Arkansas is home to abundant aquatic life, and it serves as a valuable source of drinking water for a number of com-

munities, and is a critical source of water for agricultural uses. It is one of the more popular rivers for rafting and recreational uses.

Protecting the Arkansas River and its ecosystem is of paramount importance to the local residents of Lake County, and to all the people of Colorado. Improving and protecting this river led to the decision to add the California Gulch area to the National Priorities List in 1983, after a surge event from another drainage tunnel near Leadville, the Yak Tunnel, turned the Arkansas River red for 20 miles.

Much work has been done to clean up this area, and the quality of water in the Arkansas River has improved. However, the remedy for the area of the site known as Stray Horse Gulch, also known as Operable Unit No. 6, has not been fully implemented, because it requires the participation by the Bureau, and the treatment of contaminated water at the Bureau's water treatment plant at the mouth of the tunnel.

Despite efforts at minimizing the impacts on the Bureau to treat this water, the Bureau has refused to assist in this remedy. What gains have been made in cleaning up the Arkansas may be lost, however, because of the condition of the tunnel. Over the years the tunnel has fallen into disrepair, largely due to poor maintenance. Many collapses first occurred in the 1960s.

Of greatest concern to the residents of Lake County and to the people of Colorado is the most recent collapse. Within the last year, the level of the water in the mine pool that feeds into the tunnel has increased to the highest ever seen, resulting in many new seeps and springs in the area.

The fear is that if the tunnel suffers a blowout, millions of gallons of contaminated water can surge down the Arkansas, resulting in significant property damage, and devastating many miles of aquatic life, and reversing years of work to clean the Arkansas.

In November 2007, EPA sent a letter expressing its concern regarding the potential for a catastrophic blowout of the tunnel, to the Bureau of Reclamation. And in February, the Lake County Commissioners declared a state of emergency. Governor Bill Ritter sent letters to both President Bush and Secretary Kempthorne urging them to take action, to treat the water behind the collapse to reduce the mine pool.

Colorado believes action is needed now to direct the Bureau of Reclamation to take responsibility to repair and maintain the structural integrity of the tunnel, and to participate in the implementation of the remedy for the California Gulch Superfund Site to avoid any tragic impacts to the people of Lake County and the Arkansas River.

H.R. 5511 would provide such direction. We believe this bill addresses an important issue to the people of Colorado, and its passage is critical to the long-term protection of local residents in Lake County, and to the long-term protection of the Arkansas River ecosystem. Thank you for the opportunity to testify before this Subcommittee today. I would be happy to answer any questions.

[The prepared statement of Ms. Rudolph follows:]

**Statement of Martha Rudolph, Director of Environmental Programs,
Colorado Department of Public Health and Environment**

Chairwoman Napolitano and members of the Subcommittee, I would like to thank you today for the opportunity to present Colorado's views on H.R. 5511, The Leadville Mine Drainage Tunnel Remediation Act of 2008. This bill makes clear that the Secretary of the Interior, through the Bureau of Reclamation, has both the authority and the responsibility to repair and maintain the structural integrity of the Leadville Mine Drainage Tunnel (LMDT), and this bill requires the Bureau of Reclamation to participate in the implementation of the remedy for the California Gulch Superfund Site in accordance with the Record of Decision agreed to by the Environmental Protection Agency and the State of Colorado. Colorado has long urged the Bureau of Reclamation to take on the responsibilities outlined in H.R. 5511, therefore Colorado supports this bill.

The LMDT is located in Lake County, just outside the City of Leadville. Located at an elevation of 10,152 feet, Leadville is the highest incorporated city in the United States. Leadville's history centers around mining. During World War II, miners in Leadville were given exemptions from the draft in order to support the war effort by producing strategic metals. To facilitate the mining of these metals, the U.S. Bureau of Mines began construction of the LMDT in 1943 to provide continuous drainage of the mines in the surrounding Leadville Mining District. The LMDT was completed in 1952 to a length of approximately 12,000 feet. In 1959 the Bureau of Mines declared the LMDT excess real property, and the Bureau of Reclamation acquired ownership of the LMDT hoping to obtain water rights to the mine drainage. Following the passage of the Clean Water Act in 1972, the EPA issued the first National Pollutant Discharge Elimination System (NPDES) permit for the LMDT in 1975. After several years of attempting to meet the limitations in this permit, the Bureau of Reclamation eventually constructed a water treatment plant at the mouth of the LMDT and began to treat the mine drainage in 1979.

An unfortunate legacy of the intense mining in the Leadville Mining District is its impact on another valuable resource, the Arkansas River. The headwaters of the Arkansas River are located near Leadville. As it flows through the high mountain valleys and down through the eastern plains of Colorado, the Arkansas River supports a wide variety of uses. Throughout its length it serves as a precious resource to sustain a diversity of aquatic life and wildlife. It is a valuable source of drinking water for a number of communities, and is a critical source of water for agriculture uses. Notably, it is one of the more popular rivers for rafting and recreational uses. Protecting the Arkansas River and its ecosystem is of paramount importance to the local residents of Lake County and to all the people of Colorado.

The significance of protecting the Arkansas River was highlighted in the early 1980s when another mine drainage tunnel near Leadville, the Yak Tunnel, had what was called a "surge event" discharging enough tainted water to turn the Arkansas River red for 20 miles. In response to this event the site was added to the National Priorities List in 1983. The listed elements of the Superfund site were the Yak Tunnel, mine waste piles in California Gulch and its tributaries, the waters in California Gulch that empty into the Arkansas River, and 11 miles of the Arkansas River directly below the confluence with California Gulch. EPA specifically excluded the Leadville Mine Drainage Tunnel from the Superfund site based on the Bureau of Reclamation's then existing responsibilities to treat the LMDT discharge under the Clean Water Act.

Even though the LMDT is not part of the California Gulch Superfund site, EPA and Colorado selected a remedy that would require both the use of the LMDT and the commitment by the Bureau of Reclamation to treat contaminated surface water from the Stray Horse Gulch area of the Superfund site before its discharge into the Arkansas River. The Stray Horse Gulch area of the site (called Operable Unit 6) includes many mine waste piles. Surface water flowing over these waste piles, unless diverted, contributes contaminated surface runoff into California Gulch. EPA and Colorado identified different remedies to handle this surface runoff, and ultimately selected the remedy that would collect contaminated water from the area and direct it down a mine shaft connected to the LMDT. Because the Bureau of Reclamation is not required under the Superfund law to treat this contaminated water at its treatment plant, EPA and Colorado have attempted for several years to negotiate with the Bureau to obtain its cooperation to fully implement this remedy.

In an effort to gain this cooperation, EPA incorporated the following design aspects into the remedy to minimize the additional impact on the Bureau of Reclamation caused by treating this additional contaminated surface water:

- Construction of a bulkhead in the LMDT to isolate the contaminated mine water naturally draining into the LMDT from clean alluvial groundwater;

- Installation of wells behind the bulkhead and construction of a pipeline to convey the contaminated water to the Bureau of Reclamation's treatment plant;
- Backfilling the LMDT's lower portions to prevent clean ground water from entering and flowing to the treatment plant, and to protect against collapse and failure (since the Bureau of Reclamation currently treats water that is significantly diluted by clean groundwater, this would decrease the volume of water to be treated and therefore decrease the Bureau of Reclamation's overall treatment costs); and,
- Routing contaminated surface water from the Stray Horse Gulch area during spring runoff into the mine workings connected to the upper reaches LMDT where it would be conveyed through the pipeline to the Bureau of Reclamation's treatment plant.

Ultimately this remedy would treat contaminated mine pool water including spring run-off (thereby protecting the Arkansas River), reduce the amount of water treated by the Bureau of Reclamation (thereby decreasing its operating costs), and provide protection against structural failure of the LMDT.

Despite many attempts by Colorado and EPA to convince the Bureau of Reclamation to participate in this proposed remedy for Operable Unit 6, the Bureau contends that it lacks the statutory authority or mandate to treat this additional contaminated surface water from the Stray Horse Gulch area. This long-standing position of the Bureau of Reclamation has stymied Colorado's and EPA's efforts to implement the selected remedy for Operable Unit 6. H.R. 5511 would break this logjam by directing the Bureau of Reclamation to take responsibility for the LMDT, and to participate in the selected remedy for Operable Unit 6.

Congressional action has become more critical now than ever before. Since the Bureau of Reclamation assumed ownership of the LMDT in 1959, there have been many concerns regarding tunnel safety and potential environmental threats. Due to a lack of maintenance, the condition of the LMDT has deteriorated over time. There have been many collapses within the LMDT beginning in the 1960's. Although the Bureau of Reclamation took some steps in response to these early collapses, the Bureau has continued to assert that it is not responsible for the maintenance or repair of the LMDT. Most recently, the mine pool that feeds into the LMDT has increased to a level never before seen, resulting in many new seeps and springs in the area, likely due to a recent collapse within the LMDT. In November, 2007 EPA sent a letter expressing its concerns regarding the potential for a catastrophic blowout of the LMDT to the Bureau of Reclamation, and on February 13, 2008 the Lake County Commissioners declared a state of emergency. Colorado Governor Bill Ritter sent a letter to President Bush asking him to request Secretary Kempthorne to direct the Bureau of Reclamation to treat the water accumulating behind the blockage in the LMDT at its water treatment plant to help reduce the build up of water draining into the LMDT. Governor Ritter made the same request directly to Secretary Kempthorne.

Fortunately, to address the immediate concerns of the high levels of the mine pool and the pressure within the LMDT, EPA has begun pumping water from the Gaw shaft located near the LMDT, and in June EPA is scheduled to commence drilling directly into the LMDT to pump water from the upper reaches of the LMDT and to transfer the water through a pipeline to the Bureau of Reclamation's treatment facility where the Bureau has agreed to treat this water before it is discharged into the Arkansas. While this action responds to the immediate concerns of a LMDT blowout, it will not address the long-term need for LMDT maintenance and repair, and the commitment to reduce the mine pool and to treat contaminated mine and surface water discharging from the LMDT in perpetuity. Unfortunately, the Bureau of Reclamation is continuing to stall, and is refusing to take necessary action to address the condition of the LMDT, preferring to take the time to study the risks associated with the increasing severity of the tunnel failures, and declining now to affirmatively accept any responsibility to repair or maintain the LMDT, or to treat the contaminated water, regardless of the outcome of the study. Ultimately the Bureau of Reclamation must take responsibility for the LMDT regardless of the study conclusions. H.R. 5511 would make it clear that the Bureau of Reclamation is responsible for the repair and maintenance of the LMDT and must participate in the Operable Unit 6 remedy. Congressional action is needed now for the long-term protection of the local residents of Lake County, and for the long-term protection of the Arkansas River ecosystem.

