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MISCELLANEOUS WATER AND POWER LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

S. 300
S. 1258
S. 1477
S. 1522
H.R. 1025

JULY 26, 2007

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MISCELLANEOUS WATER AND POWER LEGISLATION

THURSDAY, JULY 26, 2007

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

The subcommittee met, pursuant to notice, at 2:33 p.m., in room SD–366, Dirksen Senate Office Building, Hon. Ken Salazar presiding.

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

Senator WYDEN [presiding]. I call to order this hearing before the Water and Power Subcommittee. Senator Salazar will be chairing this subcommittee hearing, but it is a hectic day, even by Senate standards, so he is on his way.

It's my pleasure to be able to welcome everyone to this afternoon's hearing. The subcommittee will have two panels of witnesses here today. A number of them have traveled from across the country to be able to express their views, and we thank them for their efforts.

The five bills that are before the subcommittee today are S. 300, sponsored by Senators Kyl, Reid, Feinstein, and Ensign, authorizing the lower Colorado River Multi-species Conservation Program; S. 1258 sponsored by Senators Cantwell, Wyden, Smith, Allard, and Hatch, which amends the Reclamation Safety of Dams Act to address the repayment of costs incurred for site security at reclamation facilities; S. 1477, a bill that Senator Salazar is sponsoring with Senator Allard, directing reclamation to carry out the Jackson Gulch Rehabilitation Project in Colorado; S. 1522 that I've introduced along with Senators Smith, Craig, Murray, Cantwell, Backus, Crapo, and Tester—the entire Northwest delegation—which reauthorizes the Fisheries Restoration and Irrigation Mitigation Act; and H.R. 1025, which authorizes the reclamation to study the feasibility of a water supply and conservation project in the Republican River Basin, in Kansas and Nebraska.

We're going to have Senator Allard make his opening statement because it's going to be a bit hectic. If I can ask my friend from Colorado to indulge me just for another minute or two. I'll be able to give my statement on S. 1522 and then we'll want to recognize our friend from Colorado.

I've been joined by the entire Northwest Senatorial delegation in supporting S. 1522, the Fisheries Restoration and Irrigation Miti-

gation Act. We're also very pleased to be able to welcome back here, Mr. Mark Thalacker, manager of the Three Sisters Irrigation District in Sisters who is going to be speaking on behalf of the Oregon Water Resources Congress, about the many benefits of the program.

This legislation extends a home-grown common-sense win-win effort that has a proven track record in helping to restore the salmon runs in the Pacific Northwest. Since 2001, dollar for dollar, the fish screening and fish passage facilities funded by this program are among the most cost-effective uses of public and private fisheries restoration dollars. Over the past 6 years, more than $10 million in Federal funds has leveraged nearly $20 million in private and local funding. This money has protected more than 550 river miles of fish habitat and species throughout the Pacific Northwest.

The program has wide support, including from Oregon Governor Ted Kulongoski. I would ask unanimous consent to include his letter in support of the bill in our record. Without objection that will be so ordered.

Community leaders, fishery managers, agriculture producers, and irrigators and environmental organizations, the National Audubon Society, American Rivers, and Oregon trout all recognize the benefit of this program. When he was Governor of Idaho, our Interior Secretary Dirk Kempthorne also spoke strongly in behalf of the program.

This year, for the first time, Interior included $1 million in its fiscal year 2007 work plan to fund the program. Up until now, every Federal dollar for the program has been added by Congress and this is a very encouraging sign that the administration's attitude toward the program is changing. So, we are looking forward to passing the legislation and working with Secretary Kempthorne on it.

I would ask unanimous consent to have the rest of my remarks put into the record.

We have been joined by our friend from Tennessee, Senator Corker. I think what I'd like to do, with your leave, Senator Corker—Senator Allard was here. If he could make his statement, we'll hear from Senator Allard and then we'll go right to you.

[The prepared statements of Senators Wyden, Cantwell, Kyl, and Smith follow:]

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

I'm pleased to be joined by all of my friends and fellow Senators from the Northwest—our acting Subcommittee Chairman, Senator Cantwell; Senators Gordon Smith, Larry Craig, Patty Murray, Max Baucus, Jon Tester, and Mike Crapo in supporting S. 1522, the Fisheries Restoration and Irrigation Mitigation Act of 2007—a bill to reauthorize the FRIMA (pronounced "freema") program, as we call it.

Let me also recognize and welcome back Mr. Marc Thalacker, Manager of the Three Sisters Irrigation District in Sisters, Oregon, who will be speaking today on behalf of the Oregon Water Resources Congress about the many benefits of the FRIMA program.

Our legislation extends a homegrown, common-sense, win-win program that has a proven track record in helping to restore Northwestern salmon runs and protecting other fish species in Oregon, Washington, Idaho and Western Montana.

Since 2001, dollar-for-dollar, the fish screening and fish passage facilities funded by FRIMA are among the most cost-effective uses of public and private fisheries restoration dollars.

Over the past six years, more than $10 million in federal funds has leveraged nearly $20 million in private, local funding. This money has protected more than 550 river miles of fish habitat and species throughout the Northwest.

This program has wide support, including from Oregon Governor Kulongowski. Community leaders, fisheries managers, agricultural producers and irrigators, and environmental organizations—the National Audubon Society, American Rivers, and Oregon Trout—all recognize the benefit of this program.

While he was Governor of Idaho, Interior Secretary Dirk Kempthorne said, ". . . the FRIMA program serves as an excellent example of government and private land owners working together to promote conservation. The screening of irrigation diversions plays a key role in Idaho's efforts to restore salmon populations while protecting rural economies." And this year, for the first time, Interior included a million dollars in its FY07 work plan to fund FRIMA. Up until now, every federal dollar for FRIMA has been added by Congress, and I hope this is sign that the Administration's attitude toward this program is truly changing.

I look forward to working with Secretary Kempthorne and with all of our colleagues here on the Committee to reauthorize this important program.

Finally, I want to thank Sen. Cantwell for her leadership in drafting S. 1258, a bill to allocate security costs at Bureau of Reclamation dams, which I have co-sponsored.

Water and power users of these projects agree that they ought to pay their fair share of security costs, but believe that these costs are no different than other operations and maintenance costs and the 15% allocation should apply to security just as it does to these other costs. And that's what this bill would do.

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

SITE SECURITY COSTS AT FEDERAL DAMS

Mr. Chairman, I am pleased that the Water and Power Subcommittee is holding this hearing on S. 1258 that is important legislation to ensure that water and power customers across the West are afforded fairness and certainty in paying for security costs at federal dams.

I would like to specifically welcome Shannon McDaniel from Pasco, Washington. Mr. McDaniel is Manager of the South Columbia Basin Irrigation District and is testifying for the National Water Resources Association today.

Mr. Chairman, this legislation will expressly authorize the Bureau of Reclamation's program to enhance site security at federal dams. This legislation will also ensure appropriate Congressional oversight and provide certainty to water and power customers in terms of a fair, durable and equitable allocation of costs they will pay in the future.

I introduced S. 1258 with my colleagues Senators Murray, Wyden, Hatch, Smith, and Allard to ensure that costs of enhanced security measures in this post-9/11 world that the Bureau of Reclamation seeks to recover from water and power customers are fairly allocated.

Following the terrorist attacks of September 11, 2001, the Bureau of Reclamation undertook an aggressive program protect important Western, multi-purpose projects, including Grand Coulee Dam in Washington state.

As multi-purpose projects, these dams not only provide clean, renewable energy, they also provide important flood control, water storage for irrigation, municipal and industrial users, and recreation and environmental mitigation benefits.

Everyone agrees that it is important for Reclamation to act to protect our critical national infrastructure. The disagreement arises over who should pay for these enhanced security measures.

Initially, the Commissioner of Reclamation agreed that protection of these important federal dams is in the national interest and, therefore, the costs of enhanced security measures should be a federal expense.

But in 2005, Reclamation abruptly changed its position, probably because OMB forced the change, and decided to make water and power customers pay all the costs of increased guards and patrols. In Western states, this is currently about $20 million per year.

This means about $5 million to the Pacific Northwest. And water and power customers are asked to shoulder all of these costs.

I find this unfair to federal water and power customers and an irresponsible way to administer an important federal security program. I believe that Reclamation's original determination that these costs should be a federal obligation was the right decision.

Everyone agrees that these critical dams must be protected because they are federal assets which provided benefits to entire regions of the country. But is it unfair to force water and power customers to pay 100% of these enhanced security costs.

These costs are then passed on to the end-use customer, many of which are farming families with limited incomes.

Some wholesale customers are willing to pay for a portion of these costs, as long as there is transparency and certainty in the program. They have a right to know where their hard earned money is being spent and why.

In a similar Reclamation program for these federal projects, authorized under the 1978 "Safety of Dams Act", water and power customers pay 15% of the costs for protecting the structural safety of federal dams.

The Safety of Dams cost share formula means that water and power customers pay a reasonable share of the costs and have more certainty about what they must pay for the structural safety of dams.

S. 1258 extends the same reasonable cost share allocation and certainty to Reclamation's enhanced security costs by applying the cost-sharing formula from the Safety of Dams Act to future capital and operation and maintenance costs for site security.

S. 1258 also expressly authorizes the site security program and requires Reclamation to provide annual reports to Congress on:

a) site security activities undertaken for each fiscal year;

b) a breakdown of those costs that indicates which are for pre-9/11 activities and which are for post-9/11 measures; and

c) a five-year planning horizon that gives Congress and customers a look at anticipated costs and expenditures.

I think the compromise contained in S. 1258 is a fair one and I hope we can resolve this issue this year. I understand similar legislation has been introduced in the House (H.R. 1662) and reported favorably by the House Water and Power Subcommittee. I hope this subcommittee can do the same.

I look forward to hearing today's testimony from our witnesses.

PREPARED STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

S. 300—THE LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM ACT

Mr. Chairman, Members of the Subcommittee, thank you for holding this hearing on S. 300, the Lower Colorado River Multi-Species Conservation Program Act. I introduced this bill, along with Senators Ensign, Feinstein, and Reid, in January 2007, to protect and implement the Lower Colorado River Multi-Species Conservation Program. This bill is nearly identical to legislation I introduced late last year with Senators Ensign, Feinstein, and Reid.

The Lower Colorado River Multi-Species Conservation Program, otherwise known as MSCP, is a comprehensive, joint effort among 50 federal and non-federal entities in Arizona, California, and Nevada whose purposes are to: (1) protect fish and wildlife along the lower Colorado River while ensuring the certainty of existing river water and power operations; (2) protect threatened and endangered wildlife under the Endangered Species Act; and (3) prevent the listing of additional species on the lower Colorado River.

To accomplish these goals, the MSCP will create more than 8,100 acres of riparian, marsh, and backwater habitat and implement additional measures to protect 26 endangered, threatened, and sensitive species. The program covers approximately 400 miles, including the full-pool elevations of Lake Mead to the United States-Mexico Southerly international Boundary.

The program costs will be spread over 50 years, and split fifty-fifty between the federal government and the non-federal entities covered by MSCP. Arizona and Nevada will each bear 25 percent of the non-federal costs and California will bear 50 percent of the non-federal costs.

The Secretary of the U.S. Department of the Interior approved the program on April 2, 2005, after nearly a decade of complex negotiations and considerable planning efforts by federal, state, tribal, and local officials, and water and power customers.

Although implementation of the program began in April 2005 under the Department of the Interior's existing authority, legislation is needed to protect the substantial financial commitments that the non-federal parties are making to species protection. To that end, the bill (1) expressly authorizes appropriations to cover the federal share of the program costs; (2) directs the Secretary of the Interior to manage

and implement MSCP in accordance with the underlying program documents; and (3) provides a waiver of sovereign immunity to allow the non-federal parties to enforce, if necessary, the underlying program documents. The waiver, however, does not allow an action to be brought against the United States for money damages.

Late in 2006, the House Committee on Resources, Subcommittee on Water and Power held a comprehensive field hearing in Arizona on the MSCP Act. Unfortunately, Congress adjourned before it could take action on the bill. Since then on July 24, 2007, the House Water and Power Subcommittee held another hearing on the legislation. Both hearings highlighted the vital importance of the program to Colorado River users in Arizona, California, and Nevada, and to endangered and threatened species along the lower Colorado River.

Given the bipartisan support for S. 300, I hope that the Committee will work with me and the bill's cosponsors in securing its swift passage in the 110th Congress.

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

Mr. Chairman, I appreciate your holding this legislative hearing today on several bills pending before the subcommittee. I am a cosponsor of two of the bills being heard today, and look forward to working with my colleagues to get these bills enacted. I want to welcome Marc Thalacker of the Three Sisters Irrigation District in Sister, Oregon, who is here to testify today on behalf of the Oregon Water Resources Congress.

The first bill that I have cosponsored is S. 1522, the Fisheries Restoration and Irrigation Mitigation Act of 2007. This bill would reauthorize an important program in the Pacific Northwest that has provided federal funding, on a cost-shared basis, for the screening of water diversions and other facilities to protect fish in our region.

There are numerous fish runs listed as either threatened or endangered throughout the Pacific Northwest. The health of these runs affects the commercial fisheries not only off the West Coast, but for Canadian and Alaskan fishermen as well.

The FRIMA program was originally authorized in 2000. It has been an important partnership that has assisted numerous Oregon irrigation districts to construct fish screens and fish passage facilities. Funds for Oregon projects have generally been leveraged so that the non-federal cost share has been much larger than required under the program. Participation in the program is strictly voluntary.

Reauthorization of the FRIMA program is supported by the Oregon Water Resources Congress, as well as the Idaho Water Users Association and the Washington State Water Resources Association. I am glad that the Administration's testimony supports the goals of the program.

The second bill before the subcommittee today that I have cosponsored is S. 1258, relating to site security costs at Bureau of Reclamation facilities. In the post-September 11th era, the Bureau of Reclamation has undertaken a number of site security measures at the federal dams under its management. Reclamation has taken the position that facility fortifications should be non-reimbursable expenditures, but that project beneficiaries should pay for all of the increased security operation and maintenance (O&M) costs. There are no cost control measures on this program, which has been an on-going concern for Reclamation's water and power customers. This bill would put the site security program under the Reclamation Safety of Dams program, which has well-established reimbursement and consultation requirements.

Again, Mr. Chairman, thank you for convening this hearing. I look forward to the testimony from today's witnesses.

Senator WYDEN. Senator Allard.

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

Senator ALLARD. Senator Wyden, thank you very much for recognizing me. I am here to talk about S. 1477, which is an effort by both Senator Salazar and myself to improve water management in the State of Colorado.

Mr. Chairman, thank you for holding this hearing today and thank you, Senator Corker, also for being here and allowing me to speak briefly on behalf of the bill to authorize the rehabilitation of the Jackson Gulch Project, which Senator Salazar and I are sponsoring together.

I'd like to extend a special welcome to Gary Kennedy, who is also here to testify in support of this bill.

As I'm sure you're aware, Mr. Chairman, many federally-owned Bureau of Reclamation projects throughout the West are at, or past, their life expectancy and are in severe need of rehabilitation. While the cost of rehabilitation is generally one-half to one-third of the cost of replacing a project, this is more than many small rural communities can afford. The Bureau has maintained that rehabilitation equates to operations and maintenance, which in many cases is turned over to local operating agencies long ago.

It seems to me however, that these two things are not the same. No matter how many oil changes or tune-ups you perform on a car, there comes a point where it's no longer serviceable. The same can be said of these water projects. Local entities have worked diligently over the years to care for and make repairs to these projects, but eventually they reach the end of their operational life and move, and more extensive help is needed, especially in light of ever increasing Federal water standards and ever-diminishing water supplies. I believe that the Federal Government should play a role in assisting local communities in the rehabilitation of federally-built, federally-owned projects.

The bill being discussed today is S. 1477. It would authorize the Secretary of Interior to participate in the cost-sharing arrangement with the local water entity, the Mancos Water Conservancy District, to rehabilitate the canals and other water delivery infrastructure related to the project. Continued operation of this project is vital to the delivery of water to residents and agricultural interests in the Mancos Valley and to Mesa Verde National Park. It is important to note, under the provisions of this bill, operations and maintenance will continue to be the responsibility of the District.

Again, thank you for holding this hearing, Mr. Chairman. I look forward to working with you, other members of the committee, and our colleagues in the full Senate to ensure that this important bill is given the opportunity to advance.

Senator WYDEN. Thank you, Senator Allard.

Thank you for your patience as well, Senator Corker.

Senator ALLARD. Thank you, Senator Corker, for yielding to me. I appreciate that very much.

Thank you, Mr. Chairman.

STATEMENT OF HON. BOB CORKER, U.S. SENATOR FROM TENNESSEE

Senator CORKER. Thank you much for being here. I know you have other business. Senator Wyden, Mr. Chairman, I've scratched out three times who was going to be chairman today. I'm glad it's finally you.

Senator WYDEN. We may have to go back to your original draft.

Senator CORKER. OK.

It's a pleasure to be here with you today to discuss these five bills. I appreciate the explanation that's going to be before us.

I would like to elaborate on two of the bills before us today. Let me address S. 1258, regarding the safety and security of our dams. First of all, I think all of you know that—and I talk a little differently than most of the folks who are going to be testifying

today—I know most of these issues affect western areas of our country.

Since 9/11 we've invested a substantial amount of time and money to ensure protection of these critical assets. S. 1258 addresses a policy challenge of who should pay for the ongoing cost associated with the protection and security of these facilities.

As the witnesses discuss this bill, I'd like to ask you provide any insight that you might have for someone like me who's in a little different part of the country, how the costs have been allocated by other Federal agencies. In particular, I'd love to hear how the administration witness would compare what's happening here, with the Bureau's program, with that which happens at the Tennessee Valley Authority. I'd just like to understand the differences there, if I could.

Another challenge we are faced with now, and one that will be exacerbated in the future, is how to pay for the renovation and rehabilitation of hundreds of reclamation facilities through the western United States. The chairman's bill, S. 1477, begins with this debate, and now we're back to the second chairman I thought might be here, Chairman Salazar. Good to see you, sir.

I commend the chairman for raising this issue. It's a serious challenge. I would like for the witnesses from the administration to provide the committee a detailed list of all the projects—I know you can't do that today, but if you will after the testimony—of all the projects in need of rehabilitation now, and in the future. Because I realize this is going to present problems for us down the road. Please describe the timeline for addressing their rehabilitation and their estimated costs.

With that, let's not delay any further. I think I may turn it over to our second chairman and see if he has any introductory comments.

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

Senator SALAZAR [presiding]. Thank you very much, Senator Corker.

I apologize for being late. We were in a procedural road block, so to speak, on the Senate floor and I was trying to be helpful in straightening that up.

Let me just take a moment before we call the witnesses up, and say that I'd like to take a moment to speak about a bill that's important to Colorado that's on the agenda today, and that's S. 1477. It's a bill that authorizes the funding for the Bureau of Reclamation to work with the Mancos Water Conservancy District to carry out a much-needed rehabilitation project on the Jackson Gulch canal system in Southwest Colorado.

For us in the West, we know that water is the lifeblood of the West. We know that water is for drinking and whiskey, whiskey is for drinking and water is for fighting. I think that's the adage. So, when we talk about water we know its importance in the West.

The Mancos Project, including the facilities under this bill, provide water for irrigated agriculture. The Project provides the municipal water supply for the Mesa Verde National Park, the town of Mancos, and the Mancos Rural Water Supply Company. The

Jackson Gulch canal system has outlived its expected life and is now badly in need of rehabilitation. If the system experiences a catastrophic failure, agricultural losses of approximately $1.5 million annually will occur. The town of Mancos will suffer severe shortages and Mesa Verde may be without water during its peak visitation period and fire season.

The people of Montezuma County have shown great patience with respect to the condition of the Mancos Project, but the situation is turning dire. The Federal Government could not afford to continue to ignore the need of this particular project and I hope that we can move forward to achieve better results in fixing this project.

So with that, unless Senator Corker has other comments, we'll go ahead and call the administration witnesses. So we'll call the first panel.

Before starting, I'd like to quickly note that the subcommittee has received additional written testimony on several bills that are before us today. That testimony, as well as the written submission of the witnesses here today, will be made a part of the official hearing record.

The first panel consists of the administration's representatives. We have Larry Todd, who is the Deputy Commissioner of the Bureau of Reclamation. We also have Everett Wilson, who is a Deputy Assistant Director for Fisheries at the U.S. Fish and Wildlife Service. Both of them will be available to answer questions about the matters that are the agenda. Welcome to both of you.

Mr. Todd, please provide us a brief summary of your written testimony. Following that we'll have a brief question and answer period and then move on to the second panel.

STATEMENT OF LARRY TODD, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. TODD. Thank you, Mr. Chairman, members of the subcommittee. I am Larry Todd, Deputy Commissioner for Policy Administration and Budget at the Bureau of Reclamation. I'm pleased to be here alongside Fish and Wildlife Service to present the Department of the Interior's views on S. 300, S. 1258, S. 1477, S. 1522, and H.R. 1025.

The Department has submitted written statements on all five of these bills so I'll be brief.

S. 300—the Department supports the goals of the lower Colorado River Multi-Species Program Act and is already working collaboratively with the States on the implementation of this program. The MSCP provides Endangered Species Act compliance for a list of current and future activities for six Federal agencies and 41 non-Federal parties. Twenty-six native species are protected by the MSCP, including six federally listed species.

The MSCP helps ensure that the supply and delivery of water from the lower Colorado River is not compromised, due to the endangered species compliance issues. The administration has concerns with the language in sections 2, 4, and 5 of the bill. We stand ready to work with the committee to address these concerns.

S. 1258 would amend the existing Safety of Dams Act and reduce the collection reimbursable costs that reclamation currently receives from customer for guards and patrols at project facilities. The Department opposes S. 1258. The Department opposition centers around four primary reasons.

First, because the policy considerations inherent in amending the Safety of Dams Act. Second, because of the legislation's grouping, improperly we believe, of guard and patrol costs with fortification costs. Third, because S. 1258's negative impact on Reclamation's budget and the U.S. Treasury. Fourth, Reclamation believes S. 1258 could bring unintended results for our water and power customers.

The change to 15 percent reimbursement for the total security budget could work to the detriment of customers in projects where future capital fortifications are planned. Those security fortifications beneficiaries would be particularly disadvantaged. Furthermore, Reclamation would be required to collect these costs under multiple repayment contracts that could extend as long as 50 years.

Having said this, we believe that we have a good working relationship with the water and power users and have been working closely with them on costs, certainty, accountability, and transparency in our security program. Although we oppose this bill, we did not collect full reimbursement in fiscal year 2007, but rather collected a mid-point of $14.5 million between fiscal year 2006 levels and full reimbursement. This was considered a step toward full reimbursement in 2008.

S. 1477 would authorize the Department to fund repairs to the Mancos Project in Colorado, a rehabilitation effort referred to as the Jackson Gulch Rehabilitation Project. The Department can not support this bill because the project rehabilitation activity authorized under S. 1477 is currently the contractual obligation of the Mancos Water Conservancy District to fulfill its—pursuant to its standing operation maintenance contract.

The subcommittee has also asked the Department for its views on S. 1522, the Fisheries Restoration and Irrigation Mitigation Act of 2007. This would reauthorize and amend the Fisheries Restoration and Irrigation Mitigation Act of 2000. As noted in the statement submitted for the hearing, the Department supports the goals of FRIMA, but has concerns with several provisions of the bill.

Because administration of the FRIMA program is the responsibility of the U.S. Fish and Wildlife Service, I'm accompanied today by Everett Wilson, Deputy Assistant Director for Fisheries in the Fish and Wildlife Service, who's available to answer any questions you might have on S. 1522.

Finally, H.R. 1025 would authorize a feasibility study in the Republican River Basin between Harlan County Lake in Nebraska and Milford Lake in Kansas. The Department can not support H.R. 1025. Reclamation was part of a planning process for the lower Republican River Basin Appraisal Report in January, 2005. The Department supports the goal of the States as project sponsors to develop a locally supported solution to the water needs in the basin that is economical, affordable, and environmentally sensible. However, funds have not been allocated to carry out the provisions of

H.R. 1025 in the administration's budget for fiscal years 2007 and 2008. Given Reclamation's need to focus its limited resources, the Department can not support this bill.

Mr. Chairman, thank you for the opportunity to testify today. This concludes my prepared remarks. I'm available to answer any questions.

[The prepared statements of Mr. Todd and Mr. Wilson follow:]

PREPARED STATEMENT OF LARRY TODD, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

S. 300

Mr. Chairman and members of the Subcommittee, my name is Larry Todd and am here today to present the views of the Department of the Interior on S. 300, a bill to authorize a habitat conservation program on the lower Colorado River in the States of Arizona, California, and Nevada.

S. 300 authorizes the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) and addresses issues associated with implementation of the program, including Colorado River water use, investment of appropriated funds, and the enforceability of program documents. The Lower Colorado River is a critical resource to citizens of the southwest. Maintaining compliance with the Endangered Species Act and avoiding water supply conflicts that have been occurring in other areas of the West is critical to the Department. The Department supports the LCR MSCP as well as the intent of S. 300 to further this program. However, the Department remains concerned about language in Section 2, 4(b), 5(c), and 5(d), which I will discuss below.

The LCR MSCP was developed through a collaborative partnership with State leaders, local stakeholders and the Administration. This innovative program addresses the needs of threatened and endangered fish and wildlife on the lower Colorado River while assuring greater reliability of water deliveries and hydropower production. By meeting the needs of fish and wildlife listed under the Endangered Species Act, as well as preventing the need to list additional species, the plan provides greater certainty of continued water and power supplies from the river for Nevada, California and Arizona—and is designed to allow future water transfers within or among water users for a 50-year period.

Reclamation began work to develop the LCR MSCP in 1997 and the program was formally approved and adopted by Secretary Norton in 2005. Under existing authorities, Reclamation has been implementing activities that are similar in nature to those described in this program since 1997 when the U.S. Fish and Wildlife Service issued a Biological Opinion for southwestern willow flycatcher, bony tail chub, Yuma clapper rail and razorback sucker fish. In 2001, Reclamation adopted interim Surplus Guidelines that define when water operations can provide surplus water to water users in the Lower Colorado River Basin, and the Biological Opinion for that action is being implemented through the LCR MSCP. With these and other actions, Reclamation has been meeting the requirements of the Endangered Species Act (ESA) for over a decade.

Reclamation has spent a total of $9.5 million in FY2004 and FY2005, and spent $13 million in FY2006 from both Federal and non-Federal sources pursuant to the Program's Funding and Management Agreement with non-Federal entities. The LCR MSCP Steering Committee supports a budget of over $16 million for FY 2007. In addition to establishing over 270 acres of new habitat along the Colorado River, Reclamation has stocked 46,079 razorback suckers and 14,836 bony tail chub into the lower Colorado River since 2004. A significant amount of money has been spent on the research and monitoring needed to develop a sound scientific foundation for this 50-year program. Accomplishment reports for FY2004 and FY2005 have been approved by the MSCP Steering Committee, reviewed by the U.S. Fish and Wildlife Service, and found to be in compliance with the LCR MSCP ESA Section 10 Permit. The FY2006 report has been approved by the Steering Committee and U.S. Fish and Wildlife Service. All reports can be found on Reclamation's website at www.lcrmscp.gov.

In Reclamation's FY2008 budget, which is awaiting Congressional approval, $7 million has been identified from Federal funding for the program, with a $7 million match from non-Federal partners.

Since presenting testimony on HR 5180 last year, the Department is pleased to report progress toward resolving issues surrounding section 3(b). As written, this Section would direct the Secretary to enter into an agreement with the States of

Arizona, California and Nevada providing for the use of Colorado River water specifically for habitat creation and maintenance purposes. The Department believes that through existing contract terms, willing seller transactions, and current policies, Reclamation can utilize Colorado River (and non-Colorado River) water to implement the program. However, Reclamation has made progress with our funding partners in the Lower Basin States to develop an agreement acceptable to all parties on the use of Colorado River water for program purposes. Such an agreement could facilitate program implementation, and we look forward to continuing productive efforts with our partners on this proposed agreement.

We do have a couple of concerns with provisions contained in S. 300. The geographic definition of the Lower Colorado River in section 2 should be clarified to match that contained in the MSCP Program Documents. The Administration cannot support the language in section 4(b) of this bill allowing the Secretary to invest appropriated moneys that are not required to meet current program expenditures. Investing appropriations provides additional monies to finance a governmental purpose outside of the normal appropriations process.

We are also concerned about section 5(c), which addresses judicial review of program documents. We note that this provision has been modified from the language introduced in the last session of Congress, and that language has been added clarifying that the United States would not be liable for claims for money damages. Nevertheless, we have been advised by the Department of Justice and we are concerned that this provision could expand Federal litigation exposure in significant respects and open the door for judicial intrusion into administrative decision making. We would appreciate the opportunity to continue to work with the committee to address our concerns regarding section 5(c).

Section 5(d) seeks an explicit exemption from the Federal Advisory Committee Act. The Department believes that this exemption is not necessary as the program was determined by the Director of the U.S. Fish and Wildlife Service to be an Ecosystem Recovery and Implementation Team (ECRIT) pursuant to section 4(f)(2) of the ESA, thereby making the LCR MSCP Steering Committee exempt. Therefore, we believe section 5(d) is superfluous and we recommend deleting it.