Thank you for the opportunity to testify before this Subcommittee today. I would be happy to answer any questions you might have.

Ms. NAPOLITANO. Thank you for your testimony. We do have eight minutes to get to the Floor, so at this point we will call recess, and we will take up where we left off.

Thank you for your testimony, and we will be back.

[Recess.]

Ms. NAPOLITANO. The hearing of the Subcommittee on Water and Power resumes, with the questioning of the panel. I apologize; I told you it was going to be long, I didn't realize it was going to be this long.

But I would like to begin to go on with the witness of, Martha Rudolph, you already have been our witness, and we move on to the Hon. Mike Hickman, Chairman of the Lake County Commissioners in Leadville.

**STATEMENT OF THE HON. MIKE HICKMAN, CHAIRMAN,
LAKE COUNTY COMMISSIONERS, LEADVILLE, COLORADO**

Mr. HICKMAN. Madame Chair and other Committee members, my name is Michael J. Hickman. I am the Chair of the Lake County Board of County Commissioners in Lake County, Colorado.

I would like to thank you for the opportunity to present Lake County's views on H.R. 5511, the Leadville Mine Drainage Tunnel Remediation Act of 2008.

I am here to testify in support of this bill on behalf of Lake County and its citizens. I also wish to impress upon you today the importance of a comprehensive Federal solution to reduce the threat posed by the growing mine pool associated with the blockage behind the Leadville Mine Drainage Tunnel. Such a solution is critical to protect the local residents of Lake County as well as the ecosystem of the Arkansas Valley Watershed.

In 1959 the Bureau of Mines transferred to the LMDT the Leadville Mine Drainage Tunnel. Since that time, the Bureau of Reclamation has declined to take responsibility for the upkeep and repair of the tunnel. It has only accepted responsibility for treating contaminated water flowing out of the tunnel.

The lack of repair and upkeep of the tunnel has led to a series of what appears to be collapses deep within the LMDT over time that have brought us to the situation we face today. Groundwater levels in the mining district are now at historical highs, and blockage in the tunnel have contributed to the elevated mine pool estimated to be over one billion gallons.

Lake County has experienced snow-pack levels this winter of more than 150 percent of normal. With spring runoff set to break loose at any moment, a large volume of water is about to be added to the mine pool, already busting at its seams.

This historic buildup of water behind the blockage in the tunnel presents a serious threat to the citizens of Lake County, public and private property, local domestic water supply, and the water quality of the Arkansas River, water quality for their drinking water source.

Based upon this threat, Lake County Board of County Commissioners declared a state of emergency on February 13, 2008. Since the emergency declaration, both the EPA and the BOR have quickly moved toward acting to begin dewatering the mining pool by pumping water at the Gaw Shaft. A pipeline is under construction

by the EPA to bypass the blockage in the LMDT to reconnect the mine pool with the treatment plant.

However, this is only a temporary solution to the needed—a temporary solution is needed to solve this problem once and for all.

The solution is a multi-pronged approach that includes preventing clean surface water from infiltrating the mine pool and implementing of the California Gulch Superfund Site Operable Unit Six Remedy. Today, both the EPA and the Bureau of Reclamation will not take responsibility for a long-term fix of the mine pool problem.

For decades, Lake County has experienced frustration with the inability of these agencies to look at long-term fixes. Both say this is not my job. In fact, we still basically—in fact, we still, basically in the same place we were in, 1976. And I have a copy of the 1976 hearing that I have presented into the record.

At that time, the Bureau of Reclamation was saying the exact same things they are saying today. We basically are not taking action, and we need them to take action.

During the same hearing, we had the Colorado Department of Natural Resources submit testimony regarding the funding of the tunnel. Finally there is present danger of loose blockage material breaching, that possibly could be breaching from water, is pushing against the pressure of more than two tons per square foot.

H.R. 5511 presents an opportunity for Congress to finally tell the Bureau of Reclamation that it is their job to maintain the tunnel and implement the remedy of OU-6. If Congress does not tell the Bureau of Reclamation that they must do this, past history clearly tells us they won't.

H.R. 5511 directs the Bureau of Reclamation to participate in the implementation of Operable Unit 6 remedy by testing water behind the blockage. It also directs the BOR to take necessary steps to prevent tunnel failure, and preclude uncontrolled releases of water.

Lake County and its citizens support the intent of this bill. We have high hopes that finally the question of which agency bears the responsibility to address the rising mine pool in Lake County will be answered by Congress, by directing the BOR to take responsibility.

Thank you, Madame Chair.

[The prepared statement of Mr. Hickman follows:]

**Statement of Michael J. Hickman, Chair,
Lake County Colorado Board of County Commissioners**

My name is Michael Hickman. I am Chair of the Lake County Board of County Commissioners in Lake County, Colorado. I would like to thank you for the opportunity to present Lake County's views on H.R. 5511 "The Leadville Mine Drainage Tunnel Remediation Act of 2008."

I am here to testify in support of this bill on behalf of Lake County and its citizens. I also wish to impress upon you today the importance of a comprehensive federal solution to reduce the threat posed by the growing mine pool associated with blockages behind the Leadville Mine Drainage Tunnel. Such a solution is critical to protect the local residents of Lake County as well as the eco-system of the Arkansas River and the drinking water supply of the Arkansas Valley Watershed.

I'd like to start by giving you some background. Leadville and its historic mining district sit in the highest valley of the Arkansas River in the heart of the Rocky Mountains. Leadville is the site of mining activities that have produced gold, silver, lead and zinc. Mining began in the Leadville area in 1859 when prospectors working

the channels of the Arkansas River tributaries discovered gold at the mouth of California Gulch.

Later, miners tunneled deep into the mountains resulting in extensive development of underground mines in the mining district. Eventually most of these mines were abandoned. The U.S. Bureau of Mines began driving the Leadville Mine Drainage Tunnel in 1943 to facilitate mine drainage in order for metals such as lead, zinc and manganese to be extracted for the World War II effort.

In 1959, the Bureau of Mines transferred the LMDT to the Bureau of Reclamation. Since that time, the Bureau of Reclamation has declined to take responsibility for the upkeep and repair of the tunnel. It has only accepted responsibility for treating the contaminated water flowing out of the mine pool and into the blocked tunnel through construction of a water treatment plant in the late 1970's, built after a Sierra Club lawsuit.

The lack of repair and upkeep of the tunnel have lead to a series of what appear to be collapses deep within the LMDT over time that have brought us to the situation we face today. Groundwater levels in the mining district are now at historic highs and blockages in the tunnel have contributed to the elevated mine pool water estimated to be over one billion gallons.

Lake County has experienced snow pack levels this winter of more than 150% of normal. With spring run off set to break loose at any moment, a large volume of water is about to be added to a mine pool already bursting at the seams. This historic build up of water behind the blockages in the tunnel presents a serious threat to the citizens of Lake County, public and private property, local domestic water supply, and the water quality of the Arkansas River Basin. Approximately one million citizens in Colorado rely on the Arkansas River water quality for their drinking water supply.

Based upon this threat, the Lake County Board of County Commissioners declared a State of Emergency on February 13, 2008. Since the Emergency Declaration, both the Environmental Protection Agency and the Bureau of Reclamation have quickly moved toward actions to begin dewatering the mine pool by pumping water at the Gaw Shaft. A pipeline is under construction by the EPA to by-pass the blockages in the LMDT and reconnect the mine pool to the LMDT treatment plant. However, this is only a temporary solution to the mine pool problem. A comprehensive long-term solution is needed to solve this problem once and for all.

The solution is a multi-pronged approach that includes, preventing clean surface water from infiltrating the mine pool and implementation of the California Gulch Superfund Site Operable Unit 6 remedy. To date, however, both EPA and the Bureau of Reclamation will not take responsibility for the long-term fix of the mine pool problem. For decades, Lake County has experienced frustration with the inability of these agencies to sort out responsibilities. Both agencies continue to say to the long-term fix, "This is not my job!"

In fact, we are still basically in the same place we were when previous hearings were held on Capitol Hill in June 1976 to discuss a bill to authorize stabilization and rehabilitation of the Leadville Mine Drainage Tunnel. I refer you to the transcript of the Hearing Before the Subcommittee on Energy Research and Water Resources of the Committee on Interior and Insular Affairs United States Senate on S. 3394, June 7, 1976. I am providing you with a copy of the transcript from those hearings as a supplement to my testimony today.

At that time, the Assistant Commissioner of the Bureau of Reclamation, Department of the Interior, testified that "As stated in the Department's letter of June 7, 1976 to the committee, the Department recommends that the committee defer action on the bill at this time pending further review by the Department...of various alternative solutions." The Assistant Commissioner went on to say, "Appropriate action needs to be taken with respect to the public safety and water quality problems associated with the tunnel. As already indicated, the administration has not completed its review of the available data, and, therefore, does not yet have a position as to what action should be taken."

During these same hearings in 1976, the Colorado Department of Natural Resources submitted testimony regarding the tunnel, "Finally, there is the ever present danger of the loose blockage material being breached by water which is pushing against it at a pressure of more than two tons per square foot. This is a serious threat to property and human life, particularly because of the mobile home park adjacent to the tunnel portal." Yet, here we are today still facing the same threat as we were in 1976 and the Bureau of Reclamation is still wanting to study the problem.

H.R. 5511 presents an opportunity for Congress to finally tell the Bureau of Reclamation that it is their job to maintain the tunnel and to implement the remedy

for Operable Unit 6. If Congress does not tell the Bureau of Reclamation that they must do this, past history clearly tells us they won't.

H.R. 5511 directs the Bureau of Reclamation to participate in the implementation of the Operable Unit 6 remedy by treating water behind the blockage. It also directs the Bureau of Reclamation to take necessary steps to prevent tunnel failure and preclude uncontrolled release of water.

Lake County and its citizens support the intent of this bill. We have high hopes that, finally, the question of which agency bears the responsibility to address the rising mine pool problem in Lake County will be answered by Congress. By directing the Bureau of Reclamation to take responsibility and action, the people of Lake County and the downstream Arkansas River basin water users will not have to bear a terrible price for the inability of federal government agencies to take responsibility to fix this serious problem.

Thank you for the opportunity to speak to you today from the local community perspective about this very important matter. I'm happy to answer any questions you may have.

[NOTE: Attachments and supplemental testimony submitted for the record have been retained in the Committee's official files.]

Mr. LAMBORN. Thank you, Mr. Commissioner, for that testimony.

And I would like to now introduce the last witness on our panel, David Lansford, Chairman of the Eastern New Mexico Rural Water Authority, and also the former Mayor of Clovis, New Mexico. Thank you for being here, Your Honor.

**STATEMENT OF DAVID M. LANSFORD, CHAIRMAN OF THE
EASTERN NEW MEXICO RURAL WATER AUTHORITY, AND
FORMER MAYOR, CLOVIS, NEW MEXICO**

Mr. LANSFORD. Thank you, Congressman Lamborn and Chairwoman Napolitano.

My name is David Lansford, and I serve as the Chairman of the Eastern New Mexico Rural Water Authority. And I am here to present testimony in strong support of H.R. 5710, a bill sponsored by Congressman Tom Udall, which would authorize the Bureau of Reclamation to assist in the construction of the Eastern New Mexico Rural Water System, commonly referred to as the Ute Water Pipeline Project.

Joining me today is my successor as Mayor of the City of Clovis, New Mexico, Mayor Gayla Brumfield. The City of Clovis serves as the physical agent for the project, and residents in Curry County represent over 50 percent of the population that will be served by the proposed Ute Water Pipeline Project.

The authority was created in 2001 for the purposes of building and operating the Ute Water Pipeline Project to serve the communities of Clovis, Portales, Melrose, Texico, Grady, Elida, and throughout Curry and Roosevelt Counties.

I would like to express my deep appreciation to Congressman Tom Udall for sponsoring H.R. 5710, and the entire New Mexico delegation for supporting our efforts to establish a sustainable supply of water, and preserving the socioeconomic future of Eastern New Mexico. The sustainable supply of water is critical to the future of our region, which supports a number of industries, including dairy, large-scale food production and processing, ethanol refining, a critical military presence, and colleges and universities, among others.

Providing a sustainable water supply for Eastern New Mexico is our most significant challenge. Our communities rely solely on

water reserves located in the Ogallala Aquifer. Over the last 40 years numerous studies have clearly demonstrated that this aquifer is being depleted, and that the Ute Water Pipeline Project is the most efficient, cost-effective, and dependable solution for these water challenges.

Anticipating the potential water needs in Eastern New Mexico in the interest of maximizing New Mexico's use of water from the Canadian River system, the New Mexico Interstate Stream Commission completed construction of Ute Dam and Reservoir in 1962, at a present-day cost of over \$140 million.

Significant progress has been made on this project. Working together with the New Mexico Legislature and Gov. Bill Richardson, we have invested millions of dollars in the Water Trust Fund, which seeks to provide funding for water projects across New Mexico. Since 2002, the State of New Mexico has provided direct funding to the Eastern New Mexico Rural Water System Project, in excess of \$12 million.

The Authority is prepared to undertake the local financing, operation, and maintenance of this project. Over the years, the individual communities have contributed financial resources and in-kind resources to the project. Portales, Texico, and Melrose have increased water and wastewater rates in order to generate new revenue for the project, and the City of Clovis has enacted a gross receipts tax increment, and dedicated the revenue to the project.

These actions are solid evidence of a high level of commitment from the local governments to provide a portion of the non-Federal funding of the project. In summary, the Authority is finalizing the adoption of a formal financial plan.

We have been studying the efficacy of the Ute Water Pipeline Project for a number of years, with over 30 volumes of technical memorandum on the project that examines groundwater conditions, population growth and water demand, conservation and reuse, existing water systems, evaluation of alternatives, environmental issues, Ute Reservoir operations, water treatment needs, power service and wind power potential, cost estimating, and hydraulic optimization.

In short, our plans for the Ute Water Pipeline Project have been thorough and comprehensive. Just last year, the United States Bureau of Reclamation commented in a letter to the Authority that the project is the least costly and most sustainable way to meet long-term water needs in the area. They also agree with our design consultant's preliminary design level of completeness, cost estimates, and that no special environmental issues have been identified.

We are at a critical point in the development of the project, and appear before you today to urge Congress to expeditiously pass H.R. 5710, which would authorize the financing, planning, design, and construction of the Ute Water Pipeline Project. This pipeline project authorization meets much of the same criteria, and is similar to projects that were authorized in the Rural Water Supply Act of 2006.

We cannot emphasize strongly enough how important this project is to our member entities and for the citizens and businesses of Eastern New Mexico. Thank you very much.

[The prepared statement of Chairman Lansford follows:]

Statement of David M. Lansford, Chairman, Eastern New Mexico Rural Water Authority, on H.R. 5710

Eight cities and counties on the eastern side of New Mexico make up the Eastern NM Rural Water Authority (ENMRWA), including: Clovis, Curry County, Elida, Grady, Melrose, Portales, Roosevelt County and Texico (please refer to the map on the last page of this document).

Presently, municipal and commercial water supply to the region is provided entirely by groundwater from the Ogallala formation of the High Plains Aquifer.

Groundwater levels in the region are declining at an average rate of between 2.6 and 4 ft/yr and water well production is dropping at an alarming rate. For example, in the Clovis area, hard evidence supports that in 2008 it takes 53 wells to provide 9500 gallons per minute of production compared to 28 wells providing 10,500 gallons per minute in 2000.

ENMRWA members are saddled with ongoing expensive and unsustainable development of existing groundwater resources while actively pursuing conservation and wastewater reuse projects. The member communities have collectively incurred costs of approximately \$22 million since 2000 in purchasing groundwater water rights, converting existing wells and completing new wells.

The Eastern New Mexico Water Supply Project, Feasibility Report, May 1972 (rev. August 1972) by the Bureau of Reclamation stated:

- “There is a definite need for the Eastern New Mexico Water Supply Project...”
- “Although the investigations presented herein are in sufficient detail to establish engineering feasibility and economic justification of the project, additional investigations will be required prior to construction to insure that the final plan provides the most economical and desirable project in the interest of the state, the public, and the water users.”
- “It is recommended that: 1. The Eastern New Mexico Water Supply Project be authorized to be constructed...”
- The project envisioned at the time the 1972 Feasibility Report was prepared was larger and more complex in size and scope than that currently proposed.

The NE New Mexico Regional Water Plan (June 2006), covering five eastern NM counties, specifically identifies the ENMRWS as a priority strategy for long term sustainable water supply to the region.

There is no viable or more cost effective alternative to the project as proposed. Other than the surface water from Ute Reservoir available to New Mexico through the three state Canadian River Compact, there is not a sustainable water supply available to the citizens of eastern New Mexico.

A standalone brackish water supply project using aquifers located below the Ogallala is not viable economically nor is it sustainable. The only potential alternative for making the fresh groundwater supply sustainable is rapid, large-scale buyout and retirement of irrigated agriculture at massive cost and an undesirable (some say catastrophic) socio-economic impact.

A sustainable supply of municipal and industrial water is critical to the socio-economic future of eastern New Mexico and is in the national interest. There is a history of federal support for similar regional rural projects nationally. The area supports large scale food production (peanuts, cheese, milk and milk products), an expanding ethanol industry, a regional education complex (Eastern NM University), extensive railway commerce, a critical military presence at Cannon AFB, and regional large scale wind power development.

The City of Clovis’ Comprehensive Plan (2007) identifies the development of a long-term sustainable water supply for the region as its #1 Infrastructure Goal, with five main components:

- Implement the ENMRWS as quickly as possible.
- Protect the quality of existing water supplies in Ute Reservoir and the Ogallala aquifer.
- Implement an effective water conservation program.
- Implement an effective wastewater reuse program.
- Continue to identify, evaluate and plan for new long-range water sources.

Stringent conservation and reuse programs, coupled with retirement of much agricultural pumping could prolong the present groundwater supply in the Ogallala, but probably for only a decade or two based on simulations made with several groundwater models.

Failure to use the supply of New Mexico water available in Ute Reservoir for municipal and industrial purposes could lead to it being lost to NM users under provisions of the Canadian River Compact.

A large body of work has been completed over the past two years by the ENMRWA consultant team in close coordination with Reclamation, the NM Environment Department, the Office of the State Engineer, the NM Interstate Stream Commission and member communities. Engineering work completed, in progress, or programmed for the near term includes:

- Executive Summary
- Planning Memoranda
 - ENMRWA Member Existing Water System Facilities
 - Fresh and Brackish Groundwater Resource Assessment
 - Conservation and Reuse Assessment
 - Member Needs for Project
 - Conceptual Cost Estimating Guide
 - Dynamic Simulation Hydraulic Modeling
 - Treatability Testing and Water Treatment Plant Alternatives Evaluation
 - Alternatives Evaluation Summary
 - Alternative Pipeline Route Analysis
 - Wind Energy Feasibility Study
 - Environmental Issues
 - Benefit Cost Comparison
 - Reservoir Operations
 - Financial Analysis
- Best Technical Alternative (BTA) Preliminary Engineering (10%) Technical Memoranda
 - Raw and Finished Water Pipelines Process/Mechanical
 - Raw and Finished Water Pump Stations Process/Mechanical
 - Water Treatment Plant Process/Mechanical
 - Structural Preliminary Engineering
 - Architectural
 - Civil/Site Preliminary Engineering
 - Building Mechanical/Plumbing
 - Electrical Preliminary Engineering
 - Instrumentation and Controls
 - Corrosion Protection
 - Cost Opinion
- Best Technical Alternative Preliminary Engineering Drawings (10% design)
- Surveying and Mapping
 - Survey Control Map
 - Land Ownership Maps
 - Utility Mapping
 - Geophysical Test Sites Map
 - Survey Report
 - Topographic, planimetric and digital orthophoto mapping
- Geohazard and Geotechnical
 - Geologic Hazards Report
 - Schematic Level Geotechnical Investigation Report
- Schematic Level Design (30%)
 - Pipeline Design Criteria Technical Memorandum (TM)
 - Pipeline Hydraulics TM
 - Draft and Final Pipeline Alignment Selection TM
 - Pipelines Plan and Profile Schematic Design
 - Pressure Control, Metering, and Member Interconnections
 - Updated Cost Opinion
 - Pipeline Standard Details
 - Pipeline Master Specifications
 - Pump Stations
 - Water Treatment Plant
 - * Process Schematic Design TM's
 - * Engineering Disciplines Schematic Design TM's
 - * Cost Opinion
 - SCADA System

Environmental Assessment (EA) activities began in mid-2007. Scoping, the first step in the NEPA process, was initiated in September 2007. Three public meetings were held in Logan, Clovis and Portales from September 18 through 20, 2007. The public provided feedback on the project and asked questions about the process. Meetings were held with area experts in hydrology, cultural resources, and socio-economic resources to elicit information. Agency meetings have been ongoing since September 2007. A meeting was held in Santa Fe with State Historic Preservation Officer (SHPO) representatives to commence early communication about the project.

Coordination with New Mexico Department of Transportation, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and other agencies is ongoing. Reclamation is preparing to initiate contracts necessary to complete U.S. Fish and Wildlife Service Coordination Act requirements. A report summarizing scoping activities is now available on the project website.