The Department already has clear authorities to administer this program under existing statutes, and Reclamation began actively implementing the full LCR MSCP program in 2005. Through implementation of this program, the likelihood of a water conflict on the lower Colorado River is reduced.

The Department supports the LCR MSCP and will continue to work with interested stakeholders that seek to enhance the program. Thank you for the opportunity to comment on this legislation. We look forward to working with you on the various concerns we have. I am happy to take any questions.

S. 1258

Mr. Chairman and Members of the Subcommittee, I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. I am pleased to be here today to present the Department of the Interior's views on S. 1258, legislation to amend the Reclamation Safety of Dams Act and redirect reimbursable costs for dam safety activities. The Department opposes S. 1258, as introduced.

S. 1258 would make major changes to the process and revenues used by Reclamation to secure its facilities resulting in a loss of receipts to the Treasury. This proposed legislation addresses two components of Reclamation's site security program: (1.) capital investment (mainly facility fortification) and (2.) operation and maintenance (O&M), which consists mainly of guards and patrol functions. Currently, Reclamation treats security-related capital investment as non-reimbursable costs, and security-related O&M expenses as project costs subject to reimbursement based on project cost allocation. S. 1258 would change this methodology, eliminating the distinction between capital investment and O&M costs so that Reclamation would be required to treat 85% of the capital investment and O&M security costs as non-reimbursable, while the remaining 15% would be recovered from the reimbursable project purposes.

Reclamation understands that the impetus for this legislation is concern over increased security related costs incurred for all Federal facilities after September 11, 2001. However, our agency has been and remains committed to working with our customers and with Congress to ensure fair, consistent and efficient policies related to the treatment of these costs. The Department does not believe that the changes instituted under S. 1258 would be a positive step in this direction.

As explained in reports submitted by Reclamation to Congress in May 2005 and February 2006, Reclamation distinguishes capital costs of security-related fortifications from security-related O&M costs. Since the beginning of increased security lev-

els in fiscal year 2002, Reclamation has treated security-related capital investment as non-reimbursable. From fiscal year 2002 through the end of fiscal year 2007, for example, Reclamation will have funded over $66 million in fortification costs, none of which has been passed on to customers.

Treatment of post-9/11 O&M (guard and patrol) costs has been different, however. Early on, when security was increased at Reclamation facilities immediately after 9/11, Reclamation took the position that while these are clearly O&M costs, until a stable budget pattern emerged, and until customers had sufficient time to make the necessary adjustments to their planning and budgets, these costs should be non-reimbursable. Therefore, from FY 2002 through FY 2004, Reclamation's budget proposals called for post 9/11 security-related O&M costs to be treated as nonreimbursable.

However, in its FY 2005 and all subsequent budget proposals, Reclamation returned to the pre-9/11 practice of treating security-related O&M costs as reimbursable by project allocation. Report language which accompanies the FY 2005 Energy and Water Development Appropriation, however, directed Reclamation not to begin reimbursement in FY 2005, and additionally, provide a report to Congress on the delineation of planned reimbursable costs. Later, Congress' FY 2006 appropriations report language limited security-related O&M reimbursement to $10 million out of total costs of $20.9 million in FY 2006.

Reclamation's FY 2007 budget proposal anticipated total security-related O&M guard costs of $20.9 million. Of that amount, $2 million is allocated to non-reimbursable project purposes and requires appropriations. Reclamation anticipated full reimbursement of the remaining $18.9 million, of which approximately $11.6 million is in up-front funding not requiring appropriations, and approximately $7.3 million would be repaid to the Treasury and requires appropriations. However, because a Continuing Resolution in FY 2007 left unanswered the reimbursement amounts for the current fiscal year, Reclamation has moved to collect $14.5 million as a midpoint between the $10 million cap in FY 2006 and the full $18.9 million we expect to be reimbursable in FY 2008.

Under S. 1258, instead of the $18.9 million future annual reimbursement Reclamation currently anticipates, Reclamation would instead receive only 15% of roughly $33.1 million in total security-related O&M guard and fortification costs, or at most, about $5 million each year depending upon the structure of repayment. This would result in an additional financial burden to the United States of about $13.9 million per year in reduced reimbursement. Up-front funding would be reduced by approximately $9.7 million annually and Reclamation would need additional appropriations in order to carry out planned security activities.

Reclamation believes this legislation could bring unintended results for Reclamation water and power customers. While the change to 15% reimbursement of security-related O&M costs would benefit some customers, the change to 15% reimbursement of currently non-reimbursable security-related capital costs would work to the detriment of customers in projects where future capital fortification expenditures are planned. Water and power customers of projects whose security fortifications were lower in priority and therefore not completed prior to the bill's enactment would be particularly disadvantaged. Furthermore, Reclamation would be required to collect these costs under multiple repayment contracts that could extend as long as 50 years.

Indeed, what is less certain are the future costs for facility fortifications that Reclamation's water and power customers would absorb as reimbursable. The total cost of internally-approved fortifications for FY 2007 and future years is $35.4 million ($78.8 million minus the $43.4 million that was spent through FY 2006), and this figure does not include potentially significant additional fortification activities still under study. Under S. 1258, 15% of these fortification costs would become reimbursable by customers.

Reclamation has met with its customers frequently in the past several years on this issue, and we understand and share our contractors' desire for stable, predictable security assessments. We recognize that certainty, accountability, and transparency are important in the financing of this program. However, we believe that the site security program is now sufficiently established, and the benefits to contractors is sufficiently clear, so that reimbursable costs for our customers are adequately quantified, fairly allocated and understood in the ratepaying community.

Reclamation is interested in working with the subcommittee to address its customers' concerns in the administration of the security program. However, S. 1258 does not provide a workable solution to address those concerns. Mr. Chairman, this concludes my testimony. I am pleased to answer any questions the subcommittee may have.

S. 1477

Mr. Chairman and Members of the Subcommittee, my name is Larry Todd, and I am Deputy Commissioner at the Bureau of Reclamation. Thank you for the opportunity to appear today to present the Administration's views on S. 1477, a bill to authorize funding for repair to the Mancos Project (Project) and referred to as the Jackson Gulch Rehabilitation Project (Rehabilitation). This bill would require that 80% of the costs of project rehabilitation activity that would be authorized under this bill's provisions be borne by taxpayers. Project rehabilitation is currently the contractual obligation of the Mancos Water Conservancy District (District) to fulfill pursuant to its standing O&M contract. Relieving the District of this obligation would set a precedent for other projects across the country in need of rehabilitation. For these reasons, the Administration opposes this bill.

The Project is located in southwestern Colorado near Mancos, consisting of a 10,000 acre-foot reservoir, an inlet canal, and an outlet canal. This Project provides supplemental irrigation water for approximately 13,746 acres of irrigated farmland. Additionally, this project provides municipal and industrial (M&I) water for the Town of Mancos and the surrounding rural area, and to Mesa Verde National Park.

The Project was completed in 1948. During the twenty-year period from 1942 to 1962, the District paid Reclamation in advance for O&M costs for Project facilities. However, in 1962, responsibility for O&M of the facilities was fully transferred to the District as provided for in the Repayment Contract. Title to Project facilities remains with the United States.

The proposed legislation would authorize $6,452,311 for the federal share of the cost of rehabilitating the 59-year old Project. This amount represents 80% of the costs of rehabilitation. Reclamation has previously assisted the District in cost estimates for the new work and has also assisted in reviewing their current project needs for a long term rehabilitation plan. The District has completed a study through a private engineering firm to assess the Project needs and to prepare a study for the repair/replacement of facilities. The requested funds appear sufficient to make the needed repairs and improvements, as outlined in the District's plan.

Reclamation agrees that there is a need for rehabilitation of the Project. Due to its age, major rehabilitation is needed on the inlet and outlet canals and associated structures. Delivery of agricultural and M&I water could be affected if these repairs are not completed. The District, however, is solely responsible for the operation, maintenance, and replacement of these facilities, pursuant to their contract and should not be relieved of that obligation.

Mr. Chairman, this concludes my testimony. I am pleased to answer any questions.

H.R. 1025

Mr. Chairman and Members of the Subcommittee, my name is Larry Todd, and I am Deputy Commissioner of the Bureau of Reclamation. I am pleased to provide the Administration's views on H.R. 1025, legislation authorizing a feasibility study to improve water management in the Republican River Basin between Harlan County Lake in Nebraska, and Milford Lake in Kansas.

Reclamation was included in the early stages of the project planning process that resulted in completion of the Lower Republican River Basin Appraisal Report in January 2005. We support the goal of the States, as project sponsors, to develop a locally-supported solution that is economical, affordable and environmentally sensible. However, funds have not been allocated to carry out the provisions of H.R. 1025 in the Administration's budgets for fiscal years 2007 and 2008. Given Reclamation's need to focus its limited resources on maintaining its existing infrastructure and completing on-going construction projects, the Administration cannot support this bill.

Background

Reclamation has been working with the States on Republican River Compact water supply issues for many years. There is some important background information that I would like to share with you today to provide context for consideration of this legislation.

In 1998, Kansas filed a U.S. Supreme Court lawsuit against Nebraska and Colorado because of their belief that Nebraska was using more than its allocation of water under the Republican River Compact. The three States negotiated a settlement that was approved by the United States Supreme Court in May 2003.

In accordance with the Final Settlement Stipulations, the States agreed to pursue in good faith, and in collaboration with the United States, system improvements in the basin, including measures to improve the ability to utilize the water supply

below Hardy, Nebraska, on the Republican River's mainstem. Reclamation's appraisal study analyzed a number of alternatives recommended by the Compact Commissioners. The results from the study indicate that the water supply in the basin is not being fully utilized. With improvements in the existing systems and possibly with additional storage capability, the systems could be managed to alleviate some of the water shortage problems that exist in the lower reaches of the basin. The Settlement provided for Compact accounting which is indicating overuse of the allocations by Colorado and Nebraska. Reclamation has been working with the States in an effort to achieve and sustain Compact compliance. These efforts have included the release of 2007 storage water at Bonny Reservoir in Colorado in response to a "call" placed by the State Engineer; and approval of temporary sales of project water in 2006 and 2007 to reduce consumptive use in Nebraska and provide additional water supply to project lands in Kansas. Reclamation has worked closely with project beneficiaries and the States to find more effective and efficient ways to deliver water, and will continue to do so in the future.

Mr. Chairman, that concludes my testimony, I would be pleased to answer any questions.

PREPARED STATEMENT OF EVERETT WILSON, DEPUTY ASSISTANT DIRECTOR FOR FISHERIES, FISH AND WILDLIFE SERVICE, DEPARTEMNT OF THE INTERIOR

S. 1522

Chairman Johnson and Members of the Subcommittee, thank you for inviting the U.S. Fish and Wildlife Service (Service) to provide a written statement on S. 1522, to reauthorize the Fisheries Restoration and Irrigation Mitigation Act of 2000 (FRIMA) for fiscal years 2008 through 2014. The Administration supports the principles of FRIMA as one of the tools to conserve and restore native anadromous and resident fish populations in the Pacific Northwest.

On November 13, 2000, Congress enacted Public Law 106-502, the Fisheries Restoration and Irrigation Mitigation Act (FRIMA). This Act created a voluntary fish passage partnership program administered by the Department of the Interior. The geographic scope of the FRIMA program is the Pacific drainage area of Idaho, Oregon, Washington, and western Montana.

For decades, state, tribal, and federal fishery agencies in the Pacific Northwest have identified the screening of irrigation and other water diversions, and the resultant improvements to fish passage as an effective and important means to protect, recover, and restore native anadromous and resident fish populations. Irrigation districts in the Pacific Northwest also recognize that poorly-designed or unscreened water diversions result in fish mortality. Nearly 80 percent of water diversions in the Pacific Northwest are unscreened, and many have passage obstructions that pose a major risk to juvenile and adult threatened and endangered fish, including salmon, steelhead, bull trout, cutthroat trout, and Klamath basin suckers.

The FRIMA program is carried out by the Service on behalf of the Secretary of Interior, and the program focuses on screening water diversions and improving fish passage. FRIMA projects can result in nearly 100 percent survival of fish at what were often impassable and deadly water control structures. The program promotes both sustainable agriculture and sustainable fisheries and has strong support from both the public and the states—it is an example of the cooperative approach needed to restore depleted, native fish stocks.

The States of Idaho, Montana, Oregon, and Washington, along with tribal and local governments have worked closely with the Service to assure projects are carefully evaluated and prioritized before being funded. Local and state governments have shown a strong commitment to the program, investing their own staff time and dollars to ensure projects are well designed and properly implemented. The FRIMA Steering Committee, made up of state, tribal, and federal representatives, ensures a collaborative approach to program implementation. FRIMA projects have involved the active participation and support of over 200 partners who make up the wide array of conservation districts, counties, cities and towns, irrigation districts, tribes, resource conservation and development councils, and environmental organizations that support this program. One indication of the strong support for this program is the amount of local cost share for FRIMA projects. Although the legislation only requires a non-federal cost share of 35 percent, the local cost share for the FRIMA program has averaged 55 percent.

From fiscal years 2002 through 2006, 121 FRIMA projects have been funded, 59 of which have been completed. In addition, there are many more acceptable projects with partners that are willing to provide their cost share amount. Through 2004

(the most recent year for which summary accomplishment reports are available), FRIMA projects protected 656 miles of stream, fixed 15 fish barriers, installed 68 fish screens, conducted nine inventories, completed five pre-design analyses, and developed one database.

The Administration supports the principles of FRIMA and recognizes that, in some instances, BPA funds are treated as non-federal cost share amounts. However, more study and evaluation is needed to determine whether Bonneville funds should be counted toward the non-federal component of FRIMA.

In conclusion, FRIMA projects contribute to our efforts to restore and conserve anadromous and resident fish populations in the Pacific Northwest. The FRIMA program is cost-effective and operates in a collaborative, partnership-driven manner with private landowners, non-governmental organizations, community leaders, and local, state, and tribal governments. The Administration supports the principles of FRIMA and looks forward to working with the Committee to address concerns with the legislation.

Senator SALAZAR. Thank you, Mr. Todd.

First, let's go to S. 300 by Senator Kyl. Your testimony indicates that close to $40 million has already been expended to implement the MSCP. You also raised several concerns about the legislation. I note that you raised concerns about, it seems I think, every piece of legislation that's before us today.

On this very important program to the lower basin of the Colorado River, I'll ask you the following questions. Would there be any benefit to the program from enacting this legislation?

Mr. TODD. Well, the administration believes that we do have authority to implement the program. However, any sanction by Congress to help support this effort, we believe is helpful.

Senator SALAZAR. Does Reclamation believe that it has the adequate authority to use water from the lower Colorado River for environmental purposes?

Mr. TODD. Well, we have authority whenever projects are built and operated and maintained, and a requirement to comply with the Endangered Species Act. In this collaboration effort we are complying with the Endangered Species Act, and yes, we do have authority to do that.

Senator SALAZAR. Let me ask you a question on S. 1258, the legislation introduced by Senator Cantwell. The water and power users' testimony describes problems that exist with Reclamation's current approach to allocating security costs. These problems include: the lack of transparency in determining the level of security needed, and the claim that site security costs are only allocated to water and power users, not to other project beneficiaries. How do you respond to these concerns?

Mr. TODD. Well, first, Mr. Chairman, we have invited and we do support the inclusion of the water and power managers and boards to attend, and to get the proper clearances, so that we can share classified information with them and other information that we're holding that is not really for public dissemination. I think with all security efforts, we have to draw that line, but they do have a right to know and we certainly invite them to do so, and we would like them to do that.

On the allocation piece: we have allocations for all of our projects. In joint use facilities like dams, where you can not divide out all of the different uses in a separable way, you allocate them. So, when we're protecting facilities like dams, we apply these costs to the operation and maintenance allocation of that particular facility. That gets distributed among the functions and then out to the

water and power users. I don't believe that we are inconsistent with how we apply that allocation across the different facilities. Every facility has a different one, we're being very consistent.

Senator SALAZAR. Let me ask you this question, Mr. Todd. Would there be other approaches that Reclamation has considered that would provide more certainty in the allocation of the security costs?

Mr. TODD. Well, certainly we have information about our security program now that we've been in it since 2002. I believe that we've had a very level and consistent security program. Our guard costs have not been very variable at all, they've been very consistent from year to year.

Senator SALAZAR. OK, I have a question on S. 1522. Both the Oregon Water Resource Congress and your testimony hailed FRIMA as a true success for the Pacific Northwest. Why hasn't the administration requested any funding for the program in its annual budgets?

Mr. Wilson.

Mr. WILSON. Thank you, Senator.

The administration has not requested funding for this just due to the priorities and the amount of funding that we have to work within. It falls at a lower priority than other things that we do fund, simply.

Senator SALAZAR. Let me go back, just for a minute, on S. 1477 concerning the Jackson Gulch Project. You oppose Federal support for the rehabilitation of this project, Mr. Todd, according to your statement, because you believe it would set a precedent for other projects across the country in need of rehabilitation.

It seems that Reclamation is much more concerned about limiting its budget, rather than protecting the condition of Federal assets, and this is, in fact, a Federal asset. Isn't the Jackson Gulch situation an example of a much larger problem that we have with a number of Reclamation projects around the country? Is Reclamation doing anything it can to address the crisis that I anticipate is coming with an infrastructure within the Bureau of Reclamation that is aging more and more, year by year?

Mr. TODD. Well, certainly there is an aging infrastructure issue that seems to be out across the West and, in particular, for certain districts. However, Reclamation, through Reclamation long-standing law, is directed by Congress to have repayment and operation maintenance contracts and to transfer these responsibilities to districts. In accordance with those laws, we do have a contract with the Mancos Conservancy Irrigation District to operate and maintain those facilities. So, with that contract and with that history—procedures, this is very common within Reclamation, for irrigation districts to have that responsibility.

Senator SALAZAR. You would acknowledge, though, Mr. Todd, that these canals do, in fact, need to be rehabilitated, that's the point of view of the Bureau of Reclamation, correct?

Mr. TODD. On the Mancos, yes. They do. We have worked with that District. We have had annual reviews and we've also had formalized 6-year reviews.

Senator SALAZAR. So we're in agreement here that the reclamation needs to be conducted. Have you also recognized that the Bureau of Reclamation is the owner of this project?

Mr. TODD. Yes.

Senator SALAZAR. Do you acknowledge that without Federal funding, the District in that part of our Nation, given the economics of that part of our Nation, will not be able to afford to make the necessary rehabilitation that is required?

Mr. TODD. Mr. Chairman, on that point, I'm not aware that we have any economic studies that would demonstrate that. So I don't really know the answer to that.

Senator SALAZAR. OK, might you have a different point of view on this project, on the Bureau's role, and perhaps funding of this rehabilitation project, if you were aware of the economic factors that would make it impossible for the District to, essentially, fund the repairs on its own?

Mr. TODD. Well certainly, that would create a situation for the District. However, we do need to refer back to the contracts and responsibilities that this District has had since the 1940's. It is their responsibility, since the 1940's, to have maintained these facilities.

Senator SALAZAR. Do we have examples in other parts of the country where the Bureau of Reclamation has—notwithstanding those operation and maintenance agreements—helped to fund the rehabilitation of Bureau of Reclamation facilities?

Mr. TODD. Only if it's been specifically directed by Congress.

Senator SALAZAR. OK, so if it's specifically directed by Congress, then it has happened.

We have additional questions for you, but we will just ask you to respond to those on the record unless Senator Corker has additional questions for you.

Senator Corker.

Senator CORKER. I do, Mr. Chairman, and I know you were a few minutes late taking care of trying to solve a problem on the floor. I just want to thank you for your continued efforts to try to make things work on the Senate floor the way you do. I appreciate that very much.

Senator SALAZAR. Thank you, Bob.

Senator CORKER. Sure.

I know that, I mean it's easy to pick up the rub here, obviously, and that is that you have local districts who have financial issues and you've got a Bureau here that is used to getting paid by those districts. We've reached a point in time where, you know, the good Senator and others are trying to figure out ways of working that out. From the standpoint of good government, I guess I have a little bit of concern that, as with everything here in Washington—camel nose under the tent—once you start doing something in one area, it ends up somehow or another migrating in every other part of the country. All of us are entrepreneurial and once we see one area with a different set of standards, somehow or another we transfer that to other places. That's our role, to sort of figure those things out and make it all work together.

But, and I asked you a question, I guess, in my opening comments and I don't know if you would know the answer. But, just from the standpoint of S. 1258, do you have any idea how the Tennessee Valley Authority, for instance, handles its security in that regard and how those costs are passed along? Or what any other part of the country may do in that regard?

Mr. TODD. It's my understanding that—and we do have working relationships with TVA and the Corps of Engineers on security because we have such similar facilities—it's my understanding that the TVA and the Corps of Engineers do collect reimbursable funds for their security and law enforcement programs. So, I believe it's 100 percent paid for by the beneficiaries and not by appropriations.

Senator CORKER. OK. I guess the Bureau's concerned that unless directed by Congress and, I guess, Congress applying those funds, this creates, obviously, futuristic financial distress to the Bureau itself in carrying out its responsibilities. Is that correct?

Mr. TODD. Well, it does, yes.

Senator CORKER. I guess from my standpoint, one of the things I'd be looking at if this bill actually comes to the floor is, you know, what kind of precedent does it set? I do understand everyone's intention to just try to solve a problem here. But it does, in fact, set a precedent, is that correct?

Mr. TODD. Yes, it will.

Senator CORKER. Let me ask, just on S. 1477. Getting to the rehab portion of this, my assumption is that, you know, if you look at the era when many of these projects were built, there's going to be a lot of other things coming down the pipe that are going to have similar types of issues, is that correct?

Mr. TODD. Yes, let's see here. Yes.

Senator CORKER. I just wonder, as we look at this, and again I know that we all here try to work toward the greater good. I wonder if you could supply to Senator Salazar and Senator Craig and others on this committee, to the best of your knowledge, just the type of projects that you see coming on in the future and the types of cost incurred. Because again, we'd be setting precedent here and, it seems to me, we're going to have even greater responsibilities down the road in this same regard. Maybe I'm wrong on that?

Mr. TODD. Well, I think what we're concerned about here in precedent is that we have a lot of irrigation districts around the country that are in this situation, where we've transferred works to and have these kinds of contracts. So, any kind of rehabilitation that we would do here in this situation with help from the Government would set a precedent for any and all of those projects.

Senator CORKER. Well, I'm sure that we're going to have additional questions and I know there will be witnesses coming from respective areas after this particular, this first group of panels. I want to say to them, I was a mayor of a local area and we had issues that we tried to deal with to benefit our area and I understand that the panelists that are coming up are certainly going to be focused on doing that. But, I hope that you'll be open to further questions from our staff and other staffs of committee members here to really look into this.

Again, I appreciate the chairman and others looking at this serious problem, but I will have to say that it concerns me that we would be taking one specific area and setting precedents, I think, that could overall damage policies that we have in other parts of the country.

I thank you for your testimony.

Senator SALAZAR. Senator Craig, do you have an opening statement or would you like to query this panel?

Senator CRAIG. I have just found out that they are here testifying in support of S. 1522? That's all I needed to know. That's an important piece of legislation for my colleagues in Oregon, Washington, and Idaho, and especially in and around the Bonneville system. So, as long as they're on point in the positive, I thank you, gentlemen. I'm a late-comer.

Senator CORKER. I'm not sure that's exactly what they're testimony was.

Senator CRAIG. Oh, well we'll rediscuss it.

[Laughter.]

Senator CRAIG. It wasn't? Did you qualify it some? Well, in that case Larry, what were the qualifiers?

We're talking about the Fisheries Restoration Mitigation Act, specifically.

Senator SALAZAR. I think he said they supported it, but they had some concerns on a few of the provisions.

Senator CRAIG. Well, then we'll work with it.

Mr. TODD. We do support it. We do have some concerns.

Senator CRAIG. Yes, Everett.

Mr. WILSON. Thank you very much, Senator Craig.

The concerns that were expressed have to do with the Bonneville Power Administration and whether the funding that they have is considered non-Federal match, or Federal match. That was the major concern, I think, in the bill——

Senator CRAIG. OK.

Mr. WILSON [continuing]. That we had.

Senator CRAIG. Well, we'll work with you to try to clarify that then. We've got to get those definitions right. Our interest is in amplifying the value of the resources used there.

Mr. WILSON. The other concern, I think, that may come up, and the chairman expressed that, was that the service has never asked, or the Department has never asked, to fund this bill. When we rank our priorities, it falls below those that we have resources to fund.

Senator CRAIG. OK. It is a critical issue for us in the Pacific Northwest as it relates to those fisheries and the impact they have on the whole operation of the river itself. So, we'll work closely with you to see what we can do to make this happen. Thank you.

Thank you, Mr. Chairman.

Senator SALAZAR. Thank you, Senator Craig.

Thank you, Mr. Todd and thank you, Mr. Wilson for your testimony. There will be other questions that we'll ask you to respond to with respect this session.

We'll call up the second panel. The second panel will come up. I will introduce them as they are coming up.

On the second panel we will have Marc Thalacker, who is representing the Oregon Water Resources Congress on S. 1522. We also will have Shannon McDaniel, who is representing the National Water Resources Association on S. 1258. George Caan, representing the Colorado River Energy Distributors Association, will be speaking on S. 1258. We also have Gary Kennedy with the Mancos Water Conservancy District on S. 1477. Perri Benemelis is with the Arizona Department of Water Resources, and will be testifying concerning S. 300.

We welcome each of you to the committee, and we would ask Mr. Thalacker to start by summarizing your testimony, then we'll proceed on down the line.

If you can keep your testimony down to 3 or 4 minutes we would appreciate that, and that way we'll get through all of the witnesses.

Mr. Thalacker.

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

Mr. THALACKER. Thank you, Mr. Chairman, members of the subcommittee. My name is Marc Thalacker and I am manager of the Three Sisters Irrigation District in Oregon, and I'm here today on behalf of the Oregon Water Resources Congress.

OWRC is statewide association founded in 1912 to represent local governments that supply water for irrigation, primarily irrigation districts and water control districts, but also including member ports and other special districts and local governments. The Association represents entities that operate water management systems, including water supply reservoirs, canals, pipelines, and hydropower production.

OWRC strongly supports the reauthorization of the Fisheries Restoration and Irrigation Mitigation Act along with the amendments embodied in S. 1522. The co-sponsorship of this legislation by all eight Senators of the States in the Pacific Northwest serves as evidence of the importance of this program to those States and represents the success of this vital program for fish screening and passage. We are joined in this support by our sister organizations in Idaho and Washington, the Idaho Water Users Association and the Washington State Water Resources Association, the four States and local governments in those States.

Since this program started, we have not encountered any opposition, only support. Currently, Judge Reddin's remand of the 2004 Columbia Basin Biological Opinion has pushed the Northwest Region to a new level of cooperative conservation. For decades endangered species litigation has spent precious funds on regulation and lawsuits that could have been spent on conservation projects to help fish. Soon, Judge Reddin will approve a new biological opinion for the Columbia River and its tributaries. This new opinion will be supported by reasonable and prudent alternatives that are likely to occur.

The reauthorization and funding of FRIMA is essential to ensure that screening and passage RPAs will occur to help protected listed and non-listed fish. FRIMA will play a big role in salmon, steelhead, and bull trout recovery, which will go a long way to helping the Biological Opinion succeed.

By the end of 2005, sub-basin planning in the Columbia Basin was completed in 58 of the 62 sub-basins. The Northwest Power and Conservation Council guided the planning effort, and it was funded by Bonneville Power Administration. This locally led watershed planning effort was a collaboration of irrigation districts, watershed councils, soil and water conservation districts, environmental groups, farmers, ranchers, State and Federal, and fish and wildlife agencies, tribes, and local planning groups. These are many

of the same partners that have collaborated on FRIMA-funded projects in the four Northwest States. FRIMA projects have been a part of the planning and implementation process.

Currently NOAA and State fishery agencies are coordinating salmon and steelhead recovery planning in all areas of the Columbia Basin, with ESA-listed fish. I personally serve as a member of the mid-Columbia Steelhead Recovery Sounding Board. We started the planning process in October 2005 and we're about to release a draft for public comment. This plan for the mid-C is over a thousand pages and quite comprehensive.

Once the recovery planning process is completed and the hard work of project implementation and construction starts, with the aid of the sub-basin and recovery plans, the four States, tribes, and irrigation districts will continue to work closely with U.S. Fish and Wildlife Service and NOAA fisheries on vetting and prioritizing projects before FRIMA funds are committed.

As is evidenced by the recent report from the Oregon Department of Fish and Wildlife and the 2005 report from U.S. Fish and Wildlife,* FRIMA has been a great success and a great example of cooperative conservation partnerships.

Mr. Chairman, I would like to enter both these reports for the record. Thank you, sir.

One of FRIMA's greatest achievements has been leveraging of limited FRIMA Federal funds and the increase in non-Federal matching funds. In Oregon, from 2002 to 2007, almost $8 million of projects have been built or are under construction. FRIMA has contributed $3.2 million for 42 percent average cost-share, while matching non-Federal funding was 58 percent.