Three “methods of analysis” technical memos for hydrology, cultural resources, and socioeconomics have been prepared and approved by Reclamation. Work is continuing on the first two chapters of the EA; Purpose and Need (Chapter 1) and Alternatives (Chapter 2). Compilation of current and project water supply, demand, conservation, and background information, as well as a summary of required project permits, is included in Chapter 1. A meeting among Reclamation, NMISC, and ENMRWA to discuss the alternatives and options available to meet the purpose and need for the project was held on April 28, 2008. In addition, information collection for resource studies is underway. Detailed field studies will commence in the spring, following finalization of proposed infrastructure locations. At this time, a public review for the EA is anticipated by September 2008, and an EA/FONSI is anticipated by February 2009.

The consultant team has proposed and members of the ENMRWA have adopted a conceptual Finance Plan for the project utilizing federal, state and local funding. Federal funding (75%) is assumed over a 10 year period with State contributions (15%) over six years. Local cash contributions (10%) will begin in FY 2009 at approximately \$1,000,000 per year with debt issuance in FY 2015 and FY 2017. Water rates will be phased in and adjusted up to the initial water rate that will be sufficient to pay all operation, maintenance, renewal and replacement, and debt service costs of the system. The ENMRWA will need to issue bonds in order to provide the local portion of the non-Federal match. These bonds will be issued by the ENMRWA and are expected to be fixed rate utility revenue bonds payable from the net revenue of the water supply system. The bonds will be issued in two installments to be amortized over 25 years at an estimated interest rate of 5.25%. The draft finance plan proposes an initial pre-construction (FY 2009) wholesale water rate of \$0.19 per 1000 gallons of water reserved on the system. This will be followed by a construction period wholesale water rate of \$0.28 per 1000 gallons reserved. An initial fully adjusted water rate of \$2.05 per 1000 gallons is proposed with the system in operation.

Most of the ENMRWA members have enacted one or more programs to begin to generate capital for the local cost share of the project such as water rate increases and gross receipts increments.

The financial resources for the efforts described above have been provided by NM’s Congressional Delegation, the State of New Mexico through the Water Trust Board, and ENMRWA member agencies. At the end of the day, all of the recent study efforts and those going back over the past 44 years conclude that the ENMRWS project is the most cost effective long range solution.

The layout and capacity of the presently proposed Best Technical Alternative (BTA) water supply project has been optimized in the latest engineering work by design consultants to be the most hydraulically efficient, cost effective project possible. The latest engineering work validates the work of at least three previous studies done by various agencies and consultants—each of which recommended a project with a configuration and route similar to that now proposed.

The current cost estimate is \$436 million (2006\$) and the project is expected to incur an \$8 to 9 million annual operation and maintenance (O&M) cost. O&M will be entirely borne by the users and these costs are included in the projected wholesale water rates.

To date, the State of New Mexico has provided significant investment in the project having authorized or appropriated approximately \$12 million (including \$4.5 million in April 2008) to advance the planning and design of the project and to prepare associated environmental investigations and documentation (NEPA). This does not include the major investment the State made in the 1950’s and 1960’s (approximately \$140 million in 2008\$) to construct Ute Dam creating the water supply storage reservoir. Out of hundreds of projects submitting applications for funding through the NM Water Trust Board since its inception, the ENMRWS has consistently ranked in the very top tier of projects.

The recent steep escalation in construction costs indicates that postponing the project may lead to greatly increased costs—escalation of construction costs is outpacing general economic inflation by 2-3% per year.

Unlike many other water projects in New Mexico and the southwest, the proposed ENMRWS project has no known or anticipated significant environmental issues, no associated Native American settlement, and no water rights disputes. The water in Ute Reservoir is owned by the State and administered by the NM Interstate Stream Commission (ISC). The ISC and the members of the Ute Reservoir Water Commis-

sion, which includes the eight ENMRWA members, have a relatively straightforward water purchase agreement in effect.

On behalf of the eight member entities of the ENMRWA and our citizens and businesses we sincerely appreciate your consideration of this critical project and for holding this hearing. Collectively, we have made major investments in this project in time, energy, resources and funds with the full recognition that the cost and consequences of inaction will be much greater down the road without it.

Statement of Gayla Brumfield, Mayor of Clovis, New Mexico

Chairwoman Napolitano and Members of the Committee, my name is Gayla Brumfield and I am Mayor of the City of Clovis, New Mexico. The City of Clovis with a population of 32,667 is a member of the Eastern New Mexico Rural Water Authority and serves as the fiscal agent for the project.

I want to thank Congressman Tom Udall for introducing H.R. 5710, and the entire New Mexico delegation for supporting our efforts to meet eastern New Mexico's future water needs. H.R. 5710 will authorize the federal government to help build the Ute Water Pipeline Project carrying water to communities in Curry and Roosevelt counties. I cannot emphasize enough how important this legislation is to the future of Clovis and eastern New Mexico.

The Eastern NM Rural Water System (ENMRWS) is critical to our ongoing efforts to strengthen and diversify our economic base in the region. In addition to being a state leader in agricultural production, Clovis and Curry County are host to a number of growing industries, including ethanol refining, food processing and railway commerce. We are proud to be the home of Cannon Air Force Base, which plays a vital role in protecting our nation's interests at home and abroad.

Groundwater resources currently supply municipal water in eastern New Mexico, and long-term water supply availability and sustainability are concerns for many communities. These concerns stem from the fact that our groundwater source, the Ogallala aquifer, is rapidly approaching its limited supply of available water. The ENMRWS will address our future water shortage issues by providing a much-needed mechanism for sustainable surface water delivery to Curry and Roosevelt counties.

We have been able to attract a great deal of new business to our area, though some companies have recently expressed concerns about the sustainability and availability of our water supply. It is becoming evident that bold steps will be required on the water issue to ensure our region's standing as a potential site for business relocation and growth. The ENMRWS is the type of bold step that is needed. While the cost of its construction will be considerable, its projected delivery of potable surface water to Curry and Roosevelt counties will undoubtedly provide the resources necessary for our region to remain economically viable and prosperous. All of the alternatives available to us are more expensive than the ENMRWS and are not sustainable.

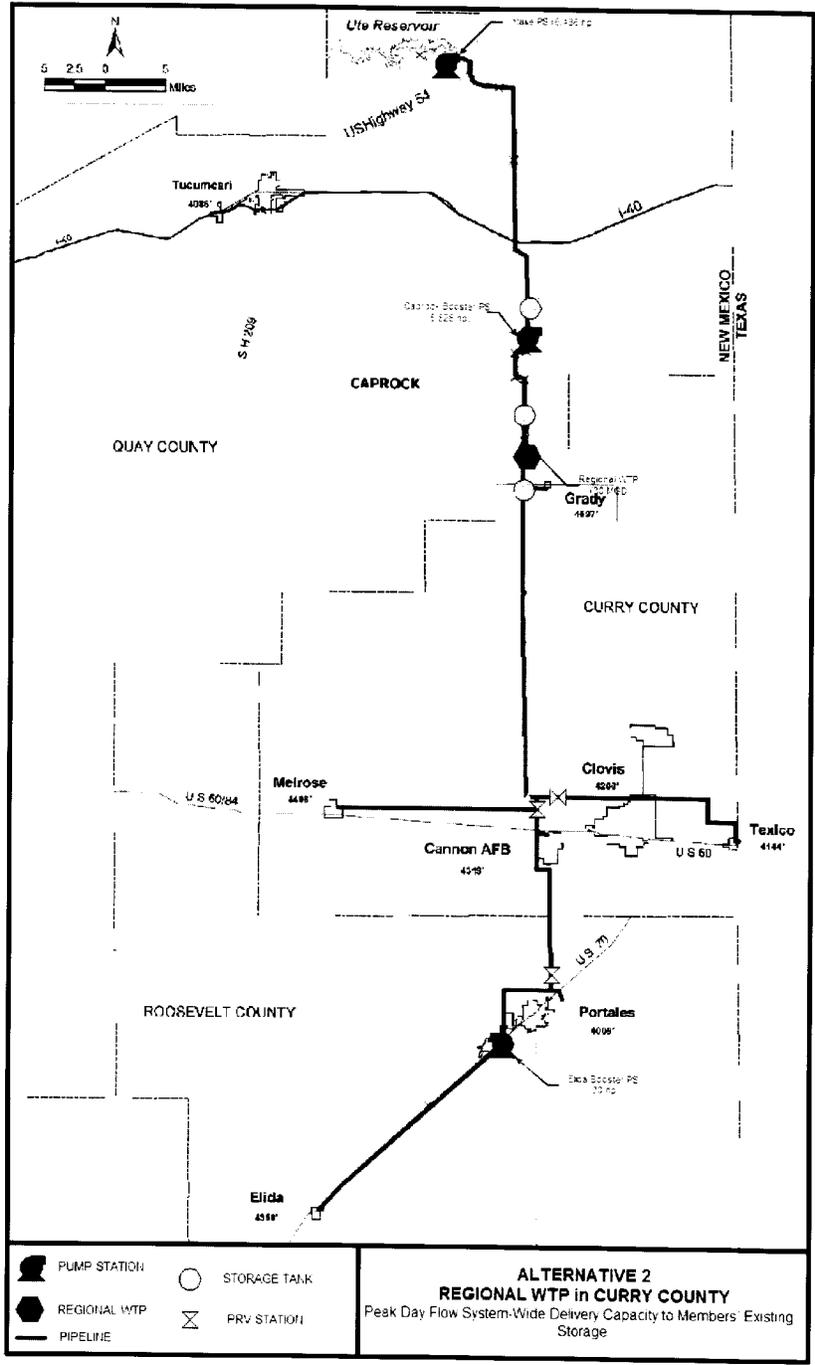
The Clovis community always unites to support programs that are vital to the well-being and future of the area. The Project represents the best alternative for providing a sustainable water supply well into the next century.

After 45+ years of research, planning and design, we are now ready to take the next big step towards making the Project a reality. If we fail to act, the result could mean significant losses to our existing economic base and lost opportunities for future economic development.

H.R. 5710 represents the important next step toward addressing the overarching issue of water in the arid West and we look forward to working with Congress and the United States Bureau of Reclamation to secure its passage.

Thank you again for the opportunity to present our request at this important hearing.

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Ms. NAPOLITANO. Thank you very much, Chairman Lansford. We will now move to the questioning. And my colleagues are not here; they will be in and out, apparently. They have votes in other committees, so they will be coming in and out.

I would like to start off with Ms. Rudolph, since apparently you do have to make a flight.

Since the Administration doesn't support this bill, are you concerned that both Federal agencies are now stalling to permanently fix this problem that is a disaster waiting to happen?

Ms. RUDOLPH. Thank you. I am making arrangements to take a later flight, so I am not so critical.

Ms. NAPOLITANO. OK.

Ms. RUDOLPH. Thank you, though. We are concerned about the Bureau of Reclamation in particular. We have negotiated with the Bureau and with EPA for some time now to try to resolve the impasse relative to the Operable Unit 6 for the California Gulch Superfund Site. And we have really not made much headway in trying to achieve an agreement that works for everyone here.

Ms. NAPOLITANO. Why?

Ms. RUDOLPH. What we are told is that the Bureau of Reclamation doesn't believe it has the authority or the responsibility to take on the maintenance and repair of the tunnel, nor to treat the extra contaminated water that would be part of the Superfund Site.

Ms. NAPOLITANO. What about, then, if the Bureau says they can't, what about EPA? In fact, before I go any further, I want to introduce into the record a letter from U.S. EPA Region 8 Regional Administration, Robert E. Roberts, dated November 8, 2007, directed to Michael Ryan, Regional Director of Great Plains of the U.S. Bureau of Reclamation, indicating that at that time, they considered this to be a very critical area to be addressed, and waited to see how they could work out, not only with the EPA, but also with the State of Colorado.

Without objection, so ordered.

[NOTE: The letter from EPA to the Bureau of Reclamation submitted for the record has been retained in the Committee's official files.]

Ms. NAPOLITANO. Mr. Quint, what say you? What is the hang-up?

Mr. QUINT. Everyone here is aware this is a very complex issue out there. I know there has been a number of years and a number of people, and a whole lot of starts and stops on this issue.

We continue to work with the State of Colorado, with Lake County, with EPA to try to find the best solutions here. We feel currently that the risk assessment that we have underway will give us a lot of data that can be used to try to come up with both short-term and long-term solutions to this problem.

Ms. NAPOLITANO. Ms. Sutherland, I just read off the letter I am introducing into the record, "Due to the unknown condition of the tunnel blockages and the large volume of water behind the blockages, we are concerned that an uncontrolled potential catastrophic release of water to the Arkansas River from the LMDT is likely at some point."

This is a very alarming statement to this Committee. And I have entered the letter into the record.

If EPA said the situation is potentially catastrophic, how can it support the Bureau's request for more time and more money, since they have had that?

Ms. SUTHERLAND. Well, we are not waiting for anybody to do anything. We are actually moving out. We have already installed a relief well in the Gaw Shaft, and we have pumped out 28 million gallons of water already.

Ms. NAPOLITANO. Is that being treated?

Ms. SUTHERLAND. Yes, that is being treated, and treated by the Bureau of Reclamation's treatment plant.

We already have evidence that that 28-million-gallon relief is drawing down somewhat the mine pool. It looks like it is also diminishing the seeps and springs that are occurring in the Lower California Gulf. So that is already effective. We started work on that in February.

And now we are just about in the process of putting in a big relief well in the mine pool itself, to pump that out and to pipe that water also to the Bureau of Rec treatment plant. That should be operational this summer.

Ms. NAPOLITANO. But why is EPA opposing this bill? When the Bureau of Reclamation gives clear authority to participate in the solution, and chose the preferred remedy for Operable 6 Unit?

Ms. SUTHERLAND. Well, the remedy that we selected, we selected that back in 2003. And at that time, we certainly thought there were certain actions that needed to be taken, such as a plug in the tunnel itself.

However, we are perfectly happy to wait for the safety risk assessment to be done by the Bureau of Reclamation, and see if that requires us to make any changes in what we thought was necessary as a remedy for OU-6. And waiting for that safety risk assessment is not delaying any of the removal actions we are taking. We are moving out on those right away.

So we are happy to wait to see if the safety assessment needs any change in our remedy.

Ms. NAPOLITANO. But then you would be saying that EPA can solve the problem entirely on your own, and do not need Reclamation help. Is that what I am hearing?

Ms. SUTHERLAND. Well, we are in negotiations right now with Reclamation on how we can work jointly on a long-term solution. We are ourselves, though, constructing the short-term solution, which is this relief well and pipeline to the treatment plant. We are doing that under our removal authority on our own.

Ms. NAPOLITANO. And I am assuming you are working with the parties that are affected from Colorado?

Ms. SUTHERLAND. Yes, absolutely.

Ms. NAPOLITANO. Am I hearing correctly?

Ms. SUTHERLAND. Yes, that is correct.

Mr. HICKMAN. Madame Chair, I would like to make one point of correction. The water that is coming out of the Gaw Shaft is not being treated. The BOR has not received any water yet from the EPA from the drilling that is to be started, has not started yet. A pipeline has been installed.

The speed with which the EPA and the Bureau of Reclamation have gotten on the short-term fix has been unbelievable, and we

greatly appreciate that, and the citizens of Lake County greatly appreciate that.

We are here to get the long-term fix. And 32 years ago we were here to get the long-term fix. And we need Congress to tell the BOR to fix the tunnel.

Ms. NAPOLITANO. Thank you, Mr. Hickman. Mr. Quint and Ms. Sutherland, it seems that there is a little bit of a difference of opinion, one. And two, these residents have been waiting a long time for the fix. And is it going to be a long-term or a temporary fix?

Mr. QUINT. I will try to address that. We are right now finishing this risk analysis, this risk assessment, to determine what the appropriate fixes are for this, short-term, as Mr. Sutherland mentioned.

Ms. NAPOLITANO. Do you have a draft of that you can submit to the Committee? I was talking to Mr. Lamborn about that, that you might be able to share with the Subcommittee.

Mr. QUINT. We intend to have that done by the end of June. So it should be done in about six weeks.

Ms. NAPOLITANO. By the end of—

Mr. QUINT. June, of this year. June.

Ms. NAPOLITANO. June. You say the report was going to be done in June. I am assuming you have some draft that you are working on.

Mr. QUINT. It is in progress right now, and it will be available to share with the Committee by the end of June.

Ms. NAPOLITANO. And may I request that if you do have a draft, I am certain that Mr. Lamborn and I would like to see that, and the rest of the Committee members might be interested in seeing a draft?

Mr. QUINT. Absolutely. And one of the features of this development of this assessment is that we had, we have set it up that if we find anything in the development of this report that is alarming or needs to be dealt with right away, that we are going to do that. And to date, none of those issues have come up.

Ms. NAPOLITANO. OK. Then to the question about the short-versus-long-term fix. And of course, the other issues, whether or not the water is being treated and whether there is water being diverted that might contaminate another area. And who will be the PRPs?

Mr. QUINT. I am being told that the water out of the Gaw Shaft is not being treated, but it does not exceed the limits of discharge into the river. So right now that is not an issue.

Ms. NAPOLITANO. I beg your pardon. It is also an issue when there is contaminated water into rivers and other bodies of water.

Mr. QUINT. But it is below the limits. It is clean water.

Ms. NAPOLITANO. Mr. Hickman.

Mr. HICKMAN. Madame Chair, the water that is going into the Arkansas River from the Gaw Shaft is considered to be clean water by standards. It is much more contaminated than the water that comes out of the Leadville Mine Drainage Treatment Plant, though. But it is considered, under Colorado rules, to be clean water.

One item that I would like to bring to your attention. I am looking 32 years ago, the Bureau of Reclamation said that they would

have their studies done in two months, and we are hearing the same thing today.

Ms. NAPOLITANO. Well, I don't want to—it took over 12 years to get one report that had been paid for by some agencies, and I won't bring that up again.

Yes. Before I finish, let us see. Mr. Lamborn

Mr. LAMBORN. Thank you, Madame Chairwoman. For you, Ms. Rudolph, and you, Mr. Hickman. Briefly describe to us what would happen if there were to be a catastrophic blowout, either to the environment or to the people who are living below that tunnel mouth.

Mr. HICKMAN. Specifically where the plant, the treatment plant is in Leadville, Colorado, is right above a 300-person, about 80-unit trailer park. Right below the trailer park is the Arkansas River.

If the portal was to blow, it would probably destroy at least immediately three homes, and it would immediately run into the Arkansas River. Depending upon how catastrophic that blowout would be, it could take with it the entire trailer park.

Last summer, prior to our declaration of an emergency, we had a chance, the other two County Commissioners and myself had a chance to tour the plant, and to tour part of the east side. The things that we were noting was the saturation in the ground. And with a number of years' accumulation of water, it is continuing to grow bigger and bigger and bigger.

If we had a glass of water sitting here and we poured water into it, you could see that the water would eventually seek the lowest point, which is what has caused possibly the Gaw Shaft, which is on the other side of town, to artesianing, which is why the EPA has put a pump on it.

Approximately three years ago the EPA brought to the Gaw Shaft electricity, concrete pad, a pump; and ran out of money, so they quit.

So the possibility of how dangerous it is, it is polluting the Arkansas River.

Mr. LAMBORN. OK. And Ms. Rudolph? And thank you for staying. I know that you are pushing your flight back to Denver.

Ms. RUDOLPH. That is quite all right. I am happy to stay. This is important.

I would add to that that of great concern to us is the actual contamination of the Arkansas River itself. We have been working for many years to clean up the California Gulch Superfund Site, and there has been a great deal of improvement in the river. But there continues to be a need to improve that.

If there is a blowout in the Leadville Mine Drainage Tunnel, we fear that the improvements that we have made over the last 25 years or so in the Arkansas River would be for naught; and that we would end up with heavily contaminated metals, with metals going down the Arkansas River and destroying much, if not most, of the aquatic life for many miles downstream. And it would be a real problem, and we would have to basically start over again to try to clean up this river, which really is a national treasure

Mr. LAMBORN. Thank you both so much, and for being here as well.

Mr. Quint, earlier this year Mr. Johnson of the Bureau was in this very room—well, down the hall—and I asked him several ques-

tions. I said, are you aware of the blockage in the Leadville Mine Drainage Tunnel in my district, and he said yes. And I said, does the Bureau of Reclamation have a duty to maintain the facilities they own. And he said yes. I said, will you commit to my constituents that you will work with me to solve this problem, and he said yes.

How can the Bureau today be against H.R. 5511, in view of these yes answers?

Mr. QUINT. My answer to that is we feel this bill is premature. Until we get this risk assessment completed, and work with a lot of the people you see at this table and their staff to figure out the long-term solutions, this bill is premature.

Mr. LAMBORN. Mr. Quint, all this bill does is say that the Bureau has the responsibility that is admittedly belonging to the Bureau. The Bureau owns the tunnel.

Mr. QUINT. Absolutely.

Mr. LAMBORN. Then how can you be, the Bureau be against the bill?

Mr. QUINT. The bill talks about, about maintaining and doing a lot to the tunnel that may or may not be part of the long-term solution of the situation out there.

Mr. LAMBORN. For Ms. Rudolph or Mr. Hickman, what is your response to that same question? I know that you don't speak for the Bureau, but from your perspective.

Ms. RUDOLPH. From our perspective, from Colorado's perspective, we are troubled by this response. Because we see the bill as exactly what you were just saying: it provides the necessary authority and direction to the Bureau to take on the responsibility, whatever that may be, to repair and maintain the tunnel. And then also to participate in that part of the California Gulch Superfund remedy.