There are over a thousand unscreened diversions in the Northwest. Without FRIMA they will remain unscreened. U.S. Fish and Wildlife and NOAA fisheries should be pressing for funding for this program. We thank Congress for having the wisdom for creating FRIMA so that we can solve the problem of unscreened diversions.

If FRIMA were reauthorized and fully funded, we could see an increase from the 120 projects that were built over the last 5 or 6 years in the four States to 1,000 projects. This would have a dramatic impact on the recovery of ESA-listed salmon, steelhead, and bull trout. Twenty-five million dollars a year is a small price to pay to help contribute to the recovery of listed fish.

This is a win-win for the whole community. FRIMA has shown that farmers and fish can coexist. FRIMA helps support sustainable fisheries and sustainable agriculture. FRIMA protects both ag and fish, which in turn contribute to our Northwest economies and ensure a secure and stable food supply.

Senator SALAZAR. Thank you, Mr. Thalacker. Can you please wrap up?

Mr. THALACKER. Yes, sir. Anyway.

Senator SALAZAR. Your full statement will be part of the record.

Mr. THALACKER. OK.

Well, OWRC is requesting reauthorization of FRIMA so we can continue from conflict to consensus to achieve ESA recovery of listed fish.

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*Report from U.S. Fish and Wildlife has been retained in committee files.

Thank you for the opportunity to testify today.
[The prepared statement of Mr. Thalacker follows:]

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

S. 1522, THE FISHERIES RESTORATION AND IRRIGATION MITIGATION ACT OF 2007

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

OWRC strongly supports the reauthorization of the Fisheries Restoration and Irrigation Mitigation Act along with the amendments embodied in S. 1522. The co-sponsorship of this legislation by all eight Senators of the states in the Pacific Northwest serves as evidence of the importance of this program to those states represents the success of this vital program for fish screening and passage. We are joined in this support by our sister organizations in Idaho and Washington: the Idaho Water Users Association and the Washington State Water Resources Association, the four states and local governments in those states.

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

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

Fish passage and fish screens have become critical to fishery protection. There are over 200 irrigation and water control districts in Oregon that provide water supplies to over one million acres of cropland in the state. Almost all of these districts are affected by either state or Federal Endangered Species Act lists of salmon and steelhead, bull trout, or other sensitive threatened or endangered species. This program, which is cost-shared on a 65% Federal/35% non-Federal basis, has been overwhelmingly supported by all involved. From a water user standpoint, it has been a success because: (1) it keeps protected fish species out of water canals and delivery systems and power generation facilities; (2) allows fish to be safely bypassed around reservoirs and facility structures; and (3) provides funding to local governments for construction of facilities to protect fish.

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

SPECIFIC COMMENTS ON S. 1522

Project Eligibility

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

As we understand the history of the original authorizing legislation, this program was intended for local governmental entities to carry out the work to mitigate the impacts of irrigation diversions on fish rather than face loss of their water if their facilities were not screened. With that in mind, we also believe the original intent

was to have the funding passed through to the states that would, in turn, provide the funding to the local governments.

Cost Sharing

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

Administrative Expenses

We believe that S. 1522 takes an appropriate step in addressing administrative expenses at the Federal and state level. One of the strengths of the FRIMA program is the return on the Federal investment. Part of this success can be attributed to the limited draw of the funding for administrative costs in order to ensure that most of the funding is used to build projects to protect fish.

We appreciate the changes made to this program as a result of consultations with the state and Federal agencies responsible for administering the program. Sharing the administrative funding with the states recognizes the important role the states have played working with local government project sponsors over the five years of the program. The states do a tremendous amount of work as their part of the partnership including project review, ranking, and selection. Their participation has been key to the success of the program. Dividing the funding evenly with the states helps ensure the collective effort is never put at risk because of unforeseen circumstances at the state level and recognizes the role the states play in the FRIMA partnership.

Reauthorization of the FRIMA Program

While the report prepared by the U.S. Fish and Wildlife Service in 2005 covers only the first three years of FRIMA, it provides an excellent overview to the projects built using FRIMA funding. It also shows the success of leveraged local match that exceeds the amount called for in the legislation, another reason for the success of this program. We encourage the Committee Members to look at this report with regard to the accomplishments of the program in the four respective states.

The importance of the legislation before you today is the need to reauthorize the Fisheries Restoration and Irrigation Act so that local government can complete the projects identified in the states' inventories.

We strongly believe that the success of the FRIMA program as evidenced by projects that have been built and the partnerships that have developed provide the justification for the continuation of this program through year 2014.

CONCLUSION

OWRC is asking Congress to continue to improve conditions for threatened and endangered fish species in Oregon and the rest of the Pacific Northwest by passing this legislation into law and reauthorizing the FRIMA program. We strongly support the improvements to the program as contained in S. 1522.

OREGON'S FRIMA PROJECT BENEFITS

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

Santiam Water Control District Project.—Fishscreen project on a large 1050 cfs multipurpose water diversion project on the Santiam River (Willamette Basin) near Stayton, Oregon. Partners are the Santiam Water Control District, Oregon Department of Fish and Wildlife, Marion Soil and Water Conservation District, and the City of Stayton. Approved FRIMA funding of $400,000 leveraged a $1,200,000 project. Species benefited include winter steelhead, spring Chinook, rainbow trout, and cutthroat trout.

South Fork Little Butte Creek.—Fishscreen and fish passage project on a 65 cfs irrigation water diversion in the Rogue River Basin near Medford, Oregon. Partners are the Medford Irrigation District and Oregon Department of Fish and Wildlife. Approved FRIMA funding is $372,000 and leveraged a $580,000 total project cost. Species benefited include listed summer and winter steelhead, Coho salmon, and cutthroat trout.

Running Y (Geary Diversion) Project.—Fishscreen project on a 60 cfs irrigation water diversion in the upper Klamath Basin near Klamath Falls, Oregon. Partners are the Wocus Drainage District, Oregon Department of Fish and Wildlife, and Jeld-Wen Ranches. Approved FRIMA funding of $44,727 leveraged a total project cost of $149,000. Species benefited included listed red-band trout and short-nosed sucker.

Lakeshore Gardens Project.—Fishscreen project on a 2 cfs irrigation water diversion in the upper Klamath Basin near Klamath Falls, Oregon. Partners are the Lakeshore Gardens Drainage District and Oregon Department of Fish and Wildlife. Approved FRIMA funding is $5,691, leveraged a total project cost of $18,970. Species benefited include red-band trout, short-nosed sucker and Lost River sucker.

Oregon Department of Fish and Wildlife Inventory Project.—An inventory to be conducted by Oregon Department of Fish and Wildlife to identify FRIMA-eligible passage and screening projects within the Rogue and Klamath basins of southwestern Oregon. Approved FRIMA funding is $76,000, leveraged an estimated total project cost is $125,000.

Senator SALAZAR. Thank you, Mr. Thalacker.

Mr. McDaniel.

STATEMENT OF SHANNON MCDANIEL, SECRETARY/MANAGER, SOUTH COLUMBIA BASIN IRRIGATION DISTRICT, NATIONAL WATER RESOURCES ASSOCIATION, PASCO, WA

Mr. MCDANIEL. My name is Shannon McDaniel. I'm the manager of the South Columbia Basin Irrigation District, located in Pasco, Washington. I'm here to testify in support of S. 1258.

The South Columbia Basin Irrigation District is part of the Columbia Basin Project located in Eastern Washington. Our primary diversion facility is Grand Coulee Dam. We irrigate about 670,000 acres with water from Grand Coulee. Our relationship there is the fact that the Bureau of Reclamation administers operations at Grand Coulee Dam on what we call the reserved works, where the primary features of the project are Grand Coulee Dam, Banks Lake, and the main canal. We pay the full cost of O&M at those facilities.

From 1980, when I got involved with the project, we have what we call a diversion right process where every 5 years we go in and negotiate a rate for the power, for the cost that we pay at Grand Coulee Dam. Those have always included some security costs, about $600,000 of those costs were a portion of that rate from 1980 to 2001. Those costs, with the securities program that the Bureau has implemented, have gone from $600,000 a year to about $5.5 million.

The reason that we're here to testify today, is to make sure that you understand that we do think that national security is a big issue and the protection of Grand Coulee Dam is a big issue, but we're looking at some way to be able to allocate those costs equitably to our land owners and other users of the project. We believe that the things that we have to say, as far as our diversion rate, are important. In the past, we've been able to work with the Bureau of Reclamation and make sure that the diversion rate—the cost that we pay—is equitable to the land owners within the project.

Those discussions are not one-sided. They are two-sided. We go in, we negotiate hard on those. We get an allocation of costs that are equitable. We're concerned that because of the priorities of the secrecy that has to be involved in the protection of those facilities, we will not be able to have input into them. Nor, really, do we want to have input into them. As managers and irrigation district directors, we feel that more or less, we're not qualified to do that, it's inappropriate for us to us to be involved in security. But, we would like to have some way to be able to control those costs and we believe that S. 1258 does that at an equitable rate by allocating

85 percent of the costs, the Federal portion, and 15 percent of the cost to the rate-payers, whether they be power or irrigation water.

Thank you.

[The prepared statement of Mr. McDaniel follows:]

PREPARED STATEMENT OF SHANNON MCDANIEL, SECRETARY/MANAGER, SOUTH COLUMBIA BASIN IRRIGATION DISTRICT, NATIONAL WATER RESOURCES ASSOCIATION, PASCO, WA

S. 1258 TO AMEND THE RECLAMATION SAFETY OF DAMS ACT OF 1978 TO AUTHORIZE IMPROVEMENTS FOR THE SECURITY OF DAMS AND OTHER FACILITIES

Mr. Chairman and Members of the Subcommittee: Thank you for the invitation to participate in this hearing on S. 1258, "to amend the Reclamation Safety of Dams Act of 1978."

I am here today to support the passage of S. 1258.

My name is Shannon McDaniel and I am the Secretary/Manager of the South Columbia Basin Irrigation District. The South District along with the Quincy and East Columbia Basin Irrigation Districts operate the transferred works of the Bureau of Reclamation's Columbia Basin Project. The three Districts and Reclamation are currently providing irrigation water to approximately 670,000 acres in eastern Washington.

The source of water and pumping energy for the Columbia Basin Project is Grand Coulee Dam on the Columbia River. Grand Coulee is a CBP reserved works and is operated and maintained by Reclamation. The three CBP Irrigation Districts advance to Reclamation the annual O&M costs for Grand Coulee to pump water from Lake Roosevelt to Banks Lake and to convey it through other reserved works into the major canal systems that have been transferred to the Districts.

In 2007 the Grand Coulee Dam, Lake Roosevelt, and Banks Lake components were $3,501,445. About 43 percent of that amount is for electricity to lift water from Lake Roosevelt to Banks Lake. The budgeting and accounting procedures that determine this payment are termed the "diversion rate." This diversion rate is set by Reclamation's Regional Director after involving the three CBP Irrigation Districts in the budgeting and accounting reviews.

All three Districts pay their apportioned share of the diversion rate. This year Reclamation began adding a guard and patrol security cost surcharge to the power component of this rate. The boards of directors of all three Districts share a common view regarding the reimbursability of these costs. I believe the comments I will present reflect that common view.

There has always been a security component associated with this diversion rate. However, until 9/11 these costs were for fire protection and night watchmen. These costs were approximately $600,000 annually. The estimated costs for security guards and patrols for 2007 are estimated to be $5,500,000.

The CBP Irrigation Districts do not dispute the need to defend important hydroelectric facilities like Grand Coulee Dam. The attacks of September 11 confirmed that foreign terrorists would go to great lengths to destroy targets that are national, cultural, and economic icons. The federal government is to be commended for taking these defensive measures.

We believe national defense is a federal responsibility, and the cost of security of large federal assets lies with the government, not local ratepayers. After September 11 through 2005 these defense and security costs were considered a federal responsibility and paid for by all Americans through Reclamation appropriations.

These costs should not be the responsibility of irrigation and power ratepayers associated with specific federal projects that happen to have a high target value for enemies of this country.

The Columbia Basin is the only project in the Pacific Northwest Region that is subject to reimbursable security costs. Similar situations exist in Reclamation's other regions. That is because Grand Coulee Dam, Shasta Dam, Hoover Dam, and a few of Reclamation's other larger hydroelectric projects have the most security needs. If security costs are to be reimbursable it creates a disparity for irrigators farming on Reclamation's projects who depend on these larger dams for their water supply. Because of the large hydroelectric facility, these farmers will pay extra charges for water compared to other farmers who do not have these security concerns but are using Reclamation water on the rest of the 10 million Reclamation irrigated acres.

Beginning in 2006, Reclamation and Congress determined that guard and patrol costs should become reimbursable. For 2006 this reimbursability was capped at $10

million, Reclamation-wide. The 2006 decision contemplated the cap for 2006 only, with full reimbursement beginning in 2007. In fact, the CBP Districts were charged a security component on their 2007 billings from Reclamation. The CBP Irrigation Districts respectfully recognize that Congress is the final decision maker in this matter and realize there are many competing pressures on the federal budget. For this reason we are in support of S. 1258 to amend the Safety of Dams Act to control the Districts' costs in support of the security of Grand Coulee Dam and the associated works related to water and power.

The CBP Irrigation Districts believe we have a positive relationship with Reclamation regarding our payment of the irrigation diversion rate at Grand Coulee Dam. We believe one source of this good relationship has been Reclamation's willingness to allow the Districts to review the documentation of the budgeting and accounting procedures relevant to the diversion rate. These reviews often lead to frank discussions and correspondence between the Districts and Reclamation about some of the diversion rate decisions but, in the end, result in a good relationship and adequately funded operation, maintenance and replacement budgets for the irrigation function at Grand Coulee. However, the Districts firmly believe that without this interaction inappropriate costs may be charged against Grand Coulee's irrigation diversion rate.

This type of review and interaction by the Districts is not possible or appropriate for post-9/11 security costs at Grand Coulee. Those costs, at least in part, result from federal decisions based on classified intelligence related to national security. Irrigation District boards of directors and management are not qualified or authorized to audit or interact in that type of budgeting and accounting. S. 1258 limits the financial responsibility in security costs to a manageable share of the total security obligation without input from the Districts.

I would like to emphasize that as Reclamation contractors the CBP Irrigation Districts work on annual budgets, and those budgets are funded by annual assessments to the farmers we serve. Irrigation Districts share many of the same challenges in the budgeting process as the federal government. We need to have stability and predictability from year to year in our Reclamation payments. S. 1258 would essentially allocate the costs at a level to all ratepayers that would be manageable.

S. 1258 would, for the most part, distribute the annual costs of security to the federal government by the allocation of 85 percent of those costs to appropriated dollars.

I would reiterate that the CBP Irrigation Districts are supportive of S. 1258 and the allocation of security costs to the federal government—where we believe the responsibility for national security lies—to the maximum extent possible.

Thank you for your consideration.

Senator SALAZAR. Thank you, Mr. McDaniel.

Welcome, Mr. Caan.

STATEMENT OF GEORGE CAAN, EXECUTIVE DIRECTOR, COLORADO RIVER COMMISSION OF NEVADA, LAS VEGAS, NV, ON BEHALF OF COLORADO RIVER ENERGY DISTRIBUTORS ASSOCIATION (CREDA)

Mr. CAAN. Good afternoon, Mr. Chairman, Senator Craig, members of the committee, subcommittee. My name is George Caan. I'm the Executive Director of the Colorado River Commission of Nevada. I want to thank you for the invitation today to talk to you on, in support of S. 1258.

The CRC is the Nevada State agency responsible for, among other things, the acquisition and delivery of Federal hydropower from the Colorado River. Today, I speak to you on behalf of the Colorado River Energy Distributors Association, known as CREDA, of which the Colorado River Commission is a member. CREDA is a nonprofit organization representing consumer-owned utilities in Arizona, Colorado, Nevada, Utah, Wyoming, and New Mexico that purchases Federal power from the Colorado River Storage Project.

I'm pleased today to testify before you in support of S. 1258, a bill to amend the reclamation of Dams Act to include express authorization, oversight, and cost-sharing by water and power cus-

tomers of the cost of sight security. I'd like to express my appreciation to Senator Cantwell for taking a lead on this bill, and to Senators Wyden, Smith, Hatch, and Allard for co-sponsoring it.

Mr. Chairman, the safety and security of facilities operated by Reclamation are critical to millions of Americans. That issue is not in question today. What is in question today, is how to pay for the cost of post-9/11 security measures at multi-purpose dams owned and operated by Reclamation.

Beginning in fiscal year 2005, the administration began to assign a significant portion of the cost of enhanced security to water and power customers, contrary to that position—immediately following the attacks on 9/11—which was that the security costs were a Federal obligation.

CREDA and virtually all other water and power customers objected to this change in policy on several grounds, including the lack of cost controls, the lack of transparency, and the fact that Reclamation assigned reimbursable costs only to water and power users. It is important to point out that CREDA and the power customers of Hoover, Parker, and Davis Dams on the Colorado River, including the CRC, have a good solid working relationship with the Bureau of Reclamation and Federal agencies on issues involving the operation and upkeep of these projects. The security cost program, however, has challenged this relationship due to its lack of transparency and lack of oversight.

CREDA and other Federal power and water interests have worked to develop a consensus on legislation that will be clear, fair, and consistent with existing Reclamation policy. We have worked with almost a dozen other organizations representing water and power to reach consensus on the legislation before you. Although we discussed other alternatives, we feel that the amendment to the Reclamation Safety of Dams Act is an appropriate vehicle to provide for the cost certainty and surety of this cost. The approach embodied in this bill and the principles on which the legislation is based, are supported by organizations representing over 80 million Americans.

The Reclamation Safety of Dams Program was introduced in 1978 following the Teton Dam failure. It authorized modifications needed as a result of new hydrologic or seismic information or change in the state-of-the-art dam technology. The bill we are discussing today authorizes structural modifications and changes to the systems of guards and patrols at Reclamation-owned dams.

Senator Corker mentioned a precedent. The site security is a perfect fit to the reclamation of dams. It adds another component on the protection of dams. The legislation has already been passed by Congress and, therefore, we feel that it is a precedent that's been set and any site security would be a perfect fit. We also think the 15 percent cost share that has been identified in the Safety of Dams Programs in 1984, is also a precedent that's worth expanding to the site security program. It's been reaffirmed by Congress and it's a reasonable, appropriate, and we believe, fair allocation of these costs. The remaining site security cost would continue to remain a non-reimbursable Federal obligation.

In conclusion, Mr. Chairman, CREDA endorses S. 1258 because it contains the following: an express authorization of the site secu-

rity program that's part of the Safety of Dams Program, application to the existing safety of dams 15 percent cost-share for water and power users for these high security costs, and a requirement that Reclamation report annual to Congress onsite security activities.

Thank you for the opportunity to present this testimony. I have submitted written comments to the committee and I look forward to your questions and comments. Thank you.

[The prepared statement of Mr. Caan follows:]

PREPARED STATEMENT OF GEORGE CAAN, EXECUTIVE DIRECTOR, COLORADO RIVER COMMISSION OF NEVADA, LAS VEGAS, NV, ON BEHALF OF COLORADO RIVER ENERGY DISTRIBUTORS ASSOCIATION (CREDA)

S. 1258

Mr. Chairman, Members of the Subcommittee, I am George Caan, the Executive Director of the Colorado River Commission of Nevada. I am appearing here today on behalf of the Colorado River Energy Distributors Association (CREDA), of which the Colorado River Commission is a member. CREDA is one of the members of the coalition of water and power users who are actively supporting this legislation.

I am pleased to appear before you today to testify in support of S. 1258, a bill to amend the Reclamation Safety of Dams Act to include express authorization, oversight and cost sharing by water and power customers of the costs of site security. I would also like to express my appreciation to Senator Cantwell for taking the lead on this important, bi-partisan legislation and to Senators Wyden, Smith, Hatch and Allard for co-sponsoring it.

CREDA is a non-profit organization representing consumer-owned electric systems that purchase federal hydropower generation of the Colorado River Storage Project (CRSP). CREDA was established in 1978, and serves as the "voice" of CRSP power customers in dealing with resource availability and affordability issues. CREDA represents its members in working with the Bureau of Reclamation (Reclamation), as the owner and operator of the CRSP, and the Western Area Power Administration (WAPA), as the marketing agency of the CRSP.

CREDA members are all non-profit electric utilities and organizations and serve over four million electric consumers in the six western states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming. Through long-term power contracts with WAPA, CREDA members purchase over 85 percent of the CRSP hydropower generation and ensure repayment of the federal investment in the CRSP.

Mr. Chairman, the safety and security of the facilities operated by Reclamation are critical to millions of Americans. The issue of how to pay for the costs of post 9/11 security measures at multi-purpose dams owned and operated by Reclamation is not a new one.

Immediately following the September 11, 2001 terrorist attacks, Reclamation initiated an aggressive program to protect its dams against terrorist attacks. Based on World War II precedent and internal legal analysis by the Department of the Interior, the Commissioner of Reclamation in April 2002 issued an administrative determination that the costs of increased security measures should be a federal obligation, non-reimbursable by project beneficiaries. Beginning in Fiscal Year 2005, however, the Administration's position shifted, and Reclamation began to assign a significant portion of the security costs to water and power customers.

CREDA and virtually all other water and power customers objected to this change in policy, on several grounds. One was the deviation from historical precedent.

Other important concerns, however, included the lack of cost controls on the security program, its lack of transparency and the fact that Reclamation assigned reimbursable costs only to water and power users, not to other project beneficiaries. In fact, approximately 94 percent of the reimbursable costs were allocated to power customers in our region. We did not think this was fair and do not believe Reclamation's allocation of costs was based on any objective, fair allocation of the costs and associated benefits of the security measures.

Our efforts to modify Reclamation's policy on reimbursable costs peaked at the oversight hearing the House Water and Power Subcommittee held on June 22, 2006. At that time, an array of witnesses representing water and power customers from virtually all regions testified, with one voice, about the need to expressly authorize the site security program to provide: (1) effective Congressional oversight; and (2) an equitable, durable allocation of costs.

Following that hearing, CREDA and other power and water interests worked to develop a consensus on legislation that would be clear, fair and consistent with existing Reclamation policy. Although we discussed other alternatives, the power and water representatives jointly decided that amending the Reclamation Safety of Dams Act to authorize the site security program made good policy sense. The approach embodied in S. 1258 and the principles (see attachment) on which the legislation is based, are supported by organizations representing over 80 million Americans.

The Reclamation Safety of Dams program was first authorized in 1978, following the Teton Dam failure. It authorized modifications needed as a result of new hydrologic or seismic information or changes in state of the art dam technology. The safety and the security of these facilities are critical, regardless of the cause. Therefore, we think the site security program fits nicely into the existing policy and legal framework of the Safety of Dams program.

We also think the 15 percent cost share, which was added to the Safety of Dams program in 1984 and has been reaffirmed by Congress since then, is reasonable, appropriate and fair. The remaining site security costs would remain a non-reimbursable, federal obligation.

CREDA endorses S. 1258 because it contains the following:

- An express authorization of the site security program, as part of the Safety of Dams program;
- Application of the existing Safety of Dams Act 15 percent cost share for water and power users for all site security costs, including capital and O&M costs; and
- A requirement that Reclamation report annually to Congress on site security activities undertaken for each fiscal year. Those reports shall include information relating to a five year planning horizon for the program and will show both pre 9/11 and post-9/11 costs for building and site security activities.

CREDA believes that S. 1258 would be a "win-win" for the American public, for water and power customers and other beneficiaries at multi-purpose Reclamation projects and for the federal government. We urge its swift passage.

Thank you for the opportunity to present these comments.

ATTACHMENT.—BUREAU OF RECLAMATION BUILDING AND SITE SECURITY PROGRAM

POSITION STATEMENT

The Colorado River Energy Distributors Association (CREDA), the Northern California Power Agency (NCPA), the Sacramento Municipal Utility District (SMUD), the Washington Public Utility District Association (WPUDA), the Mid-West Electric Consumers Association (Mid-West), the Northwest Public Power Association (NWPPA), the National Water Resources Association (NWRA), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA), the Family Farm Alliance (FFA), the CVP Water Association, the Upper Colorado River Commission and the four Upper Colorado River Basin States (collectively "Parties") believe that Congress should expressly authorize oversight of the Bureau of Reclamation's (BOR) Building and Site Security program to ensure accountability to Congress and provide cost certainty to funding stakeholders through an equitable, durable allocation of reimbursable costs.

BACKGROUND

The Parties believe that security measures instituted at Bureau of Reclamation Facilities as a response to the attacks of 9/11 should be the cost responsibility of the United States Government and should be funded through appropriated, non-reimbursable dollars. The Parties have worked diligently with Congress, the administration, and other stakeholders over the past five years on this issue.

The protection of these facilities benefits all project beneficiaries, as well as the public. If power facilities were not part of the project there would still be substantial security cost investments. If a portion of security costs is to be a repayment responsibility of the power and water customers it should be based on a fair share of the costs with some level of certainty that these costs will remain reasonable, stable and appropriate.

In its proposed FY 2006 budget as well as discussions with the Parties, the Bureau of Reclamation (BOR) indicated that only the costs of guards and patrols would be reimbursable, and that the costs of facility fortification would remain non-reimbursable. However, in its 2006 Report to Congress (issued in March), the costs

of "facility fortification upgrades"[1] are also listed as reimbursable. The practical effect of this approach is that ALL costs at some point are reimbursable. Not only is this inconsistent with stated BOR direction, it is inconsistent as well with the title of the report ("Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities").

The Parties believe that authorizing legislation is necessary to ensure appropriate Congressional oversight and to provide some certainty to the funding stakeholders in terms of a fair, durable and equitable allocation of costs.

The Parties take no position as to the mechanism used to generate funds that are not funded through reimbursable revenues.

LEGISLATIVE PRINCIPLES

Authorizing legislation should include the following essential features:

1. BOR will report annually to the House and Senate Committees on Homeland Security, Resources and Appropriations on security actions/activities taken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and nonreimbursable funding for each type of action.
2. The capital cost of security enhancements or fortifications ("hardening"), including the operation, maintenance and replacement of such enhancements or fortifications, shall continue to remain non-reimbursable.
3. Funding stakeholders to reimburse costs of Guards and Patrols at National Critical Infrastructure (NCI) Facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of $10 million,[2] indexed for inflation.
4. Such reimbursable funds to be spent only on Guards and Patrols at NCI facilities and allocated among NCI Facilities in the same delineation as allocated in FY 2006.[3]
5. BOR is authorized to enter into bilateral contractual arrangements with funding stakeholders, if stakeholders are willing to do so, in lieu of seeking appropriated funds for Guards and Patrols.
6. In the event of a change in the level of national security threat, BOR will immediately notify Congress and with the funding stakeholders seek approval of Congress to adjust the reimbursable costs for Guards and Patrols until such time as the threat level changes.
7. BOR must facilitate appropriate actions to allow funding stakeholder review, input on and management of work program elements, including security enhancements, on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (fortification, guards and patrols).

Senator SALAZAR. Thank you, Mr. Caan.

Mr. Kennedy.

STATEMENT OF GARY KENNEDY, SUPERINTENDENT, MANCOS WATER CONSERVANCY DISTRICT, MANCOS, CO

Mr. KENNEDY. I want to thank the committee, Mr. Chairman and Senator Craig, and committee members and staff for the opportunity to speak before you today.

I am Gary Kennedy, Superintendent of the Mancos Water Conservancy District. I have held this position for the past 18 years, and I am here representing the Mancos Water Conservancy District's members, the Board of Directors of the Mancos Water Conservancy District. I'm glad to be able to provide to you the information for the Jackson Gulch Rehabilitation Act of 2007, S. 1477.

I would like to give you a brief history of the project, just slightly. The project was approved in 1940, completed in 1950's, with the Bureau of Reclamation operating and maintaining the project up until 1963 when the District did assume operations and maintenance due to financial situations and restraints to the District.

[1] Report to Congress "Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities", February 2006, page 5.
[2] Id, page 1.
[3] Id, page 11.

Since then, the District has operated and maintained the project to the satisfaction of the Bureau of Reclamation. In 1999, the District did celebrate the 50th Anniversary of the Dam. At that time, the Board reviewed the need for the reservoir, understanding that the past 50 years were useful, very needed for the Valley, and wanted to see that the project lasted another 50 years into the future.

At that time, we went to the Bureau of Reclamation, asked for a feasibility report, which they happily gave to us, coming in with a $5.2 million cost for rehabilitation. Understanding the need of that important issue and protecting the Federal interest of the project, the Board at that time came to the State of Colorado and asked for funding to authorize a feasibility study with an engineering group for a full report of that rehabilitation.

At that time, we came in with a $6.2 million price range. Understanding the importance, once again we started coming to Congress to ask for appropriations upon helping with that rehabilitation cost. This is our fourth time before the Senate asking those costs.

Since we've started, our cost share has gone from 30 percent down to 20 percent. That's just in a matter of 4 years. The District is in a crucial need. The canal system is vital to the Reservoir. It is an off-river reservoir. Without the canal system, the Reservoir is useless. For that, as far as, we're just here to plead and ask that you give us support for this bill.

I want to thank you for the time that it took me to impress upon you the rehabilitation of Jackson Gulch Rehabilitation Act.