From our perspective, this would be like if you stalled your car on the highway, and you decided to wait and study the backup behind you before you agreed that it was your responsibility to move the car. That is kind of what we are hearing here, is what are the risks of there being damage or a blowout; we have to evaluate that before we can agree that we are responsible for maintenance and repair of the tunnel.

We think this bill is necessary to establish that authority. The risk, the analysis of the risks may follow, but let us get the authority, the direction on the books now, so that it is clear who is ultimately responsible for whatever maintenance and repair is necessary.

Mr. LAMBORN. And Mr. Hickman?

Mr. HICKMAN. We are also troubled by the delay that the Bureau of Reclamation has wanted to get into the specific long-term fix with regards to the Leadville Mine Drainage Tunnel.

Thirty-two years ago Congress was sold on the idea that in two months, we would have a study done. Another risk assessment is not going to fix the tunnel. This particular bill specifically puts the Bureau of Reclamation in line to fix the problem, not study it.

Mr. LAMBORN. Thank you all for your testimony. Mr. Hickman, in Leadville we have the highest incorporated city in the United States, if I am not mistaken?

Mr. HICKMAN. That is correct, sir.

Mr. LAMBORN. So all the water flows downhill from there. And it is not just the Arkansas River in Colorado, but a number of other states are affected as well. Thank you so much for being here today.

Mr. HICKMAN. Yes, sir.

Mr. LAMBORN. And I yield back, Madame Chairwoman.

Ms. NAPOLITANO. Thank you, Mr. Lamborn. Mr. Udall.

Mr. UDALL. Thank you, Madame Chair. I would like to turn my questions to Mr. Quint, and follow up on some of the very important questions that my colleague, Congressman Lamborn, asked.

Mr. Quint, you say the Administration supports the bill's goals, but it doesn't support the bill, because you aren't sure it is necessary to do what it requires. Well, the bill requires Reclamation to do three things, so let me ask you about each one of them in turn.

The first is to treat water, find any blockage in the tunnel, including surface water diverted there as a part of the Superfund Cleanup Plan. Are you saying you don't know whether that water should be treated?

Mr. QUINT. Absolutely not. We feel that is our—

Mr. UDALL. All right. The second requirement is to manage and maintain the water in the tunnel to prevent surface runoff and minimize the chance of tunnel failure.

Are you saying that you don't know whether you should have to do that?

Mr. QUINT. No.

Mr. UDALL. And the bill says that Reclamation has to repair and maintain the tunnel to prevent an uncontrolled release of water. Are you saying you don't know whether you should have to do that, either?

Mr. QUINT. The issue I would take with that is whether this is the best way to deal with that situation.

Mr. UDALL. Well, let me carry on here. If the problem with doing them, even if they aren't absolutely necessary, is it a question of cost? And if so, do you have any estimates of that cost?

Mr. QUINT. We do not have the estimates for that cost at this point in time. And that of course is always an issue as far as our budget.

Mr. UDALL. I would note that earlier this year there were some estimates that seemed to be well within hand, and easily appropriated, or actually available to the Bureau of Reclamation. Let me keep moving on.

If your assessment showed that these things were necessary, would you then support the legislation?

Mr. QUINT. If the appropriate solution was, was such that you have written, I am not sure that the bill—

Mr. UDALL. Can you give me a yes or a no on that?

Mr. QUINT. I can give you a maybe on that, because I don't know the specifics of what the long-term solution will be.

Mr. UDALL. If you said it was necessary, would you support the legislation?

Mr. QUINT. Yes.

Mr. UDALL. Thank you. In her testimony, Ms. Rudolph says that Reclamation has stymied Colorado and EPA's efforts to implement

the cleanup plan for this part of the Superfund Site, and is continuing to stall. What is your reaction to that?

Mr. QUINT. I believe Reclamation has been a responsible party here, and will continue to be in the future.

Mr. UDALL. Ms. Sutherland, does the EPA agree with—Ms. Rudolph. I am sorry, Ms. Rudolph on this point. It is for Ms. Sutherland, not for Ms. Rudolph.

Do you agree with Ms. Rudolph on the points that I just outlined, that were in Ms. Rudolph's testimony?

Ms. SUTHERLAND. Well, I think we are working very well with Bureau of Reclamation now. And I think we are really in partnership, and trying to again get to the long-term solution, while EPA really focuses their removal authority on the short-term solution.

Mr. UDALL. Could I ask, I think those are well-made points, but yes or no. Because she said, let me read it, she said that Reclamation has stymied Colorado and EPA's efforts to implement the cleanup plan, and is continuing to stall. Would you agree or disagree with that analysis?

Ms. SUTHERLAND. There has been no delay in our short-term actions caused by BOR. We have moved out very quickly, and are continuing to do so.

Mr. UDALL. So your answer is no.

Ms. SUTHERLAND. No.

Mr. UDALL. In her testimony, Ms. Rudolph says that Reclamation has continued to assert that it is not responsible for the maintenance or repair of the tunnel. Is that true, Mr. Quint?

Mr. QUINT. Say that again, please?

Mr. UDALL. In her testimony, Ms. Rudolph says Reclamation has continued to assert that it is not responsible for the maintenance or repair of the tunnel. Is that true?

Mr. QUINT. We are responsible for treating the wastewater that comes out of the tunnel. Whatever we need to do to maintain that tunnel to continue to be able to do that, that is our limits of responsibility.

Mr. UDALL. So if Reclamation isn't responsible for repairing and maintaining the tunnel, who is then? If not, who is responsible?

Mr. QUINT. I am not sure I understand the question.

Mr. UDALL. If Reclamation—yes. If you are not responsible, who is responsible for repairing and maintaining the tunnel?

Mr. QUINT. We own the tunnel. We are responsible for operating and maintaining the tunnel in order to continue to treat the water that comes out of the tunnel. And that is the main purpose of the tunnel.

Mr. UDALL. I see the yellow light is on, but so what is your objection to, if you own it, what is your objection to the bill then, which flat-out states, clarifies if you will, that you are responsible for repairing and maintaining the tunnel since you own it?

Mr. QUINT. Our objection is that this bill is premature. Until we get the risk assessment done, and we also have to reevaluate the ROD that we have in place out there for Operable Unit 6, there may be a different long-term solution that may not include the long-term stability of the tunnel.

Mr. UDALL. One comment and final question, Madame Chairwoman. As Congressman Lamborn aptly put it, powerfully put it,

this has been going on for 30 years. Commissioner Hickman, you are aware of this. We have been hearing about studies all the way back to Senator Haskell's era. What steps have you taken, the county taken, to respond to the threat that has caused you to declare a state of emergency?

Mr. QUINT. The first thing we did was the location of where the EPA is drilling up on the east side. There was between 15 to 25 feet of snow above the area, and if you think of a loader trying to move and pick up snow, and placing it 25 feet in the air, it took us approximately a week from the time we declared the state of emergency to when the EPA could start their process. And they started it immediately. They cleared a pad. They have now since partially completed the pipe going in.

Also, with the declaration of the state of emergency, all local emergency services were put on notice. The Bureau of Reclamation, who had installed sirens at their plant, but had never tested them, we finally were able to test the emergency. We got the Fire Department out there, we got emergency services, FEMA, and the Red Cross has now supplied us with cots, emergency medical. The hospital is on alert. And everyone is waiting for the first drop to come out of the east side of Leadville.

So the county has been instrumental in providing any and all support that the EPA, and/or the Bureau—I don't think we have done anything for the Bureau, because they are still waiting for the water. But maintenance of trucks, a parking area for EPA's trucks. So the county is cooperating any way and every way we possibly can in case we have an emergency, and/or if the contractors that are on the job need chains, welding, we, our road and bridge shop is well versed in what they need.

So we are participating very well with them.

Mr. UDALL. Thank you for that summary. Madame Chairwoman, thank you for indulging me with a little extra time. This is important, and thank you for your interest and concern as well.

Ms. NAPOLITANO. I would be more than happy to hear one more question. You are fine, OK. I know you have a markup, so thank you very much for coming to the Subcommittee and staying with us.

Ms. Hersetth Sandlin.

STATEMENT OF THE HON. STEPHANIE HERSETH SANDLIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Ms. HERSETH SANDLIN. Thank you. I want to thank you, Chairwoman Napolitano, for having this important hearing today and considering a very important bill, H.R. 155, to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by the Pick-Sloan projects along the Missouri River. I appreciate our working relationship, your interest in these bills, learning more about the impact of the Pick-Sloan project on the tribes in question, what they would do with the additional monies for which compensation would be granted under H.R. 155.

And thank you for inviting my good friend, Chairman Michael Jandreau, to testify today. I commend his testimony as well as the

written testimony of a newly elected tribal leader for the Crow Creek Sioux Tribe, Brandon Sazue, who is here today, and has submitted written testimony for the hearing record.

[The statement submitted for the record by Brandon Sazue follows:]

**Statement of The Honorable Brandon Sazue,
Chairman, Crow Creek Sioux Tribe**

Thank you very much for the opportunity to submit testimony on H.R. 155, the Lower Brule and Crow Creek Compensation Act. I am Brandon Sazue Chairman of the Crow Creek Sioux Tribe. It is an honor for me to support Chairman Mike Jandreau. Chairman Jandreau is the most senior Chairman in our State and in the Great Sioux Nation. I am the most junior Chairman in the Sioux Nation, having been sworn in just two days ago on May 6th.

The legislation before you is of extraordinary importance to our Tribe. Crow Creek has the dubious distinction of being the poorest Tribe in the country, located in Buffalo County, South Dakota.

The Crow Creek Sioux Tribe consists of 225,000 acres located in Central South Dakota. Our Western boundary is the Missouri River. In 1944, when the Congress enacted the Flood Control Act and authorized implementation of the Missouri River Basin Pick-Sloan Plan for water control, two of the dams, Fort Randall and Big Bend, flooded over 16,000 acres of our best and most productive bottomland. It was also the very land where a majority of our people lived. The cost to Crow Creek in human terms, and economically, was astronomical.

We lost:

- Our hospital;
- Housing units;
- Tribal Buildings and other structures;
- Schools;
- Businesses;
- Roads;
- Acres of waterbed and timberland, and domestic and ranch water systems;
- Food sources, such as fishing, hunting, and subsistence farming; and
- Ceremonial grounds and traditional medicines.

Our way of life was altered irreparably. Before the dams, the lifestyle was simple. The people worked in a community garden. In the evenings, the people would gather to share that day's catch of fish and the food gathered. They would meet to visit, pray, sing, and dance where the Bureau officials could not observe. The children attended boarding school within walking distance of their homes and family. The way of life, the social interactions, the camaraderie and sense of being one people—one Tribe, was destroyed by the environmental changes and forced relocation. The hospital and school were never replaced. The traditional medicine that grew solely in the waterbed and the Ceremonial Grounds are irreplaceable.

The elders observed that this is when the change occurred. People started to watch each other, argue with each other, begrudge each other, and become disgruntled. With the loss our school, the next option was the Immaculate Conception Boarding School, 13 miles away. The students were no longer able to walk to their homes and families on a daily basis, and those teaching were not people who believed in the heritage, culture, and customs of the students. Abuses that occurred in Catholic Boarding Schools are well documented historically, and I will not expand, except to say that the loss of our school negatively impacted our people on a much larger scale. This impact on the social development of our people has rippled down through generations.

Chairman Jandreau has spoken eloquently regarding the desire to join the global market and seeking economic parity with the rest of America. I strongly agree and support those goals. At Crow Creek we must first achieve parity with Chamberlain, South Dakota just twenty-five miles away. A small town of just 2,000 people, Chamberlain's unemployment rate is approximately the state average—5 percent, while the rate at Crow Creek is over 80 percent.

For us to move forward, we must improve our infrastructure and create an environment that is conducive to human and economic progress. The Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act enacted in 1996 (P.L. 104-223) awarded \$27.5 million to the Crow Creek Sioux Tribe. Of the \$27.5 million, the Tribe is allowed to utilize the interest. The Tribal Parity Act would greatly enhance the trust fund, thus increasing our available monies and allowing us to leverage

with the private sector. The first year of the trust fund, we received slightly over a million dollars. Due to fluctuating interest rates, the yield is now much less.

We have utilized the interest to do a number of things to improve the situation of our people, including the following:

- Purchase a small school with a gymnasium in the Big Bend District—the furthest outlying district. We are able to provide Kindergarten through 6th grade education to students in that area, preventing the necessity of an hour-long bus ride each way to and from school;
- Construct a Community Building in the Crow Creek District, providing a place to gather for socializing, celebrations, and funerals;
- Construct a Community Building in the Fort Thompson District, utilized for community events, program presentations, wakes, weddings, dance, meetings, and as a polling place;
- Set a higher education program to assist students in college;
- Purchase land to increase the land base; and
- Improve damaged roads and upgrade our water plant.

These initiatives just begin to scratch the surface. The legislation we are discussing today, H.R. 155, is intended to supplement our existing trust fund. The expanded trust fund would enable the Crow Creek Sioux Tribe to make significant strides in growth and development. Economic development and environmental improvements would change the lives of our people, our children, and all future generations of Crow Creek Sioux. It would assist in putting Reservations on parallel ground, enabling us to compete economically, with Chamberlain and the rest of the United States, as opposed to remaining in our current state, operating below the standards of most Third World Countries.

It is important to point out, however, that while the need is very great this legislation is justified based upon the merits of the bill. When our existing trust fund was enacted it was not intended or considered full and final compensation. The legislation before you would be the full and final compensation to Crow Creek Sioux Tribe for the damages we have suffered by the building of the dams.

For the men, women, and children of the Crow Creek and Lower Brule Sioux Tribes, there is nothing more important right now than moving forward with this Act. The new Tribal Council, including myself as Chairman, understands the challenges that lie ahead. Our reason for running for office and our daily motivation is to improve the situation and make a positive difference for the people of the Crow Creek Sioux Tribe. This legislation is an essential step in our efforts to reverse the downward trend and move forward.

We would appreciate our testimony being made a part of the hearing record. Thank you.

Ms. HERSETH SANDLIN. Madame Chairman, I would ask you now to submit my opening statement for the record, and go through to questions.

Ms. NAPOLITANO. Without objection.

[The prepared statement of Mrs. Herseth Sandlin follows:]

Statement of The Honorable Stephanie Herseth Sandlin, a Representative in Congress from the State of South Dakota, on H.R. 155

Thank you Chairwoman Napolitano and Ranking Member McMorris Rodgers for including H.R. 155: the Lower Brule and Crow Creek Tribal Compensation Act in today's Water and Power Subcommittee hearing.

This bill would fully compensate the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe in South Dakota for the lands that they lost as a result of the federal government's construction of massive dams on the main stem of the Missouri River. The Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe are both constituent bands of the Great Sioux Nation. Both border on the Missouri River in central South Dakota.

The 1944 Flood Control Act was designed to mitigate flooding and to develop hydroelectric power production, among other purposes. As part of the Flood Control Act, the Pick-Sloan Missouri River Basin project was authorized. This joint venture by the U.S. Army Corps of Engineers and the Bureau of Reclamation led to the construction of five dams on the Missouri River, four of which were constructed in South Dakota.

As part of the Pick-Sloan project, the construction of the Fort Randal Dam caused the flooding of 17,415 acres of Crow Creek and Lower Brule land. It is important

to note that the federal government began construction of the Fort Randall dam prior to reaching a settlement with the tribes. In 1959, the Corps began construction of the Big Bend Dam. This project subsequently flooded an additional 20,478 acres of tribal land. In addition to the land and the natural resources that were lost, over one hundred native families were displaced.

The loss of land has meant a loss of grazing and farming acreage, destruction of timber and wildlife habitat, and upheaval in the lives of the families forced from their lands to make way for the dams. Unquestionably, the Pick-Sloan projects exacted an enormous toll on the people of both tribes and their economies. It is important that we seek to fully reimburse these tribes for the lands they lost and recognize that the permanent flooding and displacement undermined the economic and cultural fabric of the tribe.

Congress created a trust fund for the Crow Creek Sioux Tribe in 1996, and a separate trust fund for the Lower Brule Sioux Tribe in 1997. These trust funds sought to compensate the tribes for the value of their land that is now permanently inundated as a result of the construction of the Fort Randall and Big Bend Dams.

Regrettably, the amounts of compensation between different but similarly situated tribes varied greatly along the Missouri River. The result was unfair and inadequate compensation trust funds for Lower Brule and Crow Creek. This act is intended to create consistency among the affected tribes and to bring some long-overdue closure to two tribes whose best lands were inundated decades ago.

This legislation already has a history that spans multiple Congresses. An earlier version of this bill was reported by the Senate Committee on Indian Affairs in the 108th Congress and ultimately passed the Senate. In the 109th Congress it was amended in the Senate after further hearings and then reported.

Unlike earlier versions of this bill, Section 5 of H.R. 155 states that "this act shall be considered...full and final compensation...for damages caused by construction of the Fort Randall Dam and the Big Bend Dam." It is my hope that the 110th Congress will act on this legislation.

Compensation for these tribes would mean an ability to actively work for the betterment of their communities. It would mean adequate roads and improved community facilities. It would mean better health care and newer schools. It would mean attracting commercial business and improving the local economy. Most importantly, it would mean a real chance for these tribes to provide future generations with the tools that so many of us take for granted.

Today, this subcommittee will hear testimony from Chairman Michael Jandreau of the Lower Brule Sioux Tribe. Mr. Jandreau has served as chairman of the tribe for over 29 years. He will explain the impacts that the Pick-Sloan projects had on his community and why just compensation is necessary in order for the community to continue their efforts to rebuild their economy and their way of life.

I would also like to acknowledge Mr. Brandon Sazue, the Chairman of the Crow Creek Sioux Tribe. Mr. Sazue was sworn in as tribal chairman on Tuesday of this week. I thank him for traveling to Washington, DC for this hearing as well as for the written testimony he provided for the record.

In closing, I once again thank the Chairwoman, the Ranking Member, and the Members of this subcommittee for holding today's hearing. I appreciate your willingness to work with me to enact legislation that would fairly and appropriately compensate members of the Lower Brule and Crow Creek Sioux Tribes. I ask you to do it because of the tremendous positive difference it would make in the lives of those affected—and because it is the right and fair thing to do.

Ms. HERSETH SANDLIN. Chairman Jandreau, thank you for traveling to Washington, D.C. today. I see some other members of the Lower Brule Sioux Tribe who have traveled here with you, and we appreciate your testimony, and your time, and your willingness to share your perspective on this invaluable legislation.

I would like, if you could, to elaborate, for the Chairwoman and myself and Committee staff, on how the Lower Brule Sioux Tribe has used the compensation funds that the tribe has received in the past from the current trust fund; and perhaps provide any examples of how Lower Brule would use the additional compensation monies, should H.R. 155 become law.

Mr. JANDREAU. Currently we have used the infrastructure dollars primarily to build much-needed facilities on the reservation: a trav-

el headquarters, a community center, a detention facility, a wildlife department, partially for the ambulance department and for the water department.

Also those dollars were used because of the reduction in funding, for employment coming to the reservation, a portion of these dollars are used every year to help create employment on the reservation. We also use them to fund, to a great extent, our day-care center, our eyeglass program for the youth. We have used our dollars to really try to build not only hard facilities but human beings.

Ms. HERSETH SANDLIN. And can you elaborate as well for us the studies that you have undertaken? The analysis as it relates to just compensation for this taking?

Mr. JANDREAU. We have done a number of studies in regard to that, which we submitted to Congress, to the Senate, some of which we submitted to you, that talked about the dollars, and the real lack of full, just compensation that had been afforded our tribe, and the Crow Creek Tribe. That these takings were by condemnation, under which there was no negotiation whatsoever.

I also listened with a great deal of interest the discussions about contamination in other areas of the country, which this Committee is concerned with. And I find that in the Missouri River, which is the longest river in the United States, the contamination has been building consistently in that river. And the concern that is being reflected is not at the level that it is in other parts of the country. So the work being done is being done with cooperation of our own people, and we fund a lot of their activities.

Ms. HERSETH SANDLIN. Thank you, Chairman Jandreau.

Mr. Quint, I understand—I can't see you very well, but I understand that the Bureau of Reclamation operates the dams in question but isn't directly involved in questions regarding compensation. However, that being said, in review of your written testimony, I think it conveys the Administration's opposition to H.R. 155.

And so you can either take these questions now, or submit answers in writing. But Madame Chairwoman, I would like to submit the following questions to Mr. Quint and the Administration.

One, has the Administration conducted its own analysis of the various tribal compensation bills related to the Pick-Sloan project? And if so, what are the findings?

Two, is the Administration's position that all impacted tribes have been justly compensated?

And three, is the Administration's position that Lower Brule and Crow Creek Sioux Tribes have been justly compensated for their losses?

Mr. QUINT. We would be happy to submit the answers to those for the record.

Ms. HERSETH SANDLIN. I appreciate that. Madame Chairwoman—

Ms. NAPOLITANO. One more question. I am willing to concede the time.

Ms. HERSETH SANDLIN. Well, I don't have any further questions. Again, I appreciate you working closely with us to address this matter.