Thank you, and open for any questions.

[The prepared statement of Mr. Kennedy follows:]

PREPARED STATEMENT OF GARY KENNEDY, SUPERINTENDENT, MANCOS WATER CONSERVANCY DISTRICT, MANCOS, CO

Committee Chairman and Members: I am before you representing the board of directors and residents of the Mancos Water Conservancy District. I am Gary Kennedy, Superintendent of the District for the last 18 years. I would like to thank you for holding this hearing in order that I can provide information on Jackson Gulch Rehabilitation Act of 2007 (S. 1477).

HISTORY

First I would like to provide a brief history of the project. The ranchers living in the Mancos valley during the dust bowl of the 1930's also experienced a devastating drought. This brought about discussion and a study—the end result of this was the construction of Jackson Gulch Reservoir (an off-river dam) providing storage of 10,000 acre feet of water storage. 2.6 miles of feeder canal (Inlet Canal) snakes along the steep West Mancos River Canyon, across a narrow mesa and dumps water from the West Mancos River into Jackson Gulch. Storage water is returned back to the river via 2.2 miles of return flow canal (Outlet Canal).

The Mancos Project was authorized in 1940; construction began in 1941. The CCC's began construction. During WWII, their camp became the home of many conscientious objectors. In 1947, the Venel Company was awarded the contract for the dam which was completed in 1954.

Construction was continually plagued by interruptions caused by earth slides, rock falls, and adverse weather. Construction roads along the Inlet Canal were constantly being reinforced and rebuilt. In 1958 the Bureau of Reclamation elected to discontinue rebuilding the roads. Natural erosion over the years has narrowed many places to barely walking trail width.

Immense boulders have rolled right through portions of the canal. Mudslides have filled the canal requiring lengthy shut-downs for repairs. This could occur at anytime along the canal today. Fortunately with Reclamation's assistance, the majority of the concrete flumes are protected from small rock fall and mudslides by concrete lids. However, the earthen sections are still vulnerable to slides that which fill sec-

tions and/or take the canal into the canyon with them. We have experienced the loss of 700 feet of canal in the last 10 years. Boulders the size of cars hitting canal walls has created the need for emergency repairs.

O&M (OPERATIONS AND MAINTENANCE)

The District assumed operations and maintenance of the project in 1963 and has continued to the satisfaction of the Bureau of Reclamation to date.

In the last 20 years, we have financed and overseen major upgrades to the project such as:

- Construction of a permanent diversion dam on the West Mancos River.
- Installation of a Hydroelectric Power Plant (increased revenue).
- Installation of automated Measuring Devices and Structures (conservation).
- Purchase of Canal Easement.
- Safety Measures (fences, protective covers on the canal, 200 feet of pipe for safety).
- New Equipment for O&M.
- 500 feet of pipe for Canal Repair.
- 400 feet of Penstock Pipe Upgrade.
- New bridges at canal crossings.

The total amount of money spent during these years for these upgrades is over $850,000.

IMPORTANCE OF THE MANCOS PROJECT AND JACKSON GULCH RESERVOIR

Many valley residents depend on the agricultural land for their livelihood. The town of Mancos and the Mancos Rural Water Company utilize the water stored in the reservoir to supply domestic water to residents. The water provided to over 550,000 annual visitors (742,080 in 1992) to Mesa Verde National Park is supplied by the reservoir.

In 1998, we experienced loss of a section of canal due to a landslide. The emergency repair was exceedingly expensive. In 2002, drought conditions resulted in sacrifice of irrigation water by agricultural producers in order that domestic water could be provided with drastic conservation measures. It is hard to imagine what would have happened had the reservoir not been in place to supply the domestic water. Our agricultural producers are just now recovering from that summer.

It is plainly evident that loss of the reservoir is unacceptable. It is also evident that the District does not and cannot sustain or generate the revenue required to continue emergency management.

Since the loss of the reservoir is not an option and emergency management is cost prohibitive, two options remain—either to rebuild the structures or to rehabilitate the structures. The Board requested a feasibility study from the Bureau of Reclamation for the cost to replace the structures and/or to rehabilitate the structures. The study was completed in 2000. Cost to rebuild was so excessive that rehabilitation was chosen. Projected cost at that time was 5.6 million. A formal engineer study came back with a cost of 6.2 million for total rehabilitation.

CONSEQUENCES OF CANAL FAILURE

The canals were built in 1947 and 1948. The canals had a flow capacity of 258 c.f.s. They are concrete box flumes in some sections and earthen in others. Natural occurrences and emergency repairs have forced a reduction in our flow capacity. Current capacity is 160 c.f.s.

The earthen canal sections have been plagued with land/mud slides since the start of construction. As stated previously, we've lost 700 feet of earthen canal in the last 10 years. Repairs to canal sections cost well over $170,000 requiring loans from the State of Colorado. The failure of the canal area happened after extremely dry summers when the water in the reservoir was lower than normal. In fact, it had been drawn down to historic levels—18%—equal to 2 years of domestic water supplies.

The concrete box flume was designed and constructed before the use of rubber water stops for construction joints. Over 50% of the construction joints have experienced serious deterioration causing reduced structural integrity. The seepage from deteriorating concrete walls not only reduces the structural integrity, it also contributes to slope instability and failure.

One other hazard to the concrete flumes is rock fall. There is 1,400 feet of the flume that is exposed to high-moderate rock falls. The right rock in the wrong place would destroy a section of the canal causing a large financial hardship due to the manner in which the repair would have to be made (helicopter in most cases). It would also most likely happen during inflow to the reservoir restricting water to the

reservoir for an extended amount of time. Depending on the seasonal precipitation, it could take us more than one season to recover and would possibly cause great strain on water availability for domestic and agriculture.

Access is a huge problem to approximately 1,000 feet of concrete flume. The construction road was not rebuilt after it failed in 1958. Rebuilding the road is much more financially responsible than making repairs by helicopter.

The operation facilities were constructed in 1941-42 as temporary facilities. Partly due to the era and partly due to their temporary status, they were constructed using unconventional building methods. Therefore, these buildings do not conform to uniform building codes and do not comply with federal regulations. The District's Superintendent is required to live on-site by contract with Bureau of Reclamation. Following 9/11 this is even more important for the safety and security of the project itself.

PREVIOUS LEGISLATION

Most discussion on water projects focus on dams. There are financial programs (grants, etc) for dam safety, water storage, and conservation. However, for the few dams that rely on canals to supply the water for storage, there are no programs to help fund major repairs.

In 1983, P.L. 98-50, 97 Stat. 251 was passed appropriating 3 million dollars for improvement of siphons, concrete liners, improved irrigation efficiency, to conserve water and reduce O&M costs. The cost of this rehabilitation was non-reimbursable and the rehabilitated and new features were turned over to the operating entity for future O&M.

FUNDING

The District began to search for assistance for funding the rehabilitation:

- We studied our ability to increase our income (water rates and taxes). It was immediately evident that the small population of the Mancos Valley could not provide total funding but may be encouraged to accept an increase in their mill levy taxes to cover a small percentage of the overall cost. In 1995 we asked the members of our District to approve a mill levy increase of 5 mills to cover what we felt was a reasonable share of the cost of rehabilitation our residents could provide. The increase would bring our total mill levy to 6.5 mills. The measure passed by a very comfortable margin providing us with not only the increased funds but the absolute knowledge our residents understand the utmost importance of their water supply and supported our efforts.
- Water rates have been gradually increased in past years to cover the cost of emergency repairs and will continue to be gradually increased.
- The Board requested assistance from the Bureau of Reclamation with no success.
- We researched and applied for grants. Our research has revealed that there are no grants, state or federal, large enough to cover the cost. We were successful in securing a small grant to study the effects of lining material in the canal. This will be finalized this year. We were also successful in securing an EPA/Stag grant but have been unable to collect these funds ($250,000).
- We went to the State of Colorado. The State (CWCB) approved a line of credit for engineering, cost share and interim emergency repairs—up to 5.2 million dollars.
- We decided to apply to Washington D.C. for appropriations. We have been here four years in a row with our request for partial funding to be awarded annually until complete (6 years). Each year reveals an increase in the cost due to rapidly increasing construction expenses. And each year brings us closer to a catastrophic canal failure.

Before the study for rehabilitation, the District was aware of the need for increased revenue. After a lengthy process, a hydroelectric power plant was installed. The power plant is providing up to 250 KWH of hydro power or 912,000 KWH annually—enough electric power for 60 homes saving 5,000 barrels of oil annually. The most revenue increase brought in by the hydro plant is $22,000/annually.

CONSEQUENCES OF FAILURE TO SECURE FUNDING

The options for the District should we fail to secure the funding necessary to rehabilitate the project are dismal. We cannot force funds from a source (valley residents) with no funds available. Current funds allow us to do some of the lesser rehabilitation but do not and cannot begin to cover the cost of the overall project. Emergency repairs will become more and more frequent causing the District to incur

more and more debt. There will come a point when we will be unable to secure funding to cover the cost of emergency repairs. It is projected that maintenance issues will be forced to be delayed in order to cover emergency repairs.

At that point it is projected that Bureau of Reclamation will begin to express concern and dissatisfaction with the O&M until the District will have no choice but to turn the project back over to Reclamation. When this possibility was brought to discussion before the board and Reclamation, the question was what would happen if this were to occur? The answer given to the board was that Reclamation is no longer in a financial position to operate and maintain this project; therefore in all likelihood the project would be locked up and/or shut down.

If this were to be an eventuality, recreation on the reservoir would cease. Current estimates of visitation to the reservoir are 80,000 people annually. Domestic water organizations would be forced to consider their own storage facilities to maintain some water delivery. Mesa Verde National Park would have to consider a storage facility or the possibility of having to haul water from other delivery points. Irrigated agriculture would cease to exist—limited dry land agriculture may be able to be maintained. If the drought continues, the river would dry up not far below the town limits in the months of July and August possibly through October. There is no way to predict the effect on wildlife, particularly waterfowl. We cannot begin to speculate on the effects to the people themselves.

Therefore, we are here before you now asking for assistance in passage of this Bill. Passage will insure continued use of a project considered extremely vital in the 1940's and no less vital—if not more so—today. Plus, this Bill not only affects our local area, it will continue to fulfill that part of the Upper Colorado Compact which was established in 1922. It will protect not only the environmental issues connected with the canal system but agriculture, recreation, cultural, historical and futuristic uses. We ask you to observe the vision of our forefathers for the West and keep looking to the future and protect these resources so vital to those who will follow us.

Thank you for this time in order that I could impress upon you the importance of the rehabilitation of the Jackson Gulch Rehabilitation Project Bill S. 1477.

Senator SALAZAR. Thank you very much, Mr. Kennedy and we will ask some questions, if we have some time. We have a vote, Senator Craig has indicated, about 3:30 p.m. So, we'll keep going as long as we can, and have your testimony here, but we also have your statements for the record, as well.

Ms. Benemelis.

STATEMENT OF PERRI BENEMELIS, ON BEHALF OF HERBERT R. GUENTHER, DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES, PHOENIX, AZ

Ms. BENEMELIS. Thank you. I'm Perri Benemelis. I'm here on behalf of Herb Guenther, the Director of the Arizona Department of Water Resources, to provide testimony in support of S. 300, the Lower Colorado River Multi-Species Conservation Program Act. I'd like to tell you a little bit about the program, and then talk about how this legislation helps to secure the long-term benefits of the program.

In April, 2005, the Secretary of the Interior signed the Record of Decision and program documents to implement the Lower Colorado River Multi-Species Conservation Program. This is a cooperative effort among 50 Federal and non-Federal entities in Arizona, California, and Nevada to protect 26 endangered, threatened, and sensitive species, while providing assurances to affected water and power agencies of the three States, that their operations may continue upon compliance with the Program requirements.

The primary reason the non-Federal water and power entities have pursued development of, and agreed to share the cost, to implement this program, is to attain a higher level of certainty in the use of water and power resources of the Colorado River.

Operation and management of the Lower Colorado River is complex. It involves non-Federal actions by parties in the three States, and management actions by the Bureau of Reclamation acting as the water master. The Lower Colorado Multi-Species Conservation Program provided comprehensive coverage for ongoing non-Federal and Federal operations, through a program that mitigates the effects of those operations.

The program provides Endangered Species Act compliance for changes to existing operations up to a defined range of use, such as water diversion and change in points of diversion. Having this compliance allows the Basin States to discuss drought management options, such as temporary water transfers that otherwise would require individual compliance.

The Program is unique when compared to previous efforts to recover endangered species associated with the Lower Colorado River. First, the Program includes most of the water and power users on the Lower Colorado River. Second, the program is coordinated and large scale. Finally, this 50-year program has an adaptive management component. The long-term program allows sufficient time to establish restored habitats, to evaluate monitoring and research data to address biological uncertainties. The opportunity to improve the status of these species to the point of downlisting, or removing them, from the endangered species list is enhanced by the large geographic scope, the broad stakeholder participation, and the coordinated implementation of this 50-year program.

The Federal and State parties have agreed to share program implementation costs totally $626 million, indexed for inflation over the 50-year term of the program. Costs are split 50 percent Federal, 50 percent non-Federal. S. 300 will affirm this funding agreement by providing that the Federal share of program costs will be non-reimbursable and will cap the non-Federal cost at the agreed-upon amount. In addition to securing the program financial agreements, the legislation includes several provisions that affirm the agreements of the Federal and non-Federal participants.

The bill provides that subsequent congressional action will not modify the parties' obligations unless specific to the program. It secures the "no surprises" and "pertinent revocation" policies contained in the program documents. The bill provides a limited waiver of sovereign immunity, to the extent that the non-Federal parties would ever need to enforce their agreements with the Federal Government. It does not provide for money damages.

The bill authorizes the Secretary to enter into an agreement with the lower division States to provide water for implementation of the program.

Program development and implementation has been an open and public process. The draft Habitat Conservation Plan underwent independent scientific peer review. The final plan was modified to incorporate recommendations from the review panel. Steering Committee meetings are noticed and open to the public. Program documents are available for review. Given the open and public nature of the program, the legislation would exempt the program Steering Committee from Federal Advisory Committee Act requirements.

The water and power operations of the non-Federal entities covered by the program are critical to the citizens of the three lower division States. Colorado River water serves over 20 million people in the lower basin and irrigates more than 900,000 acres of farm land.

This program is the best program to address endangered species needs, while preserving cities, farms, Indian tribes, and power production uses of the river. Enactment of this bill provides the non-Federal parties with certainty that the program will be funded and implemented as intended.

I'll answer any questions that you have. Thank you.

[The prepared statement of Mr. Guenther follows:]

PREPARED STATEMENT OF HERBERT R. GUENTHER, DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES, PHOENIX, AZ

S. 300, THE COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM ACT

Thank you for the opportunity to provide the following comments in support of S. 300, "The Lower Colorado River Multi-Species Conservation Program (LCR MSCP) Act". In April 2005, the Secretary signed the Record of Decision (ROD) and Program Documents that implemented this comprehensive program to address the needs of threatened and endangered species that rely on the Colorado River and adjacent habitat for their continued existence. I, along with representatives of California and Nevada, joined the Secretary in signing the agreement that became the ROD. I hope that you will support this important legislation that protects the substantial financial commitment of the non-federal parties to the protection of these species.

There have been other programs and individual efforts to improve the status of Lower Colorado River species and habitats. But the LCR MSCP differs from these other efforts in some significant ways. First, the Program includes most of the major water and power users on the Lower Colorado River. Second, the LCR MSCP is a coordinated, large-scale Program covering approximately 100 miles of the Colorado River. The opportunity to improve the status of these species to the point of down or delisting is greatly enhanced by the geographic scope, stakeholder participation and coordinated implementation of the Program.

Although Program implementation has already begun, federal authorizing legislation remains a final, very important goal. All of the LCR MSCP parties fully support implementation of the Program, but federal funding priorities change over time. The LCR MSCP is a long-term, 50-year program. Program costs are high in the early years when land and water acquisition and costly habitat restoration and enhancement work are underway. The value of this early investment is only secure if the federal contribution is assured for the full term of the Program.

The federal and state parties have agreed to share Program implementation costs totaling $626 million, indexed for inflation over the 50-year term of the Program. Costs are split 50 percent federal/50 percent non-federal. S. 300 will affirm this funding agreement by providing that the federal share of Program costs will be non-reimbursable, and cap the non-federal costs at the agreed upon amount. The State of Arizona has provided legislative authority to collect user fees to meet the Arizona portion of state parties funding obligation.

In addition to securing the Program financial agreements, this legislation includes several provisions that affirm the agreements of the federal and non-federal participants. S. 300 provides that subsequent Congressional action will not modify the party's obligations, unless specific to the LCR MSCP. S. 300 will secure the "no surprises" and permit revocation policies contained in the Program documents. It provides for a limited waiver of sovereign immunity to the extent that the non-federal parties would need to enforce their agreements with the federal government. S. 300 also authorizes the Secretary to enter into an agreement with the Lower Division States to provide water for implementation of the LCR MSCP.

The LCR MSCP development and implementation has been an open and public process. The Draft Habitat Conservation Plan underwent independent scientific peer review, and the final Plan was modified to incorporate recommendations from the review panel. Steering Committee meetings are noticed and open to the public, and Program documents are available for review. Given the open and public nature of

the Program, the legislation would exempt the LCR MSCP Steering Committee from Federal Advisory Committee Act requirements.

The important objectives of this Program can only be accomplished if Reclamation obtains adequate, long-term funding to implement the Habitat Conservation Plan. The LCR MSCP is the best program to address endangered species needs while preserving cities, farms, Indian tribes and power production uses of the Colorado River. Arizona supports S. 300, the Lower Colorado River Multi-Species Conservation Program Act, and asks for its enactment by Congress.

Thank you for the opportunity to present Arizona's view on this important piece of legislation.

Senator SALAZAR. Thank you very much, Ms. Benemelis.

I'm going to turn it over to Senator Craig for any comments or questions that he might have and then I have some questions for some of you.

Senator Craig.

Senator CRAIG. Mr. Chairman, thank you very much and thank you for holding this hearing.

All of these bills are critical and the areas of reauthorization or the areas of enhanced cooperation that have just been spoken to, that are representative in these pieces of legislation, are critical. I think Mr. Thalacker and Mr. McDaniel reflect for me the concerns we have in the reason and our effort to comply with the Endangered Species Act, our obvious effort to help these endangered and listed species in the Snake and the Columbia system. At the same time recognizing, obviously, the value of what we've done in the region to transform those water systems into working water ways, both for transportation and hydro and irrigation, critical to the environment in which we live out there.

Of course, as you know Mr. Chairman, we have our critics. We have some that would like to remove all the dams and return the world, from which we never came, to somebody's memory. That isn't the way we run an arid West. We cooperate, we work together. We're accommodating in every respect as we can, the needs of our endangered species of fish in this case, mostly. At the same time I think that these pieces of legislation reflect the balance and the application and allocation of resources necessary to do a better job.

I think the reality is, we are doing a better job, increasingly so. We know a lot more about our systems today than we did a decade or two ago, because we focused on them. As you've spoken to your work with the Advisory Committees, and tremendous amount of effort that's gone forward.

So, I thank you all for your cooperative effort and the energy that has gone into this and these pieces of legislation. Because we're dealing, in most instances, with Federal projects and State relationships and private water-user relationships, where there has to be a cooperative effort. I think that we've come to a point here where moving these pieces of legislation is important, and timely, and I hope we can do so this year.

Thank you.

Senator SALAZAR. Thank you very much, Senator Craig.

We have a vote underway as we speak, so I'm going to ask a few questions and then we will adjourn the hearing.

Mr. Kennedy, you testified on behalf of the District and the need additional money. I think you said that the feasibility study indi-

cated that the need for the rehabilitation of these canals and the structures was about $6.2 million?

Mr. KENNEDY. That's correct. That was in 2004.

Senator SALAZAR. What steps has the District taken to try to come up with some or all of that money up to this point in time?

Mr. KENNEDY. Since then, the District has applied for a 2025 grant for testing of canal linings, which we did receive, which was a 50/50 grant. We have those test liners in place and a final report will come out on those this fall. Since then we've also taken the need to the members of the district and asked for a tax increase to them of 5 mils, which was five times more than they had taxed previous, which they unanimously passed. We feel that we can not put any further burden on the tax payers of the district. We do have water rates, but those rates do have to go to operations and maintenance.

Senator SALAZAR. Mr. Kennedy, so the members of the District taxed themselves 5 mils in order to create revenue in order to be able to take on their responsibility with respect to the maintenance and rehabilitation to the project?

Mr. KENNEDY. Yes they did, and that 5 mils also included rehabilitation.

Senator SALAZAR. Five mils, within the district, generates how much money?

Mr. KENNEDY. Approximately $130,000.

Senator SALAZAR. That's $130,000 per year?

Mr. KENNEDY. Per year.

Senator SALAZAR. OK.

From your point of view has the district properly maintained the canals since the Bureau transferred those canals over to the district?

Mr. KENNEDY. I believe they have so, yes.

Senator SALAZAR. What would the passage of the legislation that we have here before us, S. 1477 do, if in fact we were able to get it through the Congress and signed by the President?

Mr. KENNEDY. It would allow us to keep the canal system as it is today, which preserves the historical value of it. At the same time, we'll be able to keep the concrete structures in place, rather than replacing them. We'll also be able to keep the earthen sections in place, which the foundations of both have been tremendously eroded because of weather, time, and seepage of the canals themselves.

Senator SALAZAR. OK. Thank you, Mr. Kennedy.

Let me check on the timing of the vote. While that's being checked on, I will ask just a couple of more questions, as I can.

On S. 1522, Mr. Thalacker, can you give the subcommittee a sense of the magnitude of the work that still needs to be done with respect to fish passage and fish screens in the Pacific Northwest?

Mr. THALACKER. Well, the previous 5 years of moneys, basically covered about 120 projects. We figure there's well over 1,000 screens and passage projects left to do.

Senator SALAZAR. To Mr. Caan, Reclamation indicates that it is still seeking full reimbursement for the cost associated with increased guards and patrols at certain Reclamation facilities. From

a rate-payer perspective, what are the implications of that initiative by the Bureau on the power users?

Mr. CAAN. Thank you, Mr. Chairman.

We believe, because these are Federal multipurpose projects benefiting water, power, recreation, flood control, serving over 20 million Americans in the lower Colorado River and others, that it is unfair to place the entire burden of these costs on one element of that group, the power customers.

That's why we feel this 15 percent, 85 percent split that's already been set as a precedent in the safety of dams, is a precedent, it makes a lot of sense to have that equitably shared, an appropriate and fair way to share those costs.

Senator SALAZAR. OK. Mr. Caan and Mr. McDaniel, a similar question to you. What are the implications to the water users if Reclamation moves forward with its policy to seek reimbursement of all costs associated with increased guards and patrols?

Mr. MCDANIEL. Well, I think, from my perspective, that, you know, it's just another increased cost to the irrigation districts, and our inability to make sure that those costs are going in appropriate ways. We're very concerned that—and historically we found that the more we negotiate, the better we understand the process and so we're able to get a better deal—but, through full reimbursement of those costs and, I was not aware until I came to this meeting today, that there was a $14.5 million cap this year. But from year to year to year, we need to know what we're going to get. If they're going to increase those costs and if they're, and what they're allocating them for, it just makes it difficult for us to plan for the future.

Senator SALAZAR. Thank you very much.

To Ms. Benemelis: your testimony indicates concern that the Federal Government will not implement the MSCP Program consistent with the Program documents. Is that concern the reason why you are seeking this legislation?

Ms. BENEMELIS. Well, not that Reclamation would not implement the Program consistent with the Program documents, it's a 50-year Program. The funding for the Program is very heavily front-loaded. During the early years of the program we're acquiring land and water and we're constructing restored habitats along the lower Colorado River. Our concern is just, that priorities change over time. We would like to do everything that we can to be sure to affirm that we've got a long-term funding stream to implement the full program.

Senator SALAZAR. Thank you very, very much.

Let me, first of all, thank each of the witnesses for coming here to Washington, DC from your respective States, traveling long distances with expenditure of resources and your time to be here to provide the testimony to the committee. I want to also thank all of the staff who works for the Committee on Energy and Natural Resources for the work that they do, including the staff that's on the Subcommittee of Water and Power here in the U.S. Senate. I want to thank the staff for each of the Senators for also helping on this important legislation.

With that, the meeting is adjourned. All your testimony and the questions will all be made part of the record.

[Whereupon, at 3:42 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSE OF MARC THALACKER TO QUESTION FROM SENATOR SALAZAR

S. 1522

Question 1. Your testimony makes it clear that a number of very good projects have been implemented under the FRIMA program.

Can you expand upon your answer at the hearing and provide the subcommittee some details on the magnitude of work that still needs to be done with respect to fish passage and fish screens in the Pacific Northwest? Are we making good progress at the levels of funding that have been provided?

Answer. We have not been able to collect accurate information for you about the work still needing to be done and the progress that has been made under past FRIMA funding due to vacations at the state agencies that have this data. We will continue our efforts to get this information and forward it to you when we have it.

In Oregon, the Oregon Fish and Game Department has chosen to put most of the FRIMA funding into on-the-ground projects to benefit and protect the fish rather than use funds to develop a full inventory to document the magnitude of work that still needs to be done. Based on informal surveys of entities that deliver irrigation water in Oregon, our estimate is that there are 200-500 diversions of different sizes that may still need fish screens. That, of course, does not account for the need in Washington, Idaho, and Montana. The cost for each of these varies based on the physical characteristics at the point of diversion including the shape of the stream bed and banks, the geological material in the bed and banks, the amount of water being diverted, the type of diversion structure, the sources of power for the screen (electric or paddlewheel or other) whether the fish can be just "turned back" or there needs to be a side channel to move them back to the stream. Project costs range from roughly $500,000 to several millions dollars.

RESPONSES OF MARC THALACKER TO QUESTIONS FROM SENATOR CORKER

S. 1522, THE FISHERIES RESTORATION AND IRRIGATION MITIGATION ACT

Question 1. S. 1522 would give priority to projects costing less than $2.5 million—down from the current threshold of $5 million. Why do you support this decrease?

Answer. The reduction in the cost for priority projects reflects our experience over the life of FRIMA. We have found project costs to be less than originally anticipated and felt this should be reflected in the authorizing legislation.

Question 2a. You've stated that you don't believe Congress intended FRIMA be used by municipal, Federal or Tribal governments to fund their facilities.

Answer. OWRC does not have the list of applicants for projects, only information about projects that were funded. It is our understanding based on discussions we have had with USFWS and other parties involved with FRIMA that the USFWS has interpreted FRIMA to include municipal, Federal, and Tribal governments as eligible applicants. Our original intent for FRIMA was that it be used to mitigate the impact on fish from irrigation diversions. The proposed language in S. 1522 simply states the original intent and ensures the funding is used as originally intended.

Question 2b. Are you aware of any cases where this has been occurred?

Answer. OWRC does not have the full list of projects approved for FRIMA funding in the four states, but in reviewing the projects listed in the USFWS brochure (July 2005) there are projects sponsored by federal agencies and a landowner, by non-prof-

it organizations, by state agencies, by cities, by tribes—all without a cooperating partnership with an irrigation district or other agriculture water supplier. It should be note, that many of these same types of entities also had projects in which they partnered with irrigation districts or other agriculture water suppliers.

Question 3. Why do you believe it is necessary to specify that BPA funds be considered non-federal share money? Has any entity been prohibited from accepting BPA funds as part of the non-federal share?

Answer. OWRC supports considering BPA funding as non-federal funds for two reasons. First, BPA provides funding to protect fish in the Columbia Basin through different groups. This is a major source of funding for these kinds of projects in the Basin where this is little other funding available. By allowing BPA funds to be considered non-federal share money, we anticipate more projects being proposed and built as this would provide some part of the non-federal match for project sponsors who have no other source of funding.

Secondly, BPA funds are rate-payer funds, not Federal funds. These rate-payer funds are from local entities in the states. The circumstance that these funds are budgeted through the Federal budgeting process does not convert them from local funding; it only serves as the medium that enables BPA to budget them for local projects.

RESPONSES OF SHANNON MCDANIEL TO QUESTIONS FROM SENATOR CORKER

S. 1258, THE SITE SECURITY PROGRAM

Question 1a. In FY06, the Bureau collected $10 million in security-related O&M guard costs from its customers. How much of an increase did your customers see in their monthly bills?

Answer. Our customers do not receive monthly bills. They are assessed annually for operation and maintenance charges.

Question 1b. How will customers be impacted by the collection of $14.5 million this year?

Answer. There are 630,000 acres in the Columbia Basin Project, and the increase in the annual bill was $62,000.

Question 1c. How much of an increase would your customers see if the Administration collected the full $18.9 million request?

Answer. The Districts will pay $82,000 without a cap. However, it is important to note that our landowners are dual customers. They are also power consumers and receive retail power through a public utility district or rural electric association that receives power from Bonneville Power Administration. Therefore, the landowners pay for this charge at Grand Coulee Dam as a U.S. Bureau of Reclamation payment and then receive additional charges through their monthly electric bills. None of these costs can be passed on to consumers of agricultural products, leaving crop producers with higher operating costs and less income.

Question 2a. From which facilities do you receive your water or power and are you a primary or secondary customer?

Answer. We receive both water and power from Grand Coulee Dam. The Columbia Basin Project's primary feature is Grand Coulee Dam. We have a contract with the United States for power and water at the dam through the Columbia Basin Project.

Question 2b. Have those facilities already been fortified by the Bureau at the Administration's expense?

Answer. Yes.

Question 2c. How do you respond to the argument that a 15% cap that covers both capital fortifications and O&M expenses will result in increased costs for those customers of facilities where fortification is not yet complete?

Answer. Our goal is to pay those costs in the future. If the bill needs to be amended to include initial fortification costs, that would be acceptable to us.

Question 3a. I think it is safe to assume that the country will never return to the security posture that existed prior to September 11, 2001. Reclamation has stated in their budget justifications that facility fortification and anti-terrorism management-related expenditures will continue to be non-reimbursible. However the costs for guards and patrols are reimbursable to their water and power customers. As the ratepayers, as well as the water and power customers, benefit from the enhanced security provided by these guards and patrols, what is the justification that these should be Federal expenses?

Answer. My understanding is that the war on terrorism is a war. We realize that we will probably never return to the laissez faire type of security conditions that

previously existed. However, a war on terrorism in the protection of federal assets should be a federal expense, in our opinion.

Question 3b. Wouldn't you think that it is only fair that those who benefit from this enhanced security level should pay part of the costs?

Answer. I thought that this was what the bill was about. Therefore, both irrigation customers and power customers would pay 15 percent, and the federal government would pay the remaining 85 percent.

RESPONSES OF GEORGE CAAN TO QUESTIONS FROM SENATOR SALAZAR

S. 1258

Question 1. Reclamation indicates that it is seeking full reimbursement for the costs associated with increased guards and patrols at certain Reclamation facilities.

What are the implications of that policy for power users? Have power rates increased already because of the allocation of a portion of the costs? Will they increase more in the future?

Answer. The history of Reclamation's policy to seek full reimbursement of the costs of guards and patrols from water and power users is as follows:

In April 2002 the Commissioner of Reclamation made an administrative determination that all costs of enhanced site security should be a federal responsibility, consistent with the way similar costs were treated during World War II. Therefore, in fiscal years 2002, 2003 and 2004 costs for dam fortification work, guards and patrols and related expenses were non-reimbursable by project beneficiaries.

In its FY 2005 budget submission, the Bureau of Reclamation (Reclamation) shifted course and proposed that water and power customers pay for costs of increased guards and patrols at its dams. However, Congress in the FY 2005 Energy and Water Development Appropriations bill directed Reclamation not to collect any costs of increased security from customers until directed to do so by Congress.

In FY 2006, Congress allowed Reclamation to recover $10 million of the $18.9 million in reimbursable costs the agency requested from water and power customers, but expressed concern about the equity of imposing the reimbursablity responsibility only on water and power beneficiaries.

In FY 2007, Reclamation again requested that water and power customers reimburse the full cost of guards and patrols, almost $20 million. As a result of a compromise following enactment of a Continuing Resolution for FY 2007, $14.5 million will be reimbursed by water and power customers.

For FY 2008, Reclamation has again proposed that water and power customers reimburse the full cost of guards and patrols. These costs are passed by Reclamation to the Western Area Power Administration (Western), which adds them to the cost of power generated at federal dams and passes them on to its utility power contractors. Those utilities, in turn, pass them on to their commercial, industrial, municipal, tribal and residential customers.

Whether the increased costs for guards and patrols have impacted power rates depends on the timing of rate processes at each project. For example, at Hoover Dam, Western reviews and adjusts its power rates each year, so increased costs for guards and patrols in FY 2006 and 2007 have already been passed through to power purchasers.

At the Colorado River Storage Project (CRSP), however, the costs of increased guards and patrols have been allocated to power contractors, but Western adjusts the rate periodically, rather than annually. Therefore, FY 2006 cost increases have not yet been reflected in the CRSP power rate, but will be when Western implements the next rate adjustment.

Question 2. Reclamation is currently seeking reimbursement on just O&M costs, not capital costs related to facility fortification. S. 1258 would require some reimbursement for capital costs.

Is there a policy reason that exists from your perspective on why some water and power users should now have to repay a portion of the capital costs associated with site security?

Answer. CREDA believes that the best policy would be for the federal government to pay 100% of the costs of increased security at Reclamation dams, because the dams are national assets and because historically these national security costs have been a federal obligation.

However, in an effort to reach a reasonable compromise, CREDA and other members of the water and power coalition that supports S. 1258 looked for legislative models for cost-sharing. The Safety of Dams Act requires project beneficiaries to pay 15% of the capital costs of dam modifications due to new seismic or hydrologic data.

Eighty-five percent of the costs of such modifications are paid by the federal government.

This model seemed both reasonable and apt, because the increased security measures (both capital and O&M expenditures) now required at Reclamation facilities are due to new information available about post-September 11, 2001 terrorism threats. The coalition members believe that the policy rationale that justifies the 15/85 cost-sharing formula for Reclamation's Safety of Dams program applies equally well to Reclamation's site security program.

RESPONSES OF GEORGE CAAN TO QUESTIONS FROM SENATOR CORKER

Question 1. In FY06, the Bureau collected $10 million in security-related O&M guard costs from its customers. How much of an increase did your customers see in their monthly bills? How will customers be impacted by the collection of $14.5 million this year? How much of an increase would your customers see if the Administration collected the full $18.9 million request?

Answer. For CRSP customers, the impact of the '06 collection is just beginning to be felt. Rates are reviewed annually and adjusted periodically by the Western Area Power Administration. Western must include Reclamation costs—such as site security costs—into its rate-setting process.

Western has begun a rate increase process for the CRSP, currently expected to be about 14%, to be implemented in October '08. This increase includes not only the impact of the inclusion of increased guard costs, but also increases in Reclamation and Western operating expenses and impacts of the ongoing drought in the Southwest.

The impact of the CRSP's share of the $14.5 million for FY 2007 is also included in this rate adjustment. If the full $18.9 million were collected, the rate increase would be higher than the 14%, but Western has not recalculated what that amount would be at this point.

Question 2. From which facilities do you receive your water or power and are you a primary or secondary customer? Have those facilities already been fortified by the Bureau at the Administration's expense? How do you respond to the argument that a 15% cap that covers both capital fortifications and O&M expenses will result in increased costs for those customers of facilities where fortification is not yet complete?

Answer. For CRSP power customers, power is generated primarily at the Glen Canyon Dam, Flaming Gorge Dam and Aspinall Unit (comprised of the Blue Mesa, Morrow Point and Crystal Dams). Glen Canyon generation represents about 70% of the total CRSP generating resource. It is one of Reclamation's multi-purpose, National Critical Infrastructure (NCI) facilities. It is CREDA's understanding that fortification has been substantially, if not entirely, completed at all Reclamation's NCI facilities. However, due to the security nature of the issue, customers do not have complete access to information about those completed improvements or potential future fortifications.

It is further CREDA's understanding that, once fortification of NCI facilities is completed, Reclamation will proceed to fortify other, smaller, single-function facilities (e.g. irrigation only projects.) If S. 1258 is enacted, there will, indeed, be an increase in security costs to customers at some projects, i.e. those that currently have no or minimal costs for guards and patrols. Under Reclamation law, capital costs that are considered beyond the "ability to pay" of irrigators are allocated to power users for repayment. Thus, we anticipate that a significant portion of capital costs that would be reimbursable if S. 1258 is enacted would be costs to power users. We believe that the "trade-off" for power users that would result from enactment of S. 1258, i.e. our agreeing to pay for 15% of previously non-reimbursable capital costs for fortification work in exchange for the certainty that only 15 percent of all site security costs would be reimbursed by water and power users, is worthwhile.

Question 3. I think it is safe to assume that the country will never return to the security posture that existed prior to September 11, 2001. Reclamation has stated in their budget justifications that facility fortification and anti-terrorism management-related expenditures will continue to be non-reimbursable. However the costs for guards and patrols are reimbursable to their water and power customers. As the ratepayers, as well as the water and power customers, benefit from the enhanced security provided by these guards and patrols, what is the justification that these should be Federal expenses? Wouldn't you think that it is only fair that those who benefit from this enhanced security level should pay part of the costs?

Answer. We do think it is reasonable to ask water and power customers to pay a fair share of the costs of increased site security at Reclamation dams. However, many of these facilities are multi-purpose facilities, serving millions of Americans

through a variety of functions, including flood control, water supply, power supply, recreation, etc. We believe that all who benefit from these important facilities should share in the cost of ensuring their safety and security. For example, if a terrorist attack succeeded in taking out a major dam, most of the impact would be from loss of life and property from flooding downstream and loss of the water supply. For various reasons, Reclamation has not sought to recover costs from other project beneficiaries or to identify other potential sources of revenues, e.g. a fee charged to visitors at the Glen Canyon or Flaming Gorge Dam visitor centers.

S. 1258 does not attempt to authorize Reclamation to seek reimbursement from those who benefit from the flood control, recreation or other functions of these multi-purpose projects. Instead, it provides fairness to water and power customers another way: by implementing a fairer cost-sharing formula than the one Reclamation now seeks to impose. It provides that these customers contribute 15% of all site security costs and that the remaining costs be assumed from the federal government on behalf of these multi-purpose, multi-use facilities. We do think, as you ask, that it is fair for water and power customers to pay part of the costs, thus the 15% included in this bill.

RESPONSE OF GARY KENNEDY TO QUESTION FROM SENATOR SALAZAR

S. 1477

Question 1a. Reclamation's testimony indicates that major facility rehabilitation is the District's responsibility pursuant to an existing contract. Per contract in question I1r-1384, there is no reference to rehabilitation or replacement.

Do you agree with Reclamation's interpretation of the contract?

Answer. No. I do not agree. The interpretation appears to be an assumption of contracts issued throughout Reclamation and not specific to the District's contract. The District's contract (I1r-1384) article 11 only specifies operations and maintenance.

Question 1b. Is the work that needs to be done beyond routine maintenance?

Answer. Yes. Operations and maintenance has done all it can to protect or slow deterioration due to age or exposure to the elements.

Question 1c. Has Reclamation expressed any dissatisfaction with the District's maintenance program as a result of its annual inspection?

Answer. No. The District has maintained the project to the satisfaction of the B.o.R. since it assumed the duties of O&M. I have attached several inspections that have been completed during my tenure.

RESPONSE OF GARY KENNEDY TO QUESTION FROM SENATOR CORKER

Question 1. Please describe your analysis of the additional rate increase needed to pay for the project if all the costs were deemed reimbursable.

Answer. Today's Cost is Approximately $8,065,389. Annual Interest Rate (if available): 3%. Loan Period in Years: 30. Annual Payment: $411,514.

There are 1,525 taxable properties in the Mancos Water Conservancy District. The mill per taxable property was 1.5. In 2005, based on the information given the residents regarding the cost of rehabilitation and restoration we had secured from our engineer study, those residents voted in a 5.0 mill levy tax increase (total mill levy=6.5). Therefore, 1,525 taxable properties pay an additional tax of $123,596 annually.

As previously established, the annual loan payment would be $411,513.13. Minus the tax increase of $123,596, those 1,525 taxable properties would be asked to pay an additional $287,917 of new taxes annually. It is important to note that the average median household income of Montezuma County based on 2004 census figures is $34,416 (compared to $50,105 Colorado state-wide—http:www//quickfacts.census.gov/qfd/states/08/08083.html).

That's an additional 12 mills for a total mill levy of 18.5. There are 12 different taxing entities in addition to our district.

Even if we could convince property owners within our District to vote on that kind of tax increase, none of the funds raised could be slated for O&M, safety and security issues, or reserved for future replacement.

If you or any of the committee members have any additional questions I would be happy to see that they get answered.

RESPONSES OF PERRI BENEMELIS TO QUESTIONS FROM SENATOR SALAZAR

Question 1. The Lower Colorado River Multi-Species Conservation Program (LCR MSCP) is a unique program that combines federal compliance under Section 7, and non-federal compliance under Section 10 of the Endangered Species Act (ESA). Enactment of S. 300 provides the non-federal parties with certainty that the program will be funded and implemented as intended.

Do you believe that the program documents provide the necessary flexibility to address changed circumstances over the next 50 years?

Answer. Yes. The program addresses future changed circumstances in two ways. First, the parties to the program documents have assumed an explicit obligation to deal with defined changed circumstances. Second, the program includes monitoring, research and adaptive management components to ensure that the measures employed to conserve species and their habitat will be based on the most current, and best available scientific information. If this data indicates that alternate species conservation measures will provide greater species benefit than currently prescribed measures, the Habitat Conservation Plan (HCP) can be modified and funding may be reprogrammed.

The HCP defines specific changed circumstances, prescribes required response measures and commits over $13 million to respond to changed circumstances. Defined changed circumstances include failure to establish essential habitat elements for one or more of the covered species, drought or shortage reductions to water supplies, sedimentation of backwater habitat or destruction of terrestrial habitat due to flooding, loss or reduced production capability for fish rearing facilities, toxic or hazardous substance spills affecting conservation areas or future listing of non-listed covered species.

Response measures will be implemented after conferring with the U.S. Fish and Wildlife Service (USFWS) the federal agency charged with the responsibility of protecting endangered species and their habitat. Current monitoring and research data will be used to develop an informed response to habitat or aquaculture technique failures. If flooding destroys terrestrial habitat, it will be recreated. If flooding results in sedimentation of backwater or marsh sites, those sites will be dredged. Toxic or hazardous waste spills will be evaluated on a case by case basis, and appropriate response measures taken. The HCP already provides covered activities mitigation for 20 covered, but not currently listed species. If any of these covered species are listed in the future, the USFWS will automatically authorize take as prescribed by regulation.

Question 2. What happens if the species of concern decline in population and health?

Answer. The HCP includes the restoration of more than 8,000 acres of habitat and stocking of more than 1.2 million juvenile fish to augment populations of two endangered fish covered by the program. Habitat restoration involves more than just planting trees. Habitat is not considered "restored" until plant communities have sufficiently matured, or additional habitat features are established to provide the primary constituent elements that covered species rely upon for their survival. Ongoing monitoring will provide information about the status of restored habitats and utilization by covered species. If monitoring data indicates that a covered species continues to decline regardless of the successful implementation of conservation measures, program biologists will evaluate alternate conservation strategies which may be implemented through the adaptive management process.

Question 3. Do you believe that Reclamation currently has all the Authority it needs to implement all aspects of the MSCP consistent with the Program documents?

Answer. Reclamation has no specific authorization to implement the LCR MSCP. It has been doing so as part of its Colorado River operations program, and within its obligations under the Endangered Species Act. This legislation will affirm Congress' commitment to support Reclamation through specific authority to implement the program and long-term funding.

The bill also provides a legal basis for the authority to use Colorado River water for LCR MSCP purposes. A contract with the Secretary of the Interior (Secretary) is required for the use of Colorado River water pursuant to the Boulder Canyon Project Act of 1928. Reclamation's Lower Colorado Regional Director enters into water delivery contracts on behalf of the Secretary. The water delivery contract constitutes an authorization to use Colorado River water in the Lower Basin. These contracts define the type of use, either for domestic or agricultural purposes.

The beneficial use of Colorado River water for environmental purposes has been called into question from time to time, and was challenged by parties in California during negotiations of the Quantification Settlement Agreement (QSA). Although

the California issue was resolved to the extent necessary to implement the QSA, S. 300 would provide explicit authorization for the Secretary to enter into an agreement with the Lower Division States to provide Colorado River water for implementation of the LCR MSCP. Subject to final review and approval within the Interior Department, the non-federal parties have reached agreement with the United States on an agreement to provide Colorado River water for LCR MSCP purposes, as authorized by Section 3(b) of the bill. Representatives of the Interior Department have advised us, however, that the United States will not be able to execute the agreement unless and until Congress enacts S. 300 or the companion House bill. The legislation does not alter existing rights to use Colorado River water.

This legislation will secure the long-term benefits of the program for covered species, water and power users.

RESPONSE OF PERRI BENEMELIS TO QUESTION FROM SENATOR CORKER

Question 1. Please describe why you believe that additional authorities are needed to fully implement the Lower Colorado River Multi-Species Conservation Program. Specifically address why you believe the Department does not have clear authorities to administer the program under existing statutes.

Answer. Reclamation has no specific authorization to implement the LCR MSCP. It has been doing so as part of its Colorado River operations program, and within its obligations under the Endangered Species Act. This legislation will affirm Congress' commitment to support Reclamation through specific authority to implement the program and long-term funding.

The bill also provides a legal basis for the authority to use Colorado River water for LCR MSCP purposes. A contract with the Secretary of the Interior (Secretary) is required for the use of Colorado River water pursuant to the Boulder Canyon Project Act of 1928. Reclamation's Lower Colorado Regional Director enters into water delivery contracts on behalf of the Secretary. The water delivery contract constitutes an authorization to use Colorado River water in the Lower Basin. These contracts define the type of use, either for domestic or agricultural purposes.

The beneficial use of Colorado River water for environmental purposes has been called into question from time to time, and was challenged by parties in California during negotiations of the Quantification Settlement Agreement (QSA). Although the California issue was resolved to the extent necessary to implement the QSA, S. 300 would provide explicit authorization for the Secretary to enter into an agreement with the Lower Division States to provide Colorado River water for implementation of the LCR MSCP. Subject to final review and approval within the Interior Department, the non-federal parties have reached agreement with the United States on an agreement to provide Colorado River water for LCR MSCP purposes, as authorized by Section 3(b) of the bill. Representatives of the Interior Department have advised us, however, that the United States will not be able to execute the agreement unless and until Congress enacts S. 300 or the companion House bill. The legislation does not alter existing rights to use Colorado River water.

This legislation will secure the long-term benefits of the program for covered species, water and power users.

[Responses to the following questions from the Department of the Interior were not received at the time the hearing went to press.]

QUESTIONS FROM SENATOR SALAZAR

S. 1477

Question 1a. You oppose federal support for rehabilitation of this project because of the precedent it would set for other projects across the country in need of rehabilitation.

Isn't the Jackson Gulch situation an example of a much larger problem that exists with a number of Reclamation projects? Is Reclamation doing anything to address the impending crisis that exists West-wide because of the aging infrastructure of its facilities? What specifically is Reclamation doing to address the problem of aging infrastructure?

Question 1b. Please provide the Subcommittee a list of the Reclamation Projects, including specific infrastructure, which are in need of significant rehabilitation or replacement in order to maintain water and power infrastructure at peak operating efficiency. In addition to specific infrastructure, please also identify the scope of work required, including cost estimates.

Question 2. Your testimony asserts that the District is solely responsible for the operation, maintenance, and replacement of these facilities, pursuant to their contract.

Please explain in detail, with supporting documentation, the basis for your assertion that the District assumed responsibilities for rehabilitation and replacement of project facilities, when it assumed responsibility for annual operations and maintenance.

Question 3. With respect to the Mancos Project, you've acknowledged that the canals need to be rehabilitated, that the U.S. owns the project, and that a large number of water users rely on these facilities.

What are the implications of the District being unable to afford the full cost of the necessary rehabilitation of the system? What is Reclamation's liability if the facilities fail, and rehabilitation and replacement are not necessarily the District's responsibility under the contract?

S. 300

Question 4. The bill directs the Secretary to implement the MSCP consistent with the "program documents".

Do those documents provide flexibility to modify the program to address changing circumstances or new scientific information over the next 50 years? If so, please describe in detail the provisions which maintain program flexibility.

S. 1258

Question 5. The water and power users' testimony describes problems that exist with Reclamation's current approach to allocating security costs. These problems include a include the lack of transparency in determining the level of security needed; and that site security costs are only allocated to water & power users, and not other project beneficiaries.

What is Reclamation doing to improve transparency in allocating security costs?

Are the water power users correct in alleging that site security costs are not allocated to all project functions/beneficiaries?

QUESTIONS FROM SENATOR CORKER

S. 1258, THE SITE SECURITY PROGRAM

Question 1a. In its FY07 Budget Request, the Administration anticipated full reimbursement of $18.9 million for security-related O&M guard costs. However, due to the Continuing Resolution, the Bureau is collecting $14.5 million this year.

With the collection of $14.5 million in security costs, how much of an increase will end-use customers see in their bills? How much of an increase would they see if the entire amount was collected?

Question 1b. Do you expect the $18.9 million requested amount to remain steady or will in increase over time?

Question 1c. Are the reimbursable security costs distributed uniformly across all of the customers?

Question 2. How has the Corps of Engineers, which also operates multi-purpose federal facilities, addressed this security cost issue? In particular, how have TVA and its customers handled relevant security costs?

Question 3a. Since 9/11, the Bureau has continued to pay for the capital investment of facility fortifications. S. 1258 would cap the costs collected by water and power customers to 15%—covering both guard O&M costs, and, for the first time, capital costs.

How many facilities have been fortified? How many are left?

Question 3b. While S. 1258 would cap the costs for some customers on the O&M side, wouldn't it result in increased costs for those customers whose facilities have yet to be fortified?

Question 4. This legislation amends the Safety of Dams program. Is that appropriate?

Question 5. We have heard repeatedly from the secondary power customers concerning the reimbursement of these security costs, yet surprisingly little from the primary power customers. Do you know why that might be the case?

S. 300, THE COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM ACT

Question 1. Please describe all the existing authorities that Reclamation has used, and will use to fully implement the Lower Colorado River Multi-Species Conservation Program.

S. 1477, JACKSON GULCH REHABILITATION

Question 1. Please describe how the Administration determines which projects need rehabilitation.

QUESTION FROM SENATOR CANTWELL

Question 1a. Mr. Todd, following the attacks on Pearl Harbor in 1942, then-Reclamation Commissioner John C. Page advised Congress that costs for enhanced security at federal dams should be non-reimbursible—that they are the responsibility of the federal government.

Following September 11, and consistent with federal policies adopted following the attack on Pearl Harbor, the Commissioner of Reclamation in April 2002 made an administrative determination that Operation and Maintenance costs that pay for enhanced guards and patrols at Reclamation's multi-purpose projects were in the public interest, and should be paid for by the federal government.

But in FY 2005, the Bureau reversed this decision and have saddled water and power customers with 100% of the increased costs of enhanced guards and patrols.

Mr. Todd, recognizing that security enhancements benefit the public at large and thus are the responsibility of the federal government, why did the Bureau in FY 2005 shift its earlier position that water and power users should not bear 100% of the responsibility for paying for increased security costs?

Question 1b. How are Post-9/11 security enhancements different than Post-Pearl Harbor security enhancements?

Question 2. Mr. Todd, there is currently no cap on what the Bureau can spend on guards and patrols for enhanced security at federal dams. There is also little transparency to how the Bureau determines those costs. So if the Bureau continues to act with no accountability for the Site Security program, and with no Congressional oversight, there is nothing to stop the costs from rising exponentially.

As one example of this cost uncertainty, replacement fortification costs were not a reimbursable cost in FY 2005. But in FY 2006 the Bureau decided that replacement fortification costs suddenly were reimbursable by the water and power customers. Much worse, the Bureau has not even disclosed how much these costs are.

The Northwest region and BPA are trying very hard to keep all costs as low as possible and to plan for future costs, so every dime counts.

Currently BPA and the Northwest Region are involved in a painstakingly detailed multi-year "Regional Dialogue" on how best to allocate power generation resources for the next two decades.

With a lack of cost controls and congressional oversight and transparency to the Bureau's current site security program, water and power customers have little certainty about future costs for this program.

Mr. Todd, given this uncertainty in future costs and the lack of cost controls, transparency, or Congressional oversight of the Bureau's current Site Security program, how can you provide certainty to water and power customers about future costs of security enhancements?

Question 3a. Mr. Todd, currently only water and power users are paying for the enhanced site security costs of guards and patrols at federal dams. Yet, multi-purpose projects provide many benefits to the general public such as flood control, recreation, fish and wildlife mitigation, and navigation that help ships our farmer's products to market.

Given that there are more than several beneficiaries for each project, do you think it is fair to saddle water and power customers with all of the reimbursable security costs?

Question 3b. What plans does the Bureau have for equitably apportioning responsibility for security costs among all the project beneficiaries?

Question 3c. What obstacles are standing in your way and how do you suggest overcoming them?

Question 3d. Once the Bureau determines which costs should be reimbursed by project beneficiaries, how does it allocate those costs among beneficiaries?

Question 3e. Why aren't all classes of project beneficiaries allocated a portion of the costs the Bureau determines should be reimbursed?

[Responses to the following questions from the Fish and Wildlife Service were not received at the time the hearing went to press.]

QUESTION FROM SENATOR SALAZAR

S. 1522

Question 1. Both your testimony, and that of the Oregon Water Resource Congress, hail FRIMA as a true success, and an example of the cooperative approach needed to protect and restore depleted fish stocks in the Pacific Northwest, which also protects the interests of water users.

Why hasn't the Administration requested any funding for the program in its annual budgets? What can be a higher priority than a cooperative program in which the state and local parties are shouldering most of the costs to achieve federal objectives? Please describe the federal objectives being address by FRIMA.

QUESTION FROM SENATOR CORKER

S. 1522, THE FISHERIES RESTORATION AND IRRIGATION MITIGATION ACT

Question 1. You testified that "in some instances, BPA funds are treated as non-federal cost share amounts. However, more study and evaluation is needed to determine whether Bonneville funds should be counted toward the non-federal component of FRIMA."

In what instances have BPA funds been treated as a non-federal cost-share amount? What are the Administration's concerns regarding such treatment? Why do you believe further study is needed?

QUESTIONS FROM SENATOR WYDEN

REGARDING S. 1522

Question 1. Mr. Wilson, the Fish and Wildlife Service has been a good partner in this program and we want to continue to work with you. However, as you stated during the hearing, the Fish and Wildlife Service has never requested any federal funds for this program, because it was not of sufficient priority. Given the billions of dollars that are being spent on restoring and protecting both listed and non-listed fish populations in the Northwest and years of litigation concerning impacts of federally constructed and operated dams and reclamation projects on endangered species in the Northwest (such as biological opinion on Coho salmon pending before Judge Redden), why isn't this program a higher priority? Please also identify for the Subcommittee what Fish and Wildlife programs have a higher priority?

Question 2. Please submit for the record, copies of the most recent inventories of fish diversion projects that could be implemented with FRIMA funding for each state. Within each state, please provide the level of funding needed in order to implement these projects in priority order.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF THE AMERICAN PUBLIC POWER ASSOCIATION

We appreciate the opportunity to submit this statement for the record related to the Subcommittee's hearing to receive testimony on S. 1258, which would amend the Reclamation Safety of Dams Act of 1978 to authorize improvements for the security of dams and other facilities. The American Public Power Association (APPA) strongly supports S. 1258.

APPA is the national service organization representing the interests of the 2,010 municipal and other state- and locally-owned utilities throughout the United States (all but Hawaii). Collectively, public power utilities deliver electricity to one of every seven electric consumers (approximately 44 million people), serving some of the nation's largest cities. However, the vast majority of APPA's members serve communities with populations of 10,000 people or less. Of the 2,010 public power systems nationwide, approximately 580 of them receive all or a portion of their power supply directly from one of the four federal Power Marketing Administrations (PMAs).

The PMAs were specifically created to market federally-generated hydropower from Bureau of Reclamation and U.S. Army Corps of Engineers multi-purpose water projects with a right of first refusal granted to not-for-profit entities including public power systems and rural electric cooperatives. These entities market wholesale electric power to 1180 public power systems and rural electric cooperatives in 33 states.[1] They also sell power to a number of other public agencies and federal installations as well as to for-profit, investor-owned utilities in years with high water flows. The power rates paid to the PMAs by their public power and rural electric cooperative customers cover all of the costs for generating and transmitting electricity and of repayment with interest of the federal investment in these hydropower projects. None of the costs are borne by taxpayers. Power rates also help to cover the costs of other activities authorized by these multi-purpose federal dams including: flood control; irrigation; municipal water supply; interstate and international compact water deliveries; lake and stream recreation; blue ribbon trout fisheries; river regulation; economic development; fish and wildlife propagation and mitigation; and power generation and transmission.

Following the attacks of September 11, 2001, the Bureau of Reclamation (Bureau) embarked upon an aggressive program to enhance the security of the federal dams they operate to protect these facilities against terrorist attacks. Based on historical precedent, the Bureau initially determined that the costs of increased security measures should remain an obligation of the federal government, and that funds spent on these measures should not be reimbursed by the PMA customers. In Fiscal Year 2005, however, the Bureau reversed its position and asked for some of these costs to be reimbursed from power and water customers.

Despite numerous expressions of congressional and customer concern about the Bureau's shift in policy since FY 2005, however, the Bureau has proceeded to expand and implement its reimbursable site security cost plan. Given that the multi-purpose federal dams benefit a host of stakeholders and the general public—not just water and power customers—we believe that asking these customers to give the Bureau a "blank check" to implement security measures is unreasonable. Therefore, we strongly support S. 1258, introduced by Senator Maria Cantwell (D-WA), among

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[1] The following states receive a portion of their power from the PMAs. Bonneville Power Administration: Washington, Oregon, Idaho, Montana (part). Western Area Power Administration: Arizona, California, Colorado, Iowa, Kansas (part), Minnesota, Montana (part), North Dakota, Nebraska, New Mexico, Nevada, South Dakota, Texas (part), Utah, Wyoming. Southwestern Power Administration: Arkansas, Kansas (part), Louisiana, Missouri, Oklahoma, Texas (part). Southeastern Power Administration: Alabama, Florida, Georgia, Illinois, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.

others, as it would provide a ceiling on the amount of reimbursable security costs that would be borne by this subset of beneficiaries of the dams, and would therefore keep costs manageable and provide needed certainty for future planning. As capital intensive not-for-profit electric utilities trying to manage costs for our customers, plan for future growth, and address environmental issues, this type of certainty is essential.