The fact of the matter is the compensation amounts following the Pick-Sloan projects between different, but similarly situated, tribes

vary greatly along the Missouri River. The result was unfair and inadequate compensation trust funds for the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe. And this Act is intended to create consistency among the affected tribes, and to bring some long overdue closure to two tribes whose best lands were inundated and taken away from them decades ago.

The legislation we have introduced already has a history that spans multiple Congresses. And we look forward to working with you to advance this legislation, 110th Congress, and hopefully find resolution for the equitable compensation to these two tribes that I am honored to represent.

Thank you, Madame Chairman. Thank you for allowing me to participate in today's hearing.

Ms. NAPOLITANO. You are very welcome. And your questions will be submitted for the record, and we expect them to be answered promptly, please. I am sorry, I have to do that, because if I don't, I end up having to wait, and I don't like to wait that long.

Talking in regard to 155, Chairman Jandreau, the current trust funds for the economic development, what has been done with them? And apparently the tribe's analysis was different from the GAO reports, not using the tribe's final asking prices as the starting point of the analysis, and second not providing a range of additional compensation.

Mr. JANDREAU. I guess I don't truly understand, except to say that our consultant's starting point that the tribes determined over time to be fair market value for the damage, and the historical evidence, shows that the tribe's final asking prices were offered on the conditions of extreme duress. And it was a take-it-or-leave-it situation.

In response to GAO's criticism, our consultant calculated four alternative ranges of additional compensation. These alternatives ranged from \$20.6 million to \$432.5 million for Lower Brule, and from \$11.5 million to \$93.8 million for Crow Creek.

And also because of the criticism received, Section 5 of the bill tells that we would consider this final compensation for Crow Creek and Lower Brule, as far as the claim for the Missouri River.

Ms. NAPOLITANO. There are five other tribes that apparently have received compensation, and they have not come back for a third request. Do you feel it has been unfair to you?

Mr. JANDREAU. Yes, I do feel it has been unfair. You know—

Ms. NAPOLITANO. In what way, sir?

Mr. JANDREAU. If additional compensation is not provided for Lower Brule and Crow Creek, then equitable settlement will not have been achieved. And these tribes have received most equitable treatment.

Ms. NAPOLITANO. You mean the other five tribes?

Mr. JANDREAU. No, these two tribes, Lower Brule and Crow Creek, than Cheyenne River, two affiliated, Santee Oryenta, because of the variance and the costs that were afforded these four tribes, versus Lower Brule and Crow Creek.

Ms. NAPOLITANO. OK, sir. Because I have a summary of what each tribe in that area had been, the acreage lost, the payments, et cetera. And I haven't done the math, but I am going to be looking at it a little more closely to see what the percentages were.

Ms. Herseth Sandlin indicated it was some of your best land.

Mr. JANDREAU. Yes, it was.

Ms. NAPOLITANO. Have you used a lot of your trust funds for economic development?

Mr. JANDREAU. Yes, we do, to the degree that we can. Our present trust fund is used primarily for survival income, ma'am. We don't have a huge casino. Our casino is very small. And the population served by it is very small. Consequently, the returns are very small in comparison to other casinos throughout the country.

Our land base is used primarily by our members and by our agricultural activities. Our efforts are to create self-efficiency based on the assets that we have. One of the assets, of course, we have expanded into value-added agricultural production, and we have started another business for that purpose.

Crow Creek likely is the same way, where they use their land base to the greatest extent possible to generate income for the people.

However, the dollars that we receive are not anything but the interest that we receive, all from the trust funds. And as you know, the interest rates on government paper has been very, very low. And that is what we are subjected to. We based our return and our capacity on a 6 percent interest rate. We have found our interest rate to be at .08 of 1 percent for overnighters, up to 3.8 on bills that we were able to purchase through the process that we have to utilize. Our income over the last two years has been 4.8 percent of our trust fund.

Ms. NAPOLITANO. Chairman, would you be so kind as to put that in writing, so we can introduce it into the record? I would like to see it further, if you wouldn't mind.

Mr. JANDREAU. Yes, I would.

Ms. NAPOLITANO. Thank you. I will move on to the next one, because we have to keep moving.

But to Mr. Lansford, let us see. I am losing my place here. Mr. Lansford, Chairman Lansford, what are the eight cities and counties involved in the Ute Pipeline Project doing to prepare financially for this project?

Mr. LANSFORD. Madame Chairwoman, that is a good question. We have, for the last several years, looked at various financing plans. And currently we are in the process now of finalizing the adoption of a finance plan which involves several communities increasing their wastewater rates, or their water rates. And the City of Clovis, being the largest member of the Authority, actually has implemented a gross receipts tax, which a portion of that has been dedicated as a revenue stream to service a debt on the local share.

Ms. NAPOLITANO. And in all of the authorities' research and consultations, what kind of evidence have you collected relating to the decline of the aquifer?

Mr. LANSFORD. Well, most recently and most troubling has been some data that has been accumulated by the City of Portales and the private water company that is associated with the City of Clovis.

And to summarize that would be to say that in the last eight years, the water provider for Clovis, New Mexico has doubled the number of wells in production. Yet the amount of water being pro-

duced is about 5 percent to 10 percent less than it was eight years ago, with again twice as many wells producing.

Ms. NAPOLITANO. Are your wells declining, then?

Mr. LANSFORD. Very dramatically. And of course, the Energy Bill is kind of a mixed blessing for us. We are an agricultural-based community, and there are corn growers in the area, and sorghum producers, and feed producers for dairies. And of course, they run their wells very, very often and very long. So the demand for water has increased in the area as well.

Ms. NAPOLITANO. My concern while sitting in this Subcommittee is that we continue to look for and try to help out wherever we can to assure the water delivery, clean water delivery, and clean up the contaminated aquifers. That is why I continue to bring that up.

We may be needing every single drop from every well and from every river and from every resource that we can, every source. So that is why I would like to have any information that you have submitted for the record, so that we may be able to take that into consideration also.

Mr. Quint and Mr. Lansford, Cannon Air Force Base will be the major recipient of this rural water project, apparently. Yet there is no cross-share for the military as there have been in other bills, such as Camp Pendleton, their license water bill. And how is the Air Force going to pay for the water? Or are they going to be paid for the water? Or are they going to be made to pay for the water?

Mr. QUINT. I do not have that information in front of me now. I will look into that and get back to you for the record.

Ms. NAPOLITANO. I would really appreciate it, because if it is free water, I take objection to that.

Mr. QUINT. I understand.

Ms. NAPOLITANO. I think everybody has been made to pick water; as these people have indicated, it is not easy and it is not cheap.

Mr. Lansford.

[Pause.]

Ms. NAPOLITANO. I am all right. I had a shot for pneumonia, and it is giving me fits. My left arm is bugging me, so you will have to forgive me, please. Yes, Mr. Lansford.

Mr. LANSFORD. Madame Chairwoman, that is a very good question, and I will assure you that the Department of Defense will not get free water from this project.

Currently the Cannon Air Force Base facility is not a member of the Water Authority, but they do have water reserved through the City of Clovis. There is a memorandum of understanding that has been in place for a number of years whereby they would actually purchase the water from the Water Authority through an agreement with the City of Clovis. And so ultimately, when water is delivered, they would become a customer of the Water Authority, and would pay market price for the water.

Ms. NAPOLITANO. So they are, they are going to be paying for that water.

Mr. LANSFORD. Yes, ma'am.

Ms. NAPOLITANO. OK. To Mr. Hickman, what effect has all the publicity over this environmental threat had on the citizens of Lake County and your economy?

Mr. HICKMAN. It has had, at the very initial start it had a dramatic impact in that we had cancellation of reservations. We have had restaurants, sales down.

Since that time, we have done our own publicity saying that the drinking water is fine, please come to Leadville. We believe that the two Federal agencies are working as hard as they possibly can to solve the short-term problem.

Since that time, we also had some real estate sales that were not consummated. Since that time, we are now approximately three months down the road, and those real estate transactions have happened. Our sales tax is actually up from what it was before. We, our immediate disaster declaration was picked up by the press, and picked up hard by the press. But it has brought us to this table today, and I would do it again.

But I think Leadville and its economy is back on line, and we hope that—our tourist season is actually the summer. And we can point to a particular area on the east side and say this is what the EPA is doing right now to solve our short-term problem.

Ms. NAPOLITANO. Thank you. Have you had any contact, been contacted by or been involved in what impact it might have on your fishing industry, if you have fishing? Or on the wildlife, on estuaries, if there are any? What impact? Because it says the runoff is not bad. But certainly some of these animals are susceptible, and that could cause a problem for some of the economy you might be banking on.

Mr. HICKMAN. I think if we had the environmental catastrophe that has been outlined in the EPA's letter, that we would not have a fishery, period. And it would have a dramatic impact upon our community. It not only would have an impact on our community; it would be all the way down to Pueblo, Colorado Springs, and other places that use that water not only for drinking, but for recreation.

So it immediately—whitewater rafting has become extremely big in Lake County and Chaffee County. Would you want to white-water raft in polluted water? This coming from Leadville. And the answer is absolutely, positively not.

So we are real concerned that if we have this environmental catastrophe that the EPA has outlined, that our economic development, our tourism would be devastated.

Ms. NAPOLITANO. Then the effect on fish and wildlife, though.

Mr. HICKMAN. Absolutely, absolutely. I think Ms. Rudolph referred to a blowout of the Yak treatment plant, which is just above the Gaw Shaft, about 1982. And it affected the fisheries all the way down to Canyon City. The water was basically turned gold, and we lost our fishery. We do not want to see that happen again.

Ms. NAPOLITANO. Thank you. And I will move that that map, probably in a smaller, condensed form, be accepted into the record. It is a little big.

And thank you, all the witnesses. This concludes the Subcommittee's hearing on H.R. 155—I apologize for the lateness—the Lower Brule and Crow Creek Tribal Compensation Act by Ms. Herseth Sandlin. H.R. 5511, the Leadville Mine Drainage Tunnel Remediation Act of 2008 by Mr. Lamborn. And H.R. 5710, the Eastern New Mexico Rural Water System Authorization by Mr. Tom Udall.

Our thanks to all of you again for appearing before the Subcommittee, and for being so honest and candid. And I hope to see that draft, how would I say, forthwith?

Mr. QUINT. We are working really, really hard on that.

Ms. NAPOLITANO. Thank you, Mr. Quint. Your testimonies and expertise have been very enlightening and very helpful. And we will, of course, include it in the record.

Under Committee Rule 4[h], additional material for the record should be submitted within 10 business days after this hearing. The cooperation of all the witnesses in replying promptly to the questions submitted to you in writing will be greatly appreciated. And I was informed by Mr. Lamborn's staff that there will be questions submitted for the record.

This hearing is now adjourned. And again, thank you.

[Whereupon, at 1:26 p.m., the Subcommittee was adjourned.]