Again, thank you for the opportunity to provide this statement for the hearing record. We would also like to associate with the testimony of George Caan, Executive Director of the Colorado River Commission of Nevada who is testifying on behalf of the Colorado River Energy Distributors Association (CREDA). Both the Colorado River Commission of Nevada and CREDA are members of APPA. We look forward to working with Senator Cantwell, cosponsors of the legislation, Senators Wyden (D-OR), Smith (R-OR), Hatch (R-UT) and Allard (R-CO), Subcommittee Members, and Full Committee members to achieve enactment of this important legislation.

STATEMENT OF THE BONNEVILLE POWER ADMINISTRATION

S. 1522 THE FISHERIES RESTORATION AND IRRIGATION MITIGATION ACT OF 2007

Chairman Salazar and Members of the Subcommittee, thank you for inviting the Bonneville Power Administration (Bonneville) to provide a statement of its views on S. 1522, a bill that reauthorizes the Fisheries Restoration and Irrigation Mitigation Act of 2000 (P.L. 106-502). The Administration supports the principles of the Fisheries Restoration and Irrigation Mitigation Act (FRIMA) program as an important part of a multi-agency effort to recover and conserve fish populations.

Bonneville is a Federal Power Marketing Agency under the Department of Energy that markets about 40 percent of the electricity consumed in the Pacific Northwest. The electricity is produced at 31 Federal dams in the Pacific Northwest and one nuclear plant, and is sold to over 140 Pacific Northwest utilities. Bonneville also operates a high-voltage transmission grid of more than 15,000 circuit-miles of lines and associated substations in Washington, Oregon, Idaho, and Montana. Bonneville generates revenues from the sale of power and transmission services and its costs are covered by its revenues, so that it does not receive annual appropriations like other federal agencies.

The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act) requires Bonneville to protect, mitigate and enhance fish and wildlife affected by Federal Columbia River Power System (FCRPS) dams. Since 1978, Bonneville has contributed over $9 billion in costs to aid fish and wildlife mitigation and species and habitat recovery efforts in the Pacific Northwest.

Bonneville's funding for fish and wildlife recovery efforts has five main components:

- *Expense or direct program*.—Bonneville funds over 400 fish and wildlife projects in the Columbia Basin (habitat restoration, research, hatcheries, land acquisitions, predator control, and culvert replacement).
- *Reimbursable*.—Bonneville reimburses the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation for a portion of those operation and maintenance costs related to improvements at the dams for fish passage and the U.S. Fish and Wildlife Service for hatchery operations.
- *Project repayment*.—Bonneville reimburses the U.S. Treasury, principal and interest, for constructing and operating projects such as hatcheries and fish passage projects at the dams.
- *Power purchases*.—Bonneville is obligated to provide its customers with electricity, and if fish operations limit electricity generated at the dams, Bonneville must purchase power elsewhere to supply customer demand. The cost varies depending on power market prices and water volume.
- *Lost opportunity costs*.—The water that is spilled through the dams for fish represents "lost" electricity and money that could have been generated if the water had passed through the turbines. The cost varies depending on power market prices and water volume.

Given this significant commitment, Bonneville believes that the FRIMA program, which is intended to prevent fish losses from irrigation projects, constitutes a cost-effective means to protect the investment already being made by Bonneville and its customers for fisheries programs. Bonneville also believes that participation in FRIMA programs is consistent with its statutory mandates for mitigating system impacts on fish and wildlife under the Northwest Power Act and other statutes.

For purposes of implementing this bill, Bonneville would fund non-Federal cost-shares through the expense or direct program portion of its budget. That portion of our fish and wildlife mitigation budget obtains review from the Independent Scientific Review Panel (ISRP) and consists largely of project recommendations from the Northwest Power and Conservation Council. Bonneville understands that there may be policy considerations that should be taken into account by the Secretary when determining whether Bonneville's funds are appropriate for the FRIMA program. And, as stated in the Department of Interior testimony, the Administration believes that more study and evaluation is needed to determine whether Bonneville funds should be counted toward the non-Federal component of FRIMA.

Congress has given Bonneville's Administrator both a mandate to mitigate the effects of the FCRPS dams on the fish and wildlife of the Columbia River Basin and broad contracting and funding authorities that allow the agency to be run much like a business in fulfilling that mission. Because the authorities granted to the Administrator allow him/her to provide funding when it would meet one or more of Bonneville's statutory purposes, the agency believes that so long as it is not violating the Northwest Power Act or other laws, the Administrator may provide funding for mitigation that helps address the FCRPS dams' impacts on fish and wildlife.

Since the Northwest Power Act passed, Bonneville has interpreted its authorities to allow the Administrator to offer to fund the non-Federal cost-share of another Federal agency's mitigation grant program so long as Bonneville's funding was authorized under section 4(h)(10)(A) of the Northwest Power Act. Since Bonneville's revenues are derived from ratepayers rather than from appropriated funds, it provides a basis for a local cost-share determination. The limitations placed on funding under that section of the act are clear and have not changed:

- Mitigation must be done in a manner consistent with the goals, objectives, and measures in the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program, the Council's Power Plan, and the Act's other purposes.
- Mitigation funded must help address FCRPS dam's impacts and be for fish and wildlife and their habitat in the Columbia River Basin.
- Bonneville's funding must not replace other mitigation programs or efforts that others are responsible for.

For years, Bonneville's Administrators have made funds available to state and local governments, tribes, and non-governmental organizations for use as the non-Federal cost-share in mitigation grant programs run by other Federal agencies. Depending upon the statutory authorizations and regulations governing those grant programs, some but not all Federal agencies have been able to accept Bonneville's funding. For example the U.S. Army Corps of Engineers accepts Bonneville funding as a non-Federal cost share for the Nursery Bridge fish ladder facility on the Oregon portion of the Walla Walla River, the 12 Mile Project on Idaho's Salmon River, and for its General Investigations Program for the Willamette Floodplain Restoration Study. Bonneville has also entered into memoranda of understanding to provide a non-Federal cost share for fish mitigation projects managed by the Bureau of Reclamation and the Forest Service.

To date, Bonneville has not contributed FRIMA matching funds to the U.S. Fish and Wildlife Service because the Department of Interior believes it is not authorized to accept non-Federal matching funds from Bonneville. The proposed amendment to FRIMA would expressly authorize the Secretary of Interior to accept non-Federal matching funds from Bonneville. As stated in the Department of Interior testimony, the Administration believes that more study and evaluation is needed to determine whether Bonneville funds should be counted toward the non-Federal component of FRIMA.

CONCLUSION

In conclusion, the Administration supports the principles of the Fisheries Restoration and Irrigation Mitigation Act and looks forward to working with the Committee to address concerns with the legislation.

STATEMENT OF GEORGE M. CAAN, EXECUTIVE DIRECTOR, COLORADO RIVER COMMISSION OF NEVADA

S. 300, THE LOWER COLORADO MULTI-SPECIES CONSERVATION PROGRAM ACT

I want to thank Chairman Johnson and Senator Corker for moving this legislation forward and I especially thank Senator Kyl for his leadership efforts on this bill.

My name is George Caan and I am the Executive Director of the Colorado River Commission of Nevada. I am also the Chairman of the Steering Committee charged with overseeing the Lower Colorado River Multi-Species Conservation Program. I appreciate the opportunity to submit a written statement regarding S. 300. This bill authorizes the Lower Colorado River Multi-Species Conservation Program. My statement is on behalf of the State of Nevada, one of the three lower basin states directly involved in the Program. Like its sister states of California and Arizona, Nevada fully supports this bill. Finally, I am grateful to have the support of Senator Harry Reid and Senator John Ensign, who are co-sponsors of this legislation.

The Lower Colorado River Multi-Species Conservation Program is an unprecedented, robust 50 year, cooperative effort among 50 federal and non-federal entities in Nevada, California and Arizona designed to protect 26 endangered, threatened and sensitive species on the Lower Colorado River. The Program provides for the creation of over 8,100 acres of riparian, marsh and backwater habitat for the species covered by the Program, and includes plans for the rearing and stocking of over 1.2 million fish to augment populations of two endangered fish covered by the Program. The Program also provides for the maintenance of existing, high-quality habitat, and a research, monitoring and adaptive management effort to ensure that Program elements are effective in helping covered species. In exchange for species and habitat protection, the affected water and power agencies of the three states are provided with assurances that their operations may continue upon compliance with Program requirements.

This Program is particularly vital to the State of Nevada. The State, through the Colorado River Commission of Nevada, an agency of the State of Nevada, and the Southern Nevada Water Authority, a political subdivision of the State of Nevada, currently diverts its entire apportioned share of Colorado River water. This Colorado River water constitutes the overwhelming majority of the water supply for the Las Vegas Valley area, almost 90%, with the remaining water coming from a limited groundwater supply. There are currently more than one and a half million residents living in the Las Vegas area. Southern Nevada is the fastest growing urban area in the United States. In the last ten years alone the population increased by almost 70% and for the next ten-year period the population is projected to increase by an additional 50%.

Southern Nevada also relies on the Colorado River for hydroelectric power. On behalf of the State and as principal in its own behalf, the Colorado River Commission receives electric power generated by various federal hydroelectric projects on the Colorado River through delivery contracts with the Western Area Power Administration of the U.S. Department of Energy. These projects include the Boulder Canyon Project, the Parker-Davis Project and Salt Lake City Area Integrated Projects. The Commission, in turn, contracts to deliver electric power from one or more of these federal projects to the several companies comprising the Basic Industries in Henderson, Nevada, the Southern Nevada Water Authority and to five power utilities that together serve southern Nevada.

Consequently, the sustainability of the Colorado River System is absolutely critical to the vitality of southern Nevada's future. For this reason, the State of Nevada was a significant participant in the development of the Program and is now one of the primary non-federal party funding contributors to the Program. In short, the Program provides for a total of $626 million in funding, indexed for inflation over 50 years, for the species conservation efforts that will be implemented under the Program. These costs are divided 50-50 between the state and federal entities covered by the Program. Accordingly, S. 300 provides an authorization of appropriations for the federal share of Program costs and directs the Secretary of the Interior to manage and implement the Program in accordance with the Program Documents. These documents include the agreements that the parties have signed embodying their commitment to carry out the Program. As former Secretary Norton declared in the Record of Decision for the Program:

> The importance of the Colorado River to the southwestern portion of the United States cannot be overstated: the Colorado is the lifeblood of the southwest. The Colorado River provides water and power to over 20 million people (in such cities as Los Angeles, San Diego, Las Vegas, Phoenix and Tucson), irrigates over 2 million acres, and generates up to 10 billion kilowatt hours of electricity annually.

S. 300 gives the necessary strength and integrity to this monumental federal and non-federal collaborative conservation Program and virtually assures its success over the next five decades. The State of Nevada supports this bill in its entirety and urges the Committee to approve the bill. I will make myself available for any questions you may have in the future.

STATEMENT OF THE ROBERT F. STACKHOUSE, EXECUTIVE DIRECTOR, CENTRAL VALLEY PROJECT WATER ASSOCIATION

The Central Valley Project (CVP) Water Association wishes to express its strong support for S. 1258, bi-partisan legislation to address the costs of increased Site Security measures at Bureau of Reclamation (Reclamation) facilities.

We believe that this legislation would provide for a fair allocation of financial responsibility for the costs of increasing security at Reclamation facilities, which are a critical element of the nation's water supply, power generation and food production infrastructures.

The CVP Water Association represents the interests of the 300 agricultural and municipal and industrial districts, agencies and communities that are located in the Central Valley of California that have contracts for water from the federal CVP. Annually, these contractors use the CVP water to irrigate 3 million acres of land (one-third of the agricultural land in California) and to meet the water needs of 1 million households. The CVP Water Association works to preserve and protect our members' CVP contractual water supplies and ensure that those water supplies are dependable, of good quality, and affordable.

S. 1258 would amend the Reclamation Safety of Dams Act to authorize funding and oversight for Reclamation's Site Security program and apply the Act's existing reimbursability requirements to all building and Site Security activities. Because both the Site Security program and the Safety of Dams program are exclusively for the purpose of ensuring the structural integrity of Reclamation facilities, S. 1258 provides that both programs have the same basis for determining cost reimbursability. Under the legislation, 15% of all costs incurred for facility fortifications, operation, maintenance and replacement of such fortifications and guards and patrols, as identified in Reclamation's Report to Congress, February 2006, would be subject to reimbursement by the water and power customers.

The CVP Water Association fully supports Reclamation's efforts to protect the physical and operational integrity of its multi-purpose facilities from attack, but has had serious concerns about the lack of cost controls, customer involvement and Congressional oversight of the Site Security program, as well as the inequitable allocation of reimbursable costs to water and power customers. S. 1258 would address these concerns by authorizing Reclamation's Site Security program as part of the agency's Dam Safety program.

Most importantly, the legislation would provide certainty for water and power users by establishing a statutory allocation of financial responsibly for the Site Security program, thus ensuring that any future changes in that allocation would be subject to full public review and debate. Currently, costs are allocated according to Reclamation policy, which can change at anytime.

The bill is supported by a broad coalition of Western water and power entities, including the CVP Water Association, the Sacramento Municipal Utility District, the Northern California Power Agency, the Family Farm Alliance and others.

We respectfully request your support for S. 1258 and for its approval by the Energy and Natural Resources Committee.

If you have any questions or concerns regarding this legislation, please feel free to contact me.

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, UPPER COLORADO REGION,
Durango, CO, December 29, 1994.

Mr. THOMAS K. COLBERT,
President, Mancos Water Conservancy District, 42888 County Road N, Mancos, CO.

Subject: Annual Review of Operation and Maintenance (RO&M) Report, the 1994 Examination of Jackson Gulch Dam, Mancos Project, Colorado

DEAR MR. COLBERT: Enclosed is a copy of the subject report for your files and records. We commend the Mancos Water Conservancy District (District) personnel and The Board of Directors on the operation and maintenance of project facilities.

If you have any questions or comments, please contact Stan Mattingly.

Sincerely,

ACTING FOR PATRICK J. SCHUMACHER,
Chief, Water and Land Division.

Enclosures.

REVIEW OF OPERATION AND MAINTENANCE—MANCOS WATER CONSERVANCY DISTRICT SYSTEM

MANCOS PROJECT

I. GENERAL DESCRIPTION OF PROJECT AND FACILITIES

As a feature of the Mancos Project, the inlet canal serves as the primary source of water for the offstream Jackson Gulch Reservoir. Its headworks are about 7 miles northwest of Mancos, Colorado, on the West Mancos River, and the canal has a length of 2.6 miles and capacity of 258 cubic feet per second (cfs). The outlet canal has a capacity of 207 cfs and a length of 2.2 miles from Jackson Gulch Dam and its termination point at the West Mancos River. Both canals were constructed during 1943-1950.

II. DATE OF EXAMINATION AND PERSONNEL

November 23, 1994

- Gary Kennedy, Superintendent, Mancos Water Conservancy District
- Stan Mattingly, Water Operations Branch, Durango Projects Office

III. STATUS OF PREVIOUS RECOMMENDATIONS

Category 1

None.

Category 2

- 90-2-A—Adjust or replace bottom seal on radial gate at headworks.—Incomplete.
- 90-2-B—Clean and paint new headworks radial gate located 400 feet upstream of old radial gate and also clean and paint old radial gate.—Incomplete.
- 90-2-C—Inlet canal—Finish repair of seep and compact material adjacent to the seep.—Complete.
- 90-2-D—Reshape outlet canal to its original alignment to eliminate ponding.—Complete.
- 93-2-A—Replace or repair two south bench flume wall panels directly downstream from diversion dam.—Incomplete.
- 93-2-B—Stabilize the inlet channel directly upstream of Jackson Gulch Reservoir.—Partially Complete.

Category 3

- 93-3-A—Core the wood bridge stringers to determine the extent of deterioration.—Incomplete.
- 93-3-B—Remove willows and brush along the inlet and outlet canals.—Partially Complete.

IV. NEW RECOMMENDATIONS

Category 1

None.

Category 2

None.

Category 3

None.

V. DETAILS OF THE 1994 EXAMINATION

Jackson Gulch Dam and Outlet Works

Jackson Gulch Dam and outlet works were inspected and found to be in satisfactory condition.

Inlet Canal

The old radial gate downstream of the diversion headworks needs to be painted and the seals adjusted or replaced as recommended during the 1990 examination (90-2-A and 90-2-B). Two south bench flume wall panels need to be replaced or repaired (93-2-A). These panels are directly downstream of the diversion dam headworks. The panels are leaning into the inlet canal.

The District has installed and is in the process of installing covers for the bench flume. These covers protect the bench flume against sliding material entering the flume. The covers also protect the flume form falling rocks.

The condition of the first wood bridge downstream of the diversion dam headworks was discussed. The top of the stringers have deteriorated. These stringers need to be cored to determine the extent of deterioration (93-3-A). Supports have been installed under the bridge to allow concrete trucks to cross.

The District is continuing to monitor seeps from both embankment and concrete lined canal sections. The District is also continuing with the program to remove willows and brush growing along the canal in some reaches. These willows and brush along the inlet canal need to be removed (93-3-B). The inlet channel directly upstream of Jackson Gulch Reservoir has been stabilized by the District (93-2-B).

A seep near the south side of the drop flume is being monitored by the District.

The drop flume and stilling basin were inspected during the year. In late September, the District cleared the stilling basin of debris that had been accumulating since original construction. There was found to be an extensive area of concrete erosion downstream of the stilling basin dentates (see Photo No. 1).* The eroded area was repaired by replacing missing reinforcement and placing silica fume concrete. A road was reopened on the west and north sides of the reservoir to allow access for the concrete delivery truck (see Photos No. 2, 3, and 4).*

Diversion Dam

The diversion dam headworks radial gate was inspected. This gate needs to be painted and the seal replaced or adjusted (90-2-A). The diversion dam concrete is in good condition with no spalling or cracking.

Outlet Canal

The outlet canal is in fairly good condition. Willows and brush have grown along the canal. These willows and brush need to be removed (93-3-B). A seep in the canal embankment at a point just upstream of the concrete lined section is causing sliding failure of the embankment. The District will reshape and monitor further problems. One reach of the canal had been widened due to failure of a bank. The outlet canal has been reshaped to its original alignment to eliminate ponding (90-2-D).

The drop structure and stilling basin were not inspected. The District attempted to dewater the stilling basin but other maintenance activities prevented the District from completely dewatering it. Mr. Kennedy is not aware of any reports on prior dewatering attempts. The stilling basin needs to be dewatered and inspected prior to or during the next annual inspection.

VI. CONCLUSIONS

Mancos Water Conservancy District System is in good condition. The District should be commended for their efforts to keep the system in good operating condition.

STATEMENT OF KARA GILLON, SENIOR STAFF ATTORNEY, DEFENDERS OF WILDLIFE

S. 300

Mr. Chair and Members of the Subcommittee, I am Kara Gillon, Senior Staff Attorney with Defenders of Wildlife. Thank you for this opportunity to provide testimony on S. 300, a bill to authorize appropriations for the Bureau of Reclamation to carry out the Lower Colorado River Multi-Species Conservation Program.

Defenders of Wildlife ("Defenders") is a national, nonprofit membership organization dedicated to the protection of all native wild animals and plants in their natural communities. Headquartered in Washington, D.C., Defenders has field offices in Albuquerque, NM, where I am located, and throughout the Colorado River basin states, in Tucson, AZ, Sacramento, CA, and Denver, CO.

Before summarizing our concerns with the Multi-Species Conservation Program, also known as the "MSCP," and proposed authorizing legislation, I first want to address briefly the Lower Colorado River—how it has been managed over the last seventy years and why the MSCP could do a better job addressing the environmental degradation suffered by the Colorado River and Delta.

We appreciate the effort and resources put into the MSCP. At its inception, Defenders seized on the opportunity presented—long-term, large-scale habitat improvement and species recovery where before there was very little. Unfortunately, the final MSCP provides lesser protections for fewer species over a smaller area.

Ten years ago, the Bureau of Reclamation found in its own biological assessment of its historic and ongoing operations that "[H]uman-induced change since the beginning of the century has resulted in an ecosystem having significantly different phys-

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* Photos 1-4 have been retained in committee files.

ical and biological characteristics. Such changes have taken place as a result of the introduction of exotic plants (such as salt cedar), the construction of dams, river channel modification, the clearing of native vegetation for agriculture and fuel, fires, increasing soil salinity, the cessation of seasonal flooding, and lowered water tables."[1] It is as if man created an entirely different river.

Native wildlife is finding survival in an altered Colorado River basin more difficult. These changed processes no longer naturally sustain riparian forests and meadows, fail to provide young fish access to flooded lands and leave young fish more susceptible to predation by sight-feeding, non-native predators.

The plight of the "Big River Fishes" highlights this extreme ecological degradation. All four fish are listed as endangered under the Endangered Species Act—the Colorado pikeminnow; bonytail; razorback sucker; and humpback chub. The Colorado pikeminnow has been extirpated from the lower basin and is not even considered by the MSCP. The bonytail also has been virtually extirpated from the wild. Razorback sucker populations have declined from 50,000 to 5,000 fish over the last ten years with very small wild populations; they are not self-sustaining. There is only one small population of the humpback chub in the lower basin.

Habitat restoration and fish augmentation performed without regard to the well-known threats to listed species are likely to fail. Years of river restoration efforts have shown us that successful river restoration is critically dependent on understanding and addressing the causes of the river's decline (Palmer et al., 2006; Aronson & Le Floch, 1996). The restored habitats and stocked fish will continue their decline because the MSCP does not address the root causes of habitat degradation and low fish survival—the impounding, storing, and diverting of the river's waters without regard to the natural hydrograph that naturally sustains the cottonwood-willow forest, mesquite bosque, and backwaters that harbor razorback suckers, bonytails, southwestern willow flycatchers and other fish and birds, compounded by the stocking of non-native predatory fish.

Success of the conservation plan is also questionable because there are no goals or objectives for habitat restoration. Without goals or objectives, there are no metrics for measuring success. For example, we do not know if cottonwood-willow habitat is successful if we find one southwestern willow flycatcher, a flycatcher nest, or ten flycatchers. We also do not know that mitigation will occur prior to adverse impacts or if permanently lost habitat will be maintained in perpetuity. We also do not know how the MSCP will select habitat creation and restoration sites; thus we do not know if the MSCP will select sites that are off-channel or hydrologically connected to the river.

Lastly, the MSCP purports to ensure the survival of imperiled fish and wildlife for the next fifty years yet fails to address perhaps the largest threat wildlife will fact in this century—global warming. In 2004, a report prepared for the Pew Center on Global Climate Change synthesized published global warming studies and concluded that there was "convincing evidence" that anthropogenic global warming had significantly affected natural systems and that "[t]he addition of climate change to the mix of stressors already affecting valued habitats and endangered species will present a major challenge to future conservation of U.S. ecological resources" (Parmesan & Galbraith, 2004).

In fact, this year, Working Group II of the Intergovernmental Panel on Climate Change ("IPCC") issued a Summary for Policy Makers which states with medium confidence that 20-30% of plant and animal species assessed in the report have an increased chance for extinction if the average global temperature increases by more than 1.5-2.5° Celsius. According to the IPCC, an increase in temperatures above this range would drastically alter ecosystem structure and functions, species' ecological interactions, and species' geographic ranges (IPCC, 2007).

Colorado River fish and wildlife are particularly susceptible to adverse effects because of their concentrated habitat and their location in the Southwest. Global warming is likely to cause temperatures in the Southwest to increase above levels which increase a species chances for extinction, according to the IPCC. Furthermore, the IPCC predicts with very high confidence that global warming will lead to decreased snow pack, more winter flooding, and reduced summer flows for the mountains of the American West. Global warming effects likely to affect the Colorado River fish include precipitation decreases in the lower-basin by mid-century, early snowmelt runoff in the upper-basin, decreased overall runoff, and increased evaporation rates (Garfin & Lenart, 2007). Therefore, global warming is likely to produce changes in stream flows, precipitation, water temperature, and ecosystem structure

[1] Bureau of Reclamation, DESCRIPTION AND ASSESSMENT OF OPERATIONS, MAINTENANCE, AND SENSITIVE SPECIES OF THE LOWER COLORADO RIVER 83 (1996), available at http://www.usbr.gov/lc/region/g2000/batoc.html.

which could very well result in an increased probability of fish extinction in the Southwest, such as in the Colorado River (National Assessment Synthesis Team, 2001).

The imperiled status of many of these fish leave them less equipped to adapt to habitat modifications presented by global warming, making the possible effects upon them even more severe and leaving them more vulnerable to extinction. The MSCP is a rare, but foregone, chance to assist wildlife through the looming bottleneck of complex effects of global warming.

To institutionalize the MSCP, as called for in the proposed legislation, may instead present one more challenge to wildlife conservation in the lower Colorado River.

We too face increasing challenges from a highly regulated river system, increasing water use, drought, and climate change. The National Research Council has recently synthesized several studies that tell us historical conditions are no longer a reliable indicator of future conditions, with future droughts exceeding those of recent experience. First, our streamflow record in the basin is only a small subset within a range of greater variability than previously thought. For example, we are learning that although up to 16.5 million acre-feet of water has been allocated to users in the United States and Mexico, the river naturally yields 12.5 million acre-feet to 14.7 million acre-feet of water. In addition, studies show a trend of increasing temperatures across the basin and a reduction in future streamflow (National Research Council, 2007). The MSCP, however, does not confront any of these challenges. For this reason, the success of proposed habitat restoration and fish augmentation is highly uncertain.

In the face of growing challenges, the desire for certainty will increase. To provide the level of certainty contemplated here can only come at the expense of assurances for another—the environment. Instead, we suggest legislation that preserves the Secretary of the Interior's authority as "water master." Think instead in terms of flexibility and resiliency, where mechanisms may be created that create opportunities for all—whether through new opportunities and creative ideas for storage, instream flow, water acquisition programs, or reservoir re-operation. Certainty, whether over water supply or other resources and gained only at the expense of others, will create an untenable and unsustainable condition.

This legislation will have the effect of constraining the Secretary of the Interior at precisely the time we need more opportunities for the Colorado River system. Provisions that codify the Program Documents and No Surprises and direct the Secretary to perform certain functions are inappropriate.

THERE IS NO PRECEDENT FOR THE CONSTRAINTS PLACED ON THE SECRETARY OF THE INTERIOR

The legislation proposed here is far, far different from that for other endangered fish programs authorized by Congress. Nearby and oft-cited examples are the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Endangered Fish Recovery Program.

Legislation for the MSCP should only do what may be necessary for federal participation in the program: authorize appropriations; authorize the federal party to acquire interests in land and/or water, accept or provide grants, and enter into contracts and cooperative agreements; and authorize the federal party to carry out aspects of the program. Rather than simply authorize the Secretary's participation, S. 300 directs the Secretary to take a certain course of action. Doing so confines the Secretary's authority as "water master" for the next fifty years.

Moreover, codifying the Program Documents would encourage other programs to emulate this legislative approach despite the fact that key documents—the Implementing Agreement and the Funding and Management Agreement—were not made available for public review and comment.

S. 300 also constrains future Congresses. The bill contains what is, in effect, a legislative no surprises policy requiring future Congresses to explicitly state if legislation applies to the MSCP, turning traditional legislative drafting and interpretation on its head.

AN HCP AND "NO SURPRISES" ARE INAPPROPRIATE DUE TO THE LEVEL OF FEDERAL INFLUENCE

The MSCP is a combination of Endangered Species Act ("ESA") sections 7 and 10, providing coverage for federal and non-federal participants. Use of a section 10 Habitat Conservation Plan, or HCP, is inappropriate in light of the federal nexus associated with nearly all lower Colorado River activities. Section 10 and use of the "No Surprises" policy are only appropriate where there is no federal nexus.

The provision in the bill directing the Secretary to act in accordance with the Program Documents not only enacts No Surprises assurances for the non-federal participants but also for federal parties. Neither the Endangered Species Act nor its regulations authorize extension of No Surprises to federal agencies.

The federal government is implicated in nearly every aspect of lower Colorado River operations, due to the Secretary of the Interior's role as "water master". The Bureau of Reclamation has been delegated responsibility for operating and maintaining the extensive network of dams, water diversions, levees, canals, and other water control and delivery systems on the River. Reclamation's authority and discretion are guided by a body of treaties, Congressional enactments, compacts, and other agreements known as the law of the river.

In 1928, Congress passed the Boulder Canyon Project Act which authorized the construction of a dam system on the River. Importantly, the Act reserved for the federal government broad authority over the operation of the dam system. As the Supreme Court in Arizona v. California explained, it was the United States' undertaking of this ambitious project and its concomitant assumption of responsibility for its operation, that "Congress put the Secretary of Interior in charge of these works and entrusted him with sufficient power . . . to direct, manage, and coordinate their operation."[2]

Unlike biological opinions for federal agencies pursuant to section 7, which could change in future consultations, section 10 HCPs include No Surprises assurances. In general, if the status of a species covered by an HCP worsens because of unforeseen circumstances, the Fish and Wildlife Service will not require conservation or mitigation measures in addition to those in the HCP without the consent of the permittee.

To obtain these assurances available only to non-federal parties, the MSCP parties employed a section 7/10 hybrid that pooled federal and non-federal actions and effects as interrelated. If No Surprises prohibits the Fish and Wildlife Service from requiring additional mitigation measures from non-federal participants in terms of land, water or other resources, the Fish and Wildlife Service may be equally constrained in requesting changes to federal activities.[3]

In other words, there is a high degree of federal influence in lower basin operations. Section 10 of the ESA relates solely to authorizing take of listed species by non-federal entities. Use of section 10 and the No Surprises policy are therefore inappropriate.

THE DEGREE OF FEDERAL INFLUENCE RENDERS DIRECTION TO THE SECRETARY UNNECESSARY

Similarly, given the authority possessed by the Secretary as "water master," directing a water accounting agreement is unnecessary and unwise. The Secretary has ample authority to provide for the comprehensive management and control of the Lower Basin system. Indeed, the Secretary need not be authorized or directed to enter into a water agreement any more than he needs authority to enter into the Colorado River Water Delivery Agreement or to develop surplus or shortage guidelines. And again, to direct the Secretary to enter into this water agreement is problematic because the Program Documents do not mention the need for such an agreement, even after comment that the documents were vague as to the sources and use of water for the MSCP, and there will be no future opportunity to comment on such agreement.

THE MSCP DOES NOT COVER ALL LISTED SPECIES

Defenders was a member of the MSCP Steering Committee during the mid-1990s, during which we sought opportunities for the MSCP to include the Colorado River Delta within its coverage and conservation areas. After extensive negotiations with other MSCP participants and after the Steering Committee voted not to endorse an agreement where the MSCP would give good faith consideration of conservation opportunities in Mexico, Defenders withdrew in late 1998.

The Colorado River basin encompasses nine states: seven in the United States and two in Mexico. The MSCP planning area, however, only "comprises areas up to and including the full-pool elevations of Lakes Mead, Mohave, and Havasu and the historical floodplain of the Colorado River from Lake Mead to the Southern

[2] Arizona v. California, 373 U.S. 546, 589-90 (1963).

[3] See Lower Colorado River Multi-Species Conservation Program Implementing Agreement at Sec. 7.2 (recognizing that federal and non-federal actions are so interconnected that a federal action could arguably be included in a section 10 permit), available at http://www.usbr.gov/lc/lcrmscp/publications/FinalIA.pdf.

International Boundary." Although these fish naturally occurred in this area, the MSCP wrongly excludes the Colorado pikeminnow from consideration; it offers no conservation measures for the fish. Moreover, the MSCP "Planning Area" does not encompass the entire area that may be affected by the covered actions—the Colorado River Delta. Several endangered species, including the razorback sucker, Yuma clapper rail, desert pupfish, and vaquita, find a home there, are affected by activities along the lower Colorado River, and deserve protection.

CONCLUSION

In its current form, the Lower Colorado River MSCP preserves the Secretary's role as water master of the Colorado River. Defenders of Wildlife has long advocated for flexibility in Colorado River management in order to increase the reliability and predictability of use of river resources. Such flexibility, however, should not come at the expense of the Secretary's environmental authorities and obligations nor should the Secretary relinquish his role as water master in lower Colorado River management in an attempt to achieve such flexibility.

Providing for increased levels of flexibility in river management will be critical to meeting the demands of both human and environmental water users in the future, particularly as Upper Basin use and the impacts of climate change decrease overall water availability in the Colorado River system. Defenders believes that S. 300 goes beyond what it needed to authorize the MSCP and may limit our options to address future challenges.

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FAMILY FARM ALLIANCE,
Klamath Falls, OR, July 25, 2007.

HON. Ken Salazar,
Acting Chairman, Senate Energy and Natural Resources Subcommittee on Water and Power, United States Senate, 304 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SALAZAR: On behalf of the Family Farm Alliance (Alliance), I would like to express support for S. 1258, a bill to amend the Reclamation Safety of Dams Act of 1978 to authorize improvements for the security of dams and other facilities.

The Family Farm Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers.

The Bureau of Reclamation (Reclamation) operates about 180 projects in the area covered by our membership. Reclamation projects provide agricultural, household, and industrial water to about one-third of the population of the American West.

About 5 percent of the land area of the West is irrigated, and Reclamation provides water to about one-fifth of that acreage.

The federal multi-purpose dams associated with these projects were authorized by Congress to provide a wide range of significant benefits to millions of citizens in the United States and elsewhere, including: flood control; irrigation; municipal water supply; lake and stream recreation; river regulation; fish and wildlife propagation and mitigation; and power generation and transmission.

Ensuring the security of these federal dams and related facilities is of utmost importance to all citizens of the United States, not just to the direct beneficiaries of these resources. This fact must be recognized in the allocation of security costs between the federal government and non-federal water and powers users. Currently, that allocation is established by Reclamation policy, not by law, and the policy is subject to change. In the past two years, Reclamation has changed its policy to move a larger share of security costs to water and power users. We fear that this trend will continue in the future.

The Alliance believes that Congress should establish in law an equitable allocation of security costs. This is the only way to prevent future administrations from shifting a greater and greater share of the financial burden on to non-federal water and power users.

S. 1258 would accomplish this. It would provide a ceiling on the amount of reimbursable security costs that would be borne by beneficiaries of the dams and would, therefore, keep costs manageable and provide needed certainty for future planning.

The Alliance supports this legislation because we believe it helps to address our concerns about the lack of cost controls, authorization ceiling, sunset date, and congressionally-approved parameters to control the amount of money Reclamation can spend for increased security. The burden our water customers are being asked to shoulder for these counter-terrorism measures are above and beyond normal operation and maintenance functions.

We look forward to continuing to work with you as the legislation proceeds. If you have any questions about this letter, I encourage you or your staff to contact me.

Sincerely,

DAN KEPPEN,
Executive Director.

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, UPPER COLORADO REGION,
Durango, CO, July 10, 2006.

MR. Dee Graf,
President, Mancos Water Conservancy District, 42888 CR N, Mancos, CO.

Subject: 2006 Annual Review of Operation and Maintenance for Mancos Project Inlet and Outlet Canal System, Mancos Project, Colorado

DEAR MR. GRAF: Enclosed is the 2006 annual Mancos Project Review of Operation and Maintenance (RO&M) Area Office examination report for the Inlet and Outlet Canal System. Please review the report and note the current status of our RO&M recommendations.

We appreciate the continued cooperation of the Mancos Water Conservancy District, and Reservoir Superintendent, Mr. Gary Kennedy, and his interest in protecting the integrity of Jackson Gulch Dam and Reservoir.

In addition to the inspection of the inlet and outlet canals, a separate inspection was also completed on the dam. This report is being sent under a separate cover letter.

If you have any questions concerning this report, please contact Jim Rottman.

Sincerely,

BRAD DODD,
Chief, Facility Maintenance Group.

ATTACHMENT.—MANAGING WATER IN THE WEST

ANNUAL REVIEW OF OPERATION AND MAINTENANCE FACILITIES EXAMINATION REPORT

MANCOS PROJECT INLET AND OUTLET CANAL SYSTEM

MANCOS PROJECT COLORADO

2006 ANNUAL RO&M INSPECTION

The Annual Inspection of the Mancos Project Inlet and Outlet Canal System was conducted on June 19, 2006, as required under the RO&M Program, Reclamation Manual, Directives and Standards FAC 01-04. The cooperation and assistance provided by Mancos Water Conservancy District (MWCD) personnel in conducting the review are appreciated.

The following personnel attended the inspection: Mr. Gary Kennedy, Reservoir Superintendent, MWCD; Brad Dodd, BOR, Facility Maintenance Group Chief, WCAO-D; Jim Rottman, BOR, Facility Maintenance Group; Tom Strain, BOR, Facility Maintenance Group.

Results of the inspection are summarized on the enclosed inspection checklist. A summary of the relevant RO&M recommendations, with estimated completion dates, is also enclosed.

OPERATIONAL AND WEATHER DATA

Reservoir water surface elevation.—7,820 feet.

Reservoir storage (active).—8,890 acre feet.

Releases: Outlet works.—Total release of 55 cfs consisting of 45 cfs through the power plant and 10 cfs through the 24-inch jet valve.

Weather.—Sunny and breezy.

STATUS OF PREVIOUS RECOMMENDATIONS

2003-2-A

Install buoy lines above major drop structures.

Status.—Incomplete—buoy's purchased in 2006 and on site, will be installed as time allows.

2004-2-A

Install "No Swimming" signs.

Status.—Incomplete—signs on site, will be installed as time allows.

2004-2-B

Install "No Trespassing" signs along canal.

Status.—Incomplete—signs on site, some installed and others will be installed as time allows.

2004-2-C

Repair leaking joints in concrete box sections.

Status.—Incomplete—outlet box section completed, after evaluation of test sections on inlet canal, will complete as necessary.

2004-2-D

Investigate repair methods for existing inlet canal structures—earthfill and concrete sections.

Status.—Incomplete—test sections in third and last year of review, repair method to be chosen in 2007.

2004-2-E

Furnish Reclamation with piezometer data for canal wells.

Status.—Completed in June 2006.

LISTING OF NEW RECOMMENDATIONS

There is one new recommendation for the operation and maintenance of Marcos Project Inlet and Outlet Canal System.

2006-2-A

District will resume negotiations with landowner on downstream easement for outlet canal drop structure.

The following table is a status summary of the RO&M Recommendations for Marcos Project Inlet and Outlet Canal System:

MANCOS PROJECT CANAL SYSTEM—COLORADO

RO&M RECOMMENDATIONS—SUMMARY OF STATUS

Number	Description	Status	Estimated Completion Date	Actual Completion Date	Originated by (office)
2003-2-A	Install buoy lines above major drop structures.	Incomplete—buoy's on site, will be installed as time allows.	2006		Area
2004-2-A	Install "No Swimming" signs	Incomplete—signs on site, will be installed as time allows.	2006		Area
2004-2-B	Install "No Trespassing" signs along canal.	Incomplete—signs on site, will be installed as time allows.	2006		Area
2004-2-C	Repair leaking joints in concrete box sections.	Incomplete—Outlet box sections done; ongoing.	2006		Area
2004-2-D	Investigate repair methods for existing inlet canal structures—earthfill and concrete sections.	Incomplete—lined sections in third and final year of evaluation.	2006		Area
2004-2-E	Furnish Reclamation with piezometer data for canal wells.	Completed	2006	June 2006	Area
2006-2-A	District will resume negotiations with landowner on downstream easement for outlet canal drop structure.	New	2007		Area

DEFINITIONS OF THE RECOMMENDATION CATEGORIES

Inspections of Bureau of Reclamation (Reclamation) project facilities are conducted under the Review of Operation and Maintenance (RO&M) Program. O&M issues noted during the RO&M inspection are assigned a Category 1, 2, or 3, based upon the severity of the problem. The following definitions (revised May 1993) apply to all levels of Reclamation RO&M inspections:

CATEGORY 1

Recommendations involving the correction of severe deficiencies where immediate and responsive action is required to ensure structural safety and operational integrity of a facility.

Based on the severity of the deficiency and the condition of the structure/facility at the time of the examination, the examination team will mutually prescribe an appropriate time frame for completion of the recommendation. Suggested remedial measures will be discussed at the time of the examination and included in the examination report. Within 30 days following preparation or receipt (depending on office conducting the examination) of the examination report containing a Category 1 recommendation, the responsible Regional Directory shall notify all concerned offices (i.e., Commissioner, Attention: W-6500 and W-6600, and Assistant Commissioner—Resources Management, Attention: D-5620 and D-5850) of the operating office or entity's plan for accomplishing the work and a schedule completion date.

Status reports will be provided by the responsible Regional Director to all concerned offices every 6 months (January 1 and July 1) until the recommendation is completed. Progress made on its completion will be reported in the Annual Summary Report for the RO&M Program.

CATEGORY 2

Recommendations covering a wide range of important matters where action is needed to prevent or reduce further damage or preclude possible operational failure of a facility.

Such recommendations are intended to be acted upon as soon as practicable following receipt of the corresponding examination report by the operating office or entity. It is desirable that those recommendations that can be included, scheduled, and accomplished as part of the normal O&M program, be undertaken as soon as weather or water conditions allow, to permit quality remedial measures. Some recommendations may require a longer time to accomplish because of the need to budget funds, complete designs, or secure equipment, material, or personnel. In such cases, the related planning and budgeting should be initiated in a timely manner.

Any Category 2 recommendation remaining incomplete at the time of the following examination (generally 3 years) will be addressed during that examination and within the corresponding examination report.

Status reports will be provided on these recommendations by the responsible Regional Director to the Assistant Commissioner—Resources Management, Attention: D-5850, on an annual basis and summarized in the Annual Summary Report for the RO&M Program until such recommendations are completed.

CATEGORY 3

Recommendations covering less important maters but believed to be sound and beneficial suggestions to improve or enhance the O&M of the project or facility.

Status reports on an annual basis will not be required on these recommendations; however, the status of each recommendation will be provided in the subsequent examination report. If the recommendation is still applicable, a current year designation should be used.

DESCRIPTION OF FACILITIES EXAMINED

A. Diversion Structure

The diversion structure is in good condition. The concrete, gates, and screen are in good condition. There is some debris on the inlet screen, but does not affect operation of the intake structure.

B. Canal Headwork

The canal headwork is in good condition. The concrete, painted metal, gate valves, and gates are in good condition. The gates have new paint and seals and look very good. The sluiceway gate has a minor leak of approximately 1-2 cfs.

C. Inlet Canal

The inlet canal is in fair to good condition. The District is preparing to do some additional slope protection above the canal (begun in 2005) and has begun to place

a soil/debris layer on top of the concrete lids to protect the canal from falling rocks during the slope scaling.

Several of the inlet concrete box sections have test linings installed and are being evaluated before an extensive repair is attempted for the leaking concrete box sections. This is the third and final year of the evaluation. There are some random and stress cracks and concrete box joints that are leaking. The District has marked the locations on the concrete and continues to monitor the leakage.

The District contracted with Buckhorn Geotech in 2003 to evaluate the inlet canal and make recommendations as to repair/replacement techniques. A recommendation report was published in February 2004.

Seepage and subsidence along the canal is generally minimal, both have occurred in the past along sections, but conditions appear to be stable at the time of the inspection. The slopes above the canal appear to be relatively unstable and landslide debris can build up on top of the canal or adjacent to it. The District is doing a good job cleaning the debris as necessary.

The new ramp flumes are in good condition. There is none to minor silting in the concrete box sections and inlet headwork.

D. Outlet Canal

The outlet canal section is in good condition with no abnormal conditions noted. The joints of the concrete box sections have been sealed with Sikaflex. The District has new buoys and cables that they will install above the drop structure that flows back to the Mancos River.

MANCOS PROJECT INLET AND OUTLET CANALS—COLORADO

CHECKLIST FOR RO&M INSPECTION

	Data
OPERATIONS:	
Project Name	Mancos
Owner	Bureau of Reclamation
Operating Entity—Reservoir Superintendent.	Mancos Water Conservancy District (MWCD)—Gary Kennedy
Date of Inspection	June 19, 2006
Last RO&M report date	June 28, 2005
Person responsible for RO&M report	Tom Strain/Jim Rottman/Brad Dodd, WCD
Last RO&M report copy on hand?	Yes
Attendance at Project	Daily during irrigation season, weekly during rest of season.
Ditch operators training (name, date).	Gary Kennedy. Completed Dam Tenders Training 2006
Flow	Inlet 19 CFS, Outlet 55 CFS (June 19, 2006)
OPERATING LOG:	
Maintained at headquarters?	Yes
Maintenance log updated?	Yes
SOP/DOC	Included in Jackson Gulch Dam SOP
Ditch copies updated?	Yes
How many copies?	Three
Where kept?	Dam tenders residence
COMMUNICATIONS:	
Type(s)	Telephone, Cell Phone
Normal	(970) 533-7325
Standby	(970) 560-2742 (Gary Kennedy cell) 560-6513 (cell in truck) 560-6514 (cell at power plant)
Adequacy	Good coverage, Dam tenders residence
ACCESS ROADS:	
Sufficient access/adequacy	Generally Adequate—section of inlet canal access adjacent to canal failed several years previous and is non-existent. Work being done to provide access along canal. 1950's
OIL CONTAINMENT:	
SPCC Plan? Last Updated?	None

MANCOS PROJECT INLET AND OUTLET CANALS—COLORADO—Continued

CHECKLIST FOR RO&M INSPECTION

	Data
GENERAL OPERATIONS:	
Landslides	No new activity—annual registry—submitted 2005
Landslide Restricted/Signs	No—slides monitored annually, locked gate for access control
Underwater inspection	None needed
Weed control program	Throughout the season.
DIVERSION STRUCTURE:	
Concrete	Ok
Rock/Debris waterdrop	Ok
Riprap	Ok
Abutment walls	Ok
Wingwalls	Ok
Embankments	Ok
Foundation at downstream toe of structure.	Ok
CANAL HEADWORKS:	
Vegetation	Ok
Rock	Ok
Crest	Ok
Concrete	Ok
Gates	Ok
Coating	Ok
Hoists	New cables.
Operation	Ok
Leakage	Ok
Guardrails	Ok
Sluiceway	Ok—Minor gate leak about 1-2 cfs
Outlet channel	Ok
Standby power	Not needed—manual
Other	None
INLET CANAL:	
Under drains	Ok—where existing
Detention ponds	N/A
Subsidence	Mostly None—some in areas of landslide and fill sections
Seepage	Ok in general, installed piezometers in 2003—not monitored this year—seepage in some areas where original earth lining is missing. Very little noted during inspection.
Linings	Ok for age of Project, earth lining in several areas needs replaced, concrete box joints leaking in several areas.
Constructed joints	Ok overall for age of Project. In general, the concrete box sections joints need attention-several are leaking.
Cracking	Random and stress relief cracking
Joint sealers	Marginal for most of concrete box sections—in some areas, seals have rusted through.
Silting	None to minor
Check Structures	Ok
Structural features	Ok
Measuring flume	Two ramp flumes constructed—one in canal, one in river—condition good.
Silting	None to minor
Bridge	Culvert—Ok
Deck	Ok—gravel
Railings	Ok
Structural features	Ok
Operating roads	Generally graveled, minor areas are dirt

MANCOS PROJECT INLET AND OUTLET CANALS—COLORADO—Continued

CHECKLIST FOR RO&M INSPECTION

	Data
Vegetation	Ok
Safety features	Need signage and floats/buoys above inlet to drop structure
Over chute	N/A
Spills	Ok
Siphons	None
Pipe	Good—restricts flow
Canal chute concrete lids	Ok for project age
PVC liner	½ mile D/S of diversion structures installed 1998—added on to 1999 added flow capacity to 120 cfs. Third and last year of evaluation.
OUTLET CANAL:	
Under drains	Ok
Detention ponds	None
Subsidence	Ok
Seepage	Minor
Linings (earth)	Ok—earth lining may be missing in some areas
Constructed joints	Ok
Random cracking	Ok
Joint sealers	Ok
Silting	Ok
Check structures	Ok
Structural features	Ok
Measuring flume	Ok
Silting	Ok
Controls	Ok
Turnouts	Ok
Gates	Ok
Structure	Ok
Bridge	Ok—Inspected in 2004
Deck	Ok
Railings	Ok
Structural features	Ok
Operating roads	Ok—water line buried underneath
Vegetation	Ok
Safety features	Need signage and floats/buoys above inlet to drop structure
Concrete chute section	Ok for age of structure
Canal-cut section	1 mile downstream of dam—MWCD having problems maintaining this section.

Representative photographs.*

CONCLUSION AND SUMMARY

Overall the District has maintained the facilities in good condition. District is preparing the inlet canal for a slope stability contractor and has had little time to work on RO&M recommendations this spring. As time allows the District will work on them. One new recommendation was added concerning the District negotiating with a landowner for an easement to the outlet canal drop structure. Report prepared by: Tom Strain, Facility Maintenance Group. Approved: Brad Dodd, Facility Maintenance Group Chief, WCAO-D.

* Photographs have been retained in subcommittee files.

KANSAS DEPARTMENT OF AGRICULTURE,
Topeka, KS, July 25, 2007.

HON. Tim Johnson,
Chairman, Subcommittee on Water and Power, 304 Dirksen Senate Office Building, Washington, DC,

HON. Bob Corker,
Ranking Member, Subcommittee on Water and Power, 304 Dirksen Senate Office Building, Washington, DC.

RE: Support for H.R. 1025, Republican River Study

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER CORKER: On behalf of the Governors Sub-Cabinet on Natural Resources for the State of Kansas, I am writing to express our support for H.R. 1025. This bill authorizes the Secretary of the Interior to conduct a study to determine the feasibility of implementing a water supply and conservation project to improve water supply reliability, increase the capacity of water storage, and improve water management efficiency in the Republican River Basin between Haman County Lake in Nebraska and Milford Lake in Kansas.

During December 2002, Kansas, Nebraska and Colorado settled their litigation in the U.S. Supreme Court regarding the enforcement of the Republican River Compact, which the Court affirmed during October 2003. The settlement included a commitment by the States and federal government to pursue system improvements in the basin, including measures that would improve the ability to allow periodic excess waters to be made available for later use to supplement existing irrigation supplies in Kansas and Nebraska.

Thus authorizing the study is the first step toward fulfilling an important provision of the Republican River Compact Settlement. H.R. 1025 is supported by all three Compact states, Nebraska, Colorado and Kansas.

Your support of this study will provide an important tool for the three Compact states to use as they collectively manage this important, interstate water resource.

If you have any additional questions, please feel free to contact me.

Sincerely,

DAVID BARFIELD, P.E.,
Acting Chief Engineer.

KANSAS FARM BUREAU,
Manhattan, KS, July 26, 2007.

HON. Ken Salazar,
United States Senator—Colorado, Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power, 304 Dirksen Senate Building, Washington, DC.

RE: HR 1025, Lower Republican River Basin Study Act

DEAR SENATOR SALAZAR: I am writing to encourage the support of your sub-committee for H.R. 1025. The measure which was authored by U.S. Representative Jerry Moran of Kansas would provide for a study of water use in the Republican River Basin and could facilitate solutions to increased water supply, reliability, storage and management in the Lovewell reservoir region.

This legislation is important to producers in the area for several reasons. First, farmers in the Bostwick Irrigation District have long faced shortages in their allocations due to drought and over-appropriation in Nebraska. Secondly, the Republican River alluvial aquifer and the landowners in the valley who pump its supply have been impacted by the requirements of minimum desirable stream flow resulting in administration of nearly 200 water rights over the majority of the last 10 to 15 years. Both of these factors have resulted in critical shortages of water throughout the region.

Passage of H.R. 1025 and the authorization of this study is the first step toward the creation of additional storage in Lovewell Reservoir which could address many of these shortages and provide important relief to producers in the area.

The State of Kansas has held dollars in its budget anticipating this study, and the Legislature has considered other measures that would set aside potential settlement dollars awarded in water litigation with Nebraska to address shortages in the area in an effort to be prepared should the Federal Government authorize and fund this study by the Department of the Interior.

I appreciate your consideration of this measure and respectfully ask that the subcommittee take favorable action on H.R. 1025. KFB is grateful for your support of Kansas agriculture and your effort to secure a solid future for irrigators across the

state through the passage of H.R. 1025. If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

STEVE BACCUS,
President.

STATE OF OREGON,
THEODORE R. KULONGOSKI, GOVERNOR,
Salem, OR, June 13, 2007.

HON. Jeff Bingaman,
Chairman,

HON. Pete V. Domenici,
Ranking Member,
Senate Energy and Natural Resources Committee, 364 Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS BINGAMAN AND DOMENICI: I write again this year to offer my full support for reauthorization of the Fisheries Restoration and Irrigation Mitigation Act (FRIMA) of 2007. This Act is critical to addressing the challenge of protecting fish while meeting farming, ranching, hydropower and municipal water needs in the Pacific Northwest.

The Fisheries Restoration and Irrigation Mitigation Act is a highly successful voluntary cost-share program, leveraging state and local dollars with federal dollars to achieve benefits for fish, with implementation through cooperative partnerships among local, state, tribal and federal governments and private entities. FRIMA has provided funds for fish screen and fishway installations at numerous irrigation diversions and dams in Idaho, Montana, Oregon and Washington, and has received support from a wide range of constituents as a win-win solution for addressing fish protection while meeting the needs of water users. Partnerships created serve as models of communication and cooperation among the participating or affected entities and agencies.

With the listing of wild Endangered Species Act (ESA) species of salmon and steelhead in the Pacific Northwest, fish screening and passage are critical to improving survival and reducing migration delay. FRIMA is a cornerstone tool for implementing projects to aid in addressing barriers to migration. It is widely accepted that correcting fish barrier, diversion and screen problems provides a large benefit to the resource in creating fish-friendly projects that minimize mortality. Throughout Oregon, the FRIMA Program has been a valuable source of funding for improving fish survival at water diversions and dams. Numerous partners, including the State of Oregon, have contributed significant dollars to this successful cost-share program. Species protected in Oregon have included ESA-listed fish such as salmon, steelhead, trout and Klamath suckers.

Each federal FRIMA dollar has been matched by $1.37 in state or local dollars. Participants have contributed a total of 58 percent toward the cost share, and in addition pay 100 percent of project operation and maintenance costs. The FRIMA projects are completed quickly because existing state fish screening and passage programs are used to implement projects.

Again, I wholeheartedly support reauthorization of the Fisheries Restoration and Irrigation Mitigation Act of 2007, and the necessary funding to support its goals. The fisheries resources and water users of Oregon and the Pacific Northwest have benefited greatly from this program, and it is hoped that those significant benefits will continue long into the future.

Sincerely,

THEODORE R. KULONGOSKI,
Governor.

PROJECT CONDITION REPORT OF THE MANCOS WATER CONSERVANCY DISTRICT

JACKSON GULCH RESERVOIR

The Mancos Project has stored and delivered water for domestic, agriculture, and recreation uses for over 50 years. It is a vital cornerstone underpinning the economy and well-being of an entire community and region hosting national historic resources. The 55-year-old Mancos Project has retained most of its structural integrity and functionality. However, restoration and rehabilitation work is needed to pre-

serve and protect the project's canal system, the operations and maintenance buildings (operations facilities) to extend its working life for another 40 or 50 years.

Aging and gradual deterioration of the canal system, increasing maintenance costs, and a history of delivery interruptions caused by landslides and rockfall incidents, have seriously jeopardized the life expectancy and reliability of the entire canal system. Since Jackson Gulch Reservoir supplies municipal water to Mesa Verde National Park (419,662 visitors in 2003—the eleven year average annual visitation is 591,660 visitors), the Town of Mancos, and the Mancos Rural Water Company, the continued viability of the canal system is critically important to the region.

Recognizing the burden of their responsibility, the Mancos Water Conservancy District entered into a contract with Buckhorn Geotech, Inc. on September 18, 2003, to conduct a thorough assessment and evaluation of the condition of the canal system and identify restoration and rehabilitation work necessary to extend the life of the canal system, improve access and operational efficiency, protect against catastrophic losses, and assure dependable water delivery.

The assessment and evaluation of the Jackson Gulch canal system and operations facilities has identified significant catastrophic problems in the form of concrete aging and deterioration, structural distress, hydraulic constrictions, access limitations, and risks from geologic hazards.

The intention of this project is to preserve and protect 4.9 miles of the canal system and associated operations facilities (workshop/dam tenders residence/public office). Only the areas with problems of the highest priority have been addressed in this proposal.

This is a federal project—title is held by the federal government. The Mancos Water Conservancy District is taking a proactive stand to protect the federal interest and extend the productive life of the Mancos Project facilities. Unfortunately, a project of this magnitude is beyond the financial capability of the population of the District.

The Jackson Gulch Reservoir system consists of an off-line storage reservoir located in Jackson Gulch, which is a deep gulch with very little tributary drainage. The reservoir functions by diverting water from the West Mancos River and transporting it to the reservoir via an Inlet Canal. The stored water is used as a domestic water supply for Mesa Verde National Park, the Town of Mancos, and the Mancos Rural Water Company, hydroelectric generation, and irrigation. The domestic water supply is processed through a treatment plant located just below the reservoir. Water mains feeding the distribution systems are buried beneath the access road that parallels the Outlet Canal. Released water that is not diverted for consumption is returned to the West Mancos River at the end of the Outlet Canal.

Water diversion from river to canal begins as soon as snow pack begins to melt. During this time, six weeks of maximum capacity flow to fill the reservoir, the canal is the most vulnerable and frequent inspections are made around the clock. The three greatest threats to the canal at this time are:

1) Maximum flow—the canal is running the maximum amount water it can carry.

2) Landslide action above or below the canal due to spring thaw, rain and saturated soil, combined with maximum flow.

3) Rock damage due to spring thaw and rain combined with maximum flow.

The dam tender can decrease the first threat—the others are not controllable.

Deterioration and erosion of retaining walls built in 1943-1948 has resulted in the loss of 2,000 feet of access road to the middle section of the canal. A failure of the canal especially at this point would have catastrophic consequences, especially during the spring run-off.

The Buckhorn Geotech, Inc. report of February, 2004 has "identified significant problems in the form of concrete aging and deterioration, structural distress, hydraulic constrictions, access limitations, and risks from geologic hazards" for the entire 4.9 miles of canal.

The federal operations facilities were constructed in 1941 by the Civilian Conservation Corp as the temporary construction offices. After completion of the project (1952), the offices were modified into the present operations facilities (workshop/dam tenders residence/public office). Due to the nature of their construction, purpose, and age (63 years); rehabilitation and/or modernization of these buildings is cost prohibitive.

These structures suffer from increasing wood rot and concrete deterioration. They lack reinforcement in the concrete floor and foundation. They are non-compliant with any United Building Codes.

Title to the Project is held by the federal government. It is time to look toward the future and protect the existing federal interest; but in order to move forward with the restoration/rehabilitation of these operations facilities, appropriation is essential.

Evaluations show that aging and deterioration are jeopardizing the future reliability of the project. Buckhorn Geotech, Inc. has determined that rehabilitation is one-third less costly than replacement. Continuing emergency management places a greater financial burden on the local economy and threatens the Project. As a result, the Board of Directors of the Mancos Water Conservancy District is taking a proactive stance to restore and rehabilitate the operations facilities securing it for the future generations. Loss of any of the Project's operations facilities is NOT an option.

The principal findings are as follows:

- 53% of the joints in the northern concrete bench flume section have experienced serious deterioration as have 46% of the joints in the southern concrete bench flume section. This deterioration is causing reduced structural integrity and seepage losses.
- 106 instances of concrete blowouts have been recorded in the concrete bench flume sections. These blowouts are gaps in and around the joints indicative of stress induced failure and deterioration of the concrete.
- Excessive lateral pressures from uphill slope failures, rockfall, soil creep, and debris flows have pushed sections of the concrete bench flume laterally, caused walls to be displaced, and created numerous stress cracks in the walls. Pressures in 320 linear feet of the concrete bench flume are approaching the ultimate load capacity of the walls and some wall sections are in danger of collapsing inward.
- Hundreds of cubic yards of rockfall and colluvial debris have accumulated atop the concrete bench flume. This debris may be in excess of the safe load capacity of the lids. Additional loading or rockfall impacts could cause the lids to collapse.
- 7000 square feet of the flume floor have experienced scour and damage from freezing of ponded water during winter periods.
- Seepage from leaking flume joints has contributed to slope instability problems resulting in loss of support in some areas along the base of the flume.
- Landslides have removed a large section of the access road alongside the flume so that approximately 2000 linear feet of canal cannot be accessed for maintenance purposes. Any failure of the flume within this section would result in a prolonged shutdown of the canal with severe consequences to Mesa Verde National Park, the Town of Mancos, Mancos Rural Water Company and the many farms and families that depend on this water source.
- Seepage losses in the vicinity of a previously damaged section of the canal have contributed to activation of a landslide below the canal. This landslide is actively moving and its headwall is migrating uphill towards the canal. If this seepage is not arrested quickly, a portion of the canal could slide into the lower canyon.
- The canal system has been found to have two flow constrictions that are limiting its hydraulic capacity to only 58% of the District's diversion entitlement. These constrictions restrict operational flexibility and the ability to optimize storage during times of uncertain supply.
- Weak geologic formations and weathering of the steep canyon walls above the canal have created rockfall hazards. Fourteen hundred and five (1,405) linear feet of the canal system are exposed to high to moderate rockfall hazard. Rockfalls have destroyed sections of the canal in the past. Thirteen patches in the concrete walls were noted in the upper flume section alone indicating that, on average, this section of flume is damaged about every four years by impact from rockfall. If this hazard is not mitigated, pending rockfall events can be expected to take the canal out of service at any time.
- Twenty slope failure features have been identified along the canal route. If these features are not de-watered, buttressed or otherwise stabilized, the canal will be subjected to continuous risk of damage, loss of service, and extensive maintenance problems.
- A section of the earthen canal is subject to seepage losses that are adversely affecting the stability of a large landslide area downslope of the canal as well as the soil materials supporting the foundation of the Mancos Rural Water Company's treatment plant. Any significant movement of the hillside below the canal could result in rupture of the domestic water lines buried beneath the ac-

cess road. Such rupture would terminate water flow to the Mesa Verde National Park, the Town of Mancos, and the Mancos Rural Water Company.
- Unconventional (temporary) building (operations facilities) construction method does not conform to any uniform building code.
- Deterioration of concrete by displacement and stress-cracks to the foundations and floors has weakened the structural integrity of the buildings also allowing uncontrollable seasonal flooding.
- The buildings do not comply to any building code and can not be made to comply.
- Existing heating system does not comply with current code and will require extensive remodel to replace.
- American Disability Act standards are not compatible with existing structural deficiencies.
- The buildings are not energy efficient nor do they meet snow load capabilities for Colorado.

A detailed description of recommendations for restoration and rehabilitation of the canal system is given in the final report submitted by Buckhorn Geotech, Inc. These recommendations will restore the integrity of the canal system, protect against catastrophic loss, restore the hydraulic capacity, and extend the life of the Jackson Gulch canal system and operations facilities by another 40 or 50 years.

The significant components include the following:

- Rehabilitate concrete blowouts, scoured floors, and damaged joints within the concrete bench flumes, apply a waterproof synthetic liner over sides and floor of the flume, and apply a protective coating of gunnite concrete.
- Restore a uniform grade within the earthen canal, dress side slopes, and apply a buffered synthetic liner to eliminate seepage loss, prevent slope instability, and reduce maintenance costs.
- Eliminate hydraulic flow constrictions by removing a bridge and installing a 600-foot length of elliptical concrete pipe to increase flow capacity, eliminate seepage losses, improve drainage, and buttress an unstable slope.
- Salvage an existing corrugated metal pipe and reuse it, along with additional piping, to provide a 300-foot long double pipe to replace a section of the earthen canal. This pipe section will stop seepage losses, improve drainage, and stabilize an area of active landslide.
- Install drilled tie-back anchors into the hillside where additional protection from earth pressures and landslides is needed to preserve stability and prevent collapse of the flume walls.
- Remove excessive overburden to prevent lid collapse while placing a wedge of soil over unprotected lid sections to provide mitigation against potential rockfall impacts.
- Restore access along a 2000-foot length of canal by anchoring a retaining wall into the narrow canyon wall for restoration of a lost roadway section.
- Install a 24-inch diameter HDPE pipeline to run alongside the canal for use during low-flow periods so that the construction season can be greatly expanded, winter water can be utilized to augment seasonal runoff, and to provide an opportunity for hydroelectric power generation.
- Rehabilitate the drop chute, prevent seepage losses, and eliminate a severe safety hazard by laying a 42-inch diameter welded steel pipe inside the existing concrete chute.
- There is no method of remodel of the buildings that would be any less expensive or any more efficient than total replacement.

Restoration of both concrete flumes, including concrete patching, flume lining, slope stabilization, rockfall mitigation, and access retaining walls is approximately $180 per linear foot. Whereas, the cost to build new flumes would be approximately $525 per linear foot, which does not include removal of the old flume, slope stabilization, rockfall mitigation, or access retaining walls.

The estimated cost to rehabilitate 5,040 feet of earthen canal is approximately $150 per linear foot. This includes canal lining, piping 900 feet, slope stability improvements, and bridge replacement.

By using this method of rehabilitation for the canal system, we will be able to preserve the historical integrity of the original project.

In preparation of the rehabilitation as described, the Board of Directors requested an increase to the District's mill levy of 5 mills. The measure passed by a comfortable margin. The increase raised the original mill levy of 1.5 mills to 6.5 mills. This enables the District to provide the 20% cost share without interfering with the operations and maintenance budget.

In March of 2006, the District received a request to increase the Project's M&I water allocation due to increased development within our boundaries.

STATEMENT OF KENNETH NELSON, SUPERINTENDENT, KANSAS BOSTWICK IRRIGATION DISTRICT

Chairman Bingaman and Senator Domenici, I am Kenneth Nelson, Superintendent of the Kansas Bostwick Irrigation District, which delivers water to 42,500 acres from the Republican River in Republic and Jewell Counties of Kansas. We provide irrigation water to 350 irrigators and provide economic support to this portion of North Central Kansas, which is vital to keeping rural America alive. Many other users such as recreation, municipal, industrial users and other irrigators benefit from the Republican River as well.

This district strongly supports H.R. 1025 which would authorize the Secretary of Interior to conduct a feasibility study of the Republican River to improve river management. The Republican River is vital not only to Kansas Bostwick but also to all down stream communities in Kansas who receive support from the River flows. The Republican River is controlled by a three state compact involving Kansas, Nebraska, and Colorado. There is much controversy over shortages and sharing of flows. This district as well as all other irrigation districts on the Republican have experienced shortages and in some cases no useable supply for several years now. The future of the River and especially Kansas share of the flows will depend upon our ability to plan and move forward with conservation and management plans improving the efficiency of the river.

There is a wide range of improvements to consider and prioritize on the Republican. Possibilities include increased storage, canal lining, automation, vegetation control, flow management and many more. Every opportunity for improvement needs to be explored giving us the opportunity to make the best possible improvements in a timely manner.

The States are struggling with compact compliance at this time. This study is absolutely necessary to move forward with river management to avoid conflict. Without the study, no lasting solutions will be reached and state versus state conflict will result. We have the opportunity to identify and work towards lasting solutions on the Republican and need to take action as soon as possible.

It goes without saying that water issues will be paramount to our future. Please pass H.R. 1025 at the earliest possible opportunity. I appreciate this opportunity to comment.

STATEMENT OF WILLL LUTGEN, JR., EXECUTIVE DIRECTOR, NORTHWEST PUBLIC POWER ASSOCIATION

Chairman Salazar, I am writing on behalf of the Northwest Public Power Association (NWPPA) to express support for S. 1258, a bill to amend the Reclamation Safety of Dams Act of 1978 to authorize improvements for the security of dams and other facilities. We are pleased that the Subcommittee is holding a hearing on this important piece of legislation.

NWPPA is a non-profit association of approximately 150 public/people's utility districts, electric cooperatives, municipalities and crown corporations in the Western states—including Alaska, Arizona, California, Idaho, Montana, Nevada, South Dakota, Oregon, Utah, Washington and Wyoming—and in Canada. NWPPA also serves the sales and networking needs of over 200 Associate Members across the U.S. and Canada who are allied with the electric utility industry.

The Bonneville Power Administration's (BPA's) rates are affected by many factors, including drought, fish and wildlife obligations and contracts with the direct service industries and we have been working hard in the Northwest to control those costs. As stewards of the public trust, we are also working to make sure that the cost of the Bureau of Reclamation's (Reclamation) enhanced security measures at Grand Coulee Dam, which also affect our rates, receive congressional scrutiny and are fair to our ratepayers.

We are concerned that currently there are no cost controls, authorization ceiling, sunset date, or congressionally-approved parameters to limit or control the amount of money Reclamation can spend for increased security. Year after year, power customers are being asked to pay a disproportionate share of the costs, despite the fact that Congress continues to include report language in appropriations bills recognizing that all project beneficiaries benefit and stating that it wants more transparency in what Reclamation is spending its money on.

NWPPA members believe in being responsible stewards of the facilities and for paying their fair share of the costs. We are not seeking to circumvent our responsibilities. However, we firmly believe that the burden our power customers are being asked to shoulder for these national security, counter-terrorism measures is above and beyond normal operation and maintenance functions. For these reasons, NWPPA strongly supports S. 1258.

Once again, we appreciate the subcommittee considering this bill and look forward to working with you and your staff as it advances.

ASSOCIATION OF CALIFORNIA WATER AGENCIES,
Washington, DC, July 23, 2007.

SENATOR Jon Kyl,
U.S. Senate, 730 Hart Senate Office Building, Washington, DC,

SENATOR Dianne Feinstein,
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

DEAR SENATORS KYL AND FEINSTEIN: The Association of California Water Agencies (ACWA) is pleased to support your S. 300, the Lower Colorado River Multi-Species Conservation Program Act. ACWA's 447 public agency members are collectively responsible for 90 percent of the water delivered in our state for residential and agricultural purposes.

The LCR MSCP provides for the restoration of over 8,000 acres of riverside habitat for bird and terrestrial species, a vigorous fish augmentation effort for endangered fish species, maintenance of existing, high quality habitat, and a research, monitoring and adaptive management effort to ensure that program elements arc effective in helping covered species. Further, the program provides a basis for compliance with the requirements of the Endangered Species Act by the federal and non-federal entities involved in continuing water and power operations on the Lower Colorado River.

ACWA supports your efforts to codify the Multi-Species Conservation program (MSCP) and advance and enhance the goals of the program as it was developed. Codification of the MSCP will establish a means for integration of ecological needs and water management on the lower Colorado River.

Again, ACWA is pleased to support S. 300, and working together with our members statewide, will encourage the rest of the Congress to do the same. Please do not hesitate to contact our office if we can be of any assistance to you.

Sincerely,

DAVID L. REYNOLDS,
Director of Federal Relations.

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, UPPER COLORADO REGION,
Grand Junction, CO, September 23, 2003.

MR. Todd Sehnert,
President, Mancos Water Conservancy District, 42888 CR N, Mancos, CO.

Subject: 2003 Review of Operation and Maintenance Associated Facilities Examination for the Mancos Project Inlet and Outlet Canal System, Mancos Project, Colorado

DEAR MR. SEHNERT: Enclosed is the 2003 annual Mancos Project Review of Operation and Maintenance (RO&M) Associated Facilities Report for the Inlet and Outlet Canal System. Please review the report and note the current status of our RO&M recommendations. The next associated facilities inspection will be in 2004.

We appreciate the continued cooperation of the Mancos Water Conservancy District, Mr. Gary Kennedy and his interest in protecting the future and integrity of Jackson Gulch Inlet and Outlet Canals.

If you have any questions concerning this report, please contact Jim Rottman.

Sincerely,

BRAD DODD,
Chief, Facility Maintenance Group.

ATTACHMENT.—BUREAU OF RECLAMATION REVIEW OF OPERATION AND MAINTENANCE PROGRAM

DEFINITIONS

Inspections of Bureau of Reclamation (Reclamation) project facilities are conducted under the Review of Operation and Maintenance (RO&M) Program. O&M issues noted during the RO&M inspection are assigned a Category 1, 2, or 3, based upon the severity of the problem. The following definitions (revised May 1993) apply to all levels of Reclamation RO&M inspections:

CATEGORY 1

Recommendations involving the correction of severe deficiencies where immediate and responsive action is required to ensure structural safety and operational integrity of a facility.

Based on the severity of the deficiency and the condition of the structure/facility at the time of the examination, the examination team will mutually prescribe an appropriate time frame for completion of the recommendation. Suggested remedial measures will be discussed at the time of the examination and included in the examination report. Within 30 days following preparation or receipt (depending on office conducting the examination) of the examination report containing a Category 1 recommendation, the responsible Regional Directory will notify all concerned offices (i.e., Commissioner, Attention: W-6500 and W-6600, and Assistant Commissioner—Resources Management, Attention: D-5620 and D-5850) of the operating office or entity's plan for accomplishing the work and a schedule completion date.

Status reports will be provided by the responsible Regional Director to all concerned offices every 6 months (January 1 and July 1) until the recommendation is completed. Progress made on its completion will be reported in the Annual Summary Report for the RO&M Program.

CATEGORY 2

Recommendations covering a wide range of important matters where action is needed to prevent or reduce further damage or preclude possible operational failure of a facility.

Such recommendations are intended to be acted upon as soon as practicable following receipt of the corresponding examination report by the operating office or entity. It is desirable that those recommendations that can be included, scheduled, and accomplished as part of the normal O&M program, be undertaken as soon as weather or water conditions allow, to permit quality remedial measures. Some recommendations may require a longer time to accomplish because of the need to budget funds, complete designs, or secure equipment, material, or personnel. In such cases, the related planning and budgeting should be initiated in a timely manner.

Any Category 2 recommendation remaining incomplete at the time of the following examination (generally 3 years) will be addressed during that examination and within the corresponding examination report.

Status reports will be provided on these recommendations by the responsible Regional Director to the Assistant Commissioner—Resources Management, Attention: D-5850, on an annual basis and summarized in the Annual Summary Report for the RO&M Program until such recommendations are completed.

CATEGORY 3

Recommendations covering less important maters but believed to be sound and beneficial suggestions to improve or enhance the O&M of the project or facility.

Status reports on an annual basis will not be required on these recommendations; however, the status of each recommendation will be provided in the subsequent examination report. If the recommendation is still applicable, a current year designation should be used.

MANCOS PROJECT INLET & OUTLET CANALS—COLORADO

2003 ANNUAL RO&M INSPECTION

The inspection of the Mancos Project Inlet and Outlet Canal System was conducted on July 29, 2003, as required under the RO&M Program, Reclamation Manual, Directives and Standards, FAC-01-04. The cooperation and assistance provided by Mancos Water Conservancy District (MWCD) personnel in conducting the review are appreciated.

The following personnel attended the inspection: Gary Kennedy, Reservoir Superintendent, MWCD; Brad Dodd, BOR, Facility Maintenance Group Chief, WCD; Jim Rottman, BOR, Facility Maintenance Group, WCD.

Results of the inspection are summarized on the enclosed checklist. A summary of the relevant RO&M recommendations, with estimated completion dates, is also enclosed.

KEY FINDINGS OF THE 2003 INSPECTION

1. The Mancos Water Conservancy District completed two outstanding Category 2 RO&M recommendations, 1990-2-A and 1990-2-B. New seals were installed on both intake radial gates at the headworks and new cables were installed. Both gates were cleaned and painted.
2. The district has acquired a loan authorization and issued a "request for proposals" for repair work on the inlet canal.
3. One new Category 2 Recommendation is the installation of buoy lines above the inlet and outlet canal major drop structures.

MANCOS PROJECT INLET AND OUTLET CANALS—COLORADO

CHECKLIST FOR RO&M INSPECTION

	Data
OPERATIONS:	
Project Name	Mancos
Owner	Bureau of Reclamation
Operating Entity—Reservoir Superintendent.	Mancos Water Conservancy District (MWCD)—Gary Kennedy
Date of Inspection	07/29/03
Last RO&M report date	08/01/00
Person responsible for RO&M report	Jim Rottman, WCD
Last RO&M report copy on hand?	yes
Attendance at Project	Daily during irrigation season, weekly during rest of season.
Ditch operators training (name, date).	
Flow	7½ cfs
OPERATING LOG:	
Maintained at headquarters?	Yes
Maintenance log updated?	Yes
SOP/DOC	Included in SOP
Ditch copies updated?	See Jackson Gulch Dam 07/29/03 inspection
How many copies?	See Jackson Gulch Dam 07/29/03 inspection
Where kept?	See Jackson Gulch Dam 07/29/03 inspection
COMMUNICATIONS	See Jackson Gulch Dam 07/29/03 inspection
Type(s)	See Jackson Gulch Dam 07/29/03 inspection
Normal	See Jackson Gulch Dam 07/29/03 inspection
Standby	See Jackson Gulch Dam 07/29/03 inspection
Adequacy	See Jackson Gulch Dam 07/29/03 inspection
ACCESS ROADS	Adequate
Sufficient access/adequacy	OK
OIL CONTAINMENT:	
SPCC Plan? Last Updated?	None
Landslides	No new activity—annual registry—submitted 2003
Landslide Restricted/Signs	No
Underwater inspection	None needed
Weed control program	Throughout the season -
DIVERSION STRUCTURE:	
Concrete	Ok
Rock/Debris waterdrop	Ok
Riprap	Ok
Abutment walls	Ok

MANCOS PROJECT INLET AND OUTLET CANALS—COLORADO—Continued

CHECKLIST FOR RO&M INSPECTION

	Data
Wingwalls	Ok
Embankments	Ok
Foundation at downstream toe of structure.	Ok
Leakage (Gates)	Ok
Embankments	Ok
Upstream	Ok
Vegetation	Ok
Riprap	Ok
Downstream	Ok
Vegetation	Ok
Rock	Ok
Crest	Ok
Canal headworks	Ok
Concrete	Ok
Gates	New Paint and seals.
Coating	Ok
Hoists	New cables.
Operation	Ok
Leakage	Ok
Fish facilities	N/A
Guardrails	Ok
Outlet channel	Ok
Control structures	Ok
Sluiceway	Ok
Concrete	Ok
Hoists and cables	New cables
Operation	Ok
Leakage	Ok
Handrails	Ok
Approach channel	Ok
Outlet channel	Ok
Standby power	Not needed
Other	
INLET CANAL:	
Under drains	Ok
Detention ponds	N/A
Subsidence	None
Seepage	Ok
Linings	Ok
Constructed joints	Ok
Random cracking	None
Joint sealers	Ok
Silting	None
Inlet checks	Ok
Structural features	Ok
Measuring flume	Ok
Silting	None
Controls	Ok
Turnouts	None
Gates	Ok
Structure	Ok
Bridge	Culvert—ok
Deck	Ok—gravel
Railings	Ok
Structural features	Ok
Operating roads	Graveled
Vegetation	Ok
Safety features	Ok
Over chute	N/A
Spills	Ok
Siphons	

MANCOS PROJECT INLET AND OUTLET CANALS—COLORADO—Continued

CHECKLIST FOR RO&M INSPECTION

	Data
Pipe	6½ foot diameter installed 1996—good
Canal chute concrete lids	Ok
PVC liner	½ mile D/S of diversion structures installed 1998—added on to 1999 added flow capacity to 120 cfs.
OUTLET CANAL:	
Under drains	Ok
Detention ponds	Ok
Subsidence	Ok
Seepage	Ok
Linings	Ok
Constructed joints	Ok
Random cracking	Ok
Joint sealers	Ok
Silting	Ok
Check structures	N/A
Structural features	Ok
Measuring flume	Ok
Silting	Ok
Controls	Ok
Turnouts	Ok
Gates	Ok
Structure	Ok
Bridge	Ok
Deck	Ok
Railings	Ok
Structural features	Ok
Operating roads	Ok—water line buried undeneath
Vegetation	Ok
Safety features	Ok
Concrete chute section	Ok
Cut section	1 mile downstream of dam—MWCD having problems maintaining this section.

MANCOS PROJECT CANAL SYSTEM—COLORADO

RO&M RECOMMENDATIONS—SUMMARY OF STATUS

Number	Description	Status	Estimated Completion Date	Actual Completion Date	Originated by (office)
1990-2-A	Adjust or replace bottom seal on radial gate at headworks (Region).	Complete	Per 1996 Status Report: Scheduled fall 2001.	2001	Area
1990-2-B	Clean and paint new headworks radial gate located 400 feet upstream of old radial gate and also clean and paint old radial gate (Region).	Complete. New cables were added on both radial gates.	New scheduled date fall.	2001	Area
2003-I-A	Install buoy lines above major drop structures.	New	2004		Area

Report prepared by: Jim Rottman, Facility Maintenance Group. Approved: Brad Dodd, Chief, Facility Maintenance Group; Ed Warner, Resources Management Division Manager.

STATEMENT OF JAMES SHETLER, ASSISTANT GENERAL MANAGER, ENERGY SUPPLY, SACRAMENTO MUNICIPAL UTILITY DISTRICT

INTRODUCTION

My name is James Shetler. I am the assistant General Manager of Energy Supply for the Sacramento Municipal Utility District (SMUD). I am responsible for overseeing the purchase and sales of the District's gas and electric commodities, the reliability of the transmission system, and the District's electric generating facilities. This testimony is being submitted in support of S. 1258, which SMUD believes will provide a fair and reasonable allocation of reimbursable costs and authorize effective congressional oversight of the Bureau of Reclamation's (Reclamation's) site security program.

SMUD is the largest single power purchase contractor from Reclamation's Central Valley Project (CVP), buying 31 percent of the CVP's power output under a 20 year contract with the Western Area Power Administration (Western) at cost-based rates.

SMUD strongly supports S. 1258, legislation to amend the Reclamation Safety of Dams Act of 1978 in order to authorize improvements for the security of dams and other facilities.

THE CENTRAL VALLEY PROJECT

Congress originally authorized the CVP in 1935 for flood control, navigation, the development of hydroelectric power, irrigation and municipal and industrial water supply; protection of the Sacramento-San Joaquin River Delta from seawater encroachment; and the protection and enhancement of fish and wildlife. The project was constructed from 1939 to 1979.

California's Central Valley Basin includes two major watersheds, the Sacramento River on the north and the San Joaquin River on the south, plus the Tulare Lake Basin. The combined watersheds extend nearly 500 miles from northwest to southeast and range from about 60 to 100 miles wide.

The Central Valley Project extends from the Cascade Range in the north to the semi-arid but fertile plains along the Kern River in the south. The CVP serves farms, homes, and industry in California's Central Valley as well as major urban centers in the San Francisco Bay Area; it is also the primary source of water for much of California's wetlands. In addition to delivering water for farms, homes, factories, and the environment, the CVP produces electric power and provides flood protection, navigation, recreation, and water quality benefits. It is truly a multiple-purpose project.

The CVP power facilities, which include 11 power plants, now have an installed capacity of 2006 MW, and generate 4,500,000 MWh in an average hydrologic year. The power generated by CVP powerplants is used to pump over three million acre feet of water per year to Central Valley farms, but also to municipal and industrial users in Northern and Central California. The remaining 80 percent of the generation is sold by Western under long-term power contracts to over 80 not-for-profit consumer-owned utilities and government agencies at cost-based rates, pursuant to Reclamation law.

SITE SECURITY COSTS FOR CVP FACILITIES

Following the September 11, 2001 terrorist attacks, Reclamation initiated an aggressive program to protect its dams against terrorist attacks. Based on World War II precedent and internal legal analysis by the Department of the Interior, the Commissioner of Reclamation in April 2002 issued an administrative determination that the costs of increased security measures should be a federal obligation, non-reimbursable by project beneficiaries. Beginning in Fiscal Year 2005, however, Reclamation began a process to assign a significant portion of the security costs to water and power customers. While Reclamation's long-term proposal for the allocation of security costs is unclear, the current allocation schedule is for water and power to cover 90% of the annual O&M security costs. It is recognized that new capital projects installed to bolster post-911 security measures are currently not treated as reimbursable costs; however, a concern exists that replacement of these facilities will be treated as reimbursable costs. Such replacement costs eventually would dwarf the annual reimbursable O&M costs.

SMUD and many all other water and power customers believe that the CVP water and power customers should not be required to bear the lion's share of the costs associated with these increased security measures. To do so would be a deviation from historical precedent, whereby such special security costs in the past were treated as non-reimbursable costs. SMUD is concerned that Reclamation will continue to assign the vast majority of costs to the water and power users, even though other project beneficiaries, like flood control beneficiaries, face the greater risk resulting from security threats to Reclamation facilities. The CVP water and power customers are also concerned with the lack of cost controls in place on the security program, and its lack of transparency.

SMUD endorses S. 1258 because it contains an express authorization of the site security program, as part of Reclamation's Safety of Dams program; it applies the existing Safety of Dams Act 15 percent cost share to water and power users for all site security costs, including capital and O&M costs; and, it establishes a requirement that Reclamation report annually to Congress on site security activities.

The Reclamation Safety of Dams program was first authorized in 1978. It authorized modifications needed as a result of new hydrologic or seismic information or changes in state of the art dam technology. The enhanced security measures undertaken by Reclamation following the September 11, 2001 events were the result of new information about the potential for terrorist attacks on vital dams and related facilities. Therefore, we believe that the site security program fits nicely into the existing policy and legal framework of the Safety of Dams program.

We also think that the proposed 15 percent cost share assigned to the water and power customers is reasonable, appropriate, and fair. This cost-sharing formula, which was added to the Safety of Dams program in 1984, has been reaffirmed by Congress since then. The remaining 85 percent of site security costs would remain a non-reimbursable, federal obligation.

Reclamation has proceeded to expand and implement its reimbursable site security cost plan, and SMUD is concerned that the costs down the road could be much higher. Given that the multi-purpose federal dams benefit a host of stakeholders and the general public, not just water and power customers, we believe that allowing Reclamation to have free rein to implement security measures, and at the same time requiring that the water and power customers be responsible for reimbursement of the majority of these costs, is not reasonable, nor equitable. SMUD strongly supports S. 1258, as it would provide a ceiling on the amount of reimbursable security costs that would be borne by this subset of beneficiaries, and it would therefore keep costs manageable for the water and power users and provide needed certainty for budget management and future planning activities. As capital intensive not-for-profit electric utilities strive to manage their costs, plan for future growth, and address increasing complex regulatory and environmental issues, this type of certainty is essential.

Finally, I wish to thank the Committee for adding my testimony to the hearing record on S. 1258, and for considering the information and concerns provided therein.

STATEMENT OF SUSAN BITTER SMITH, PRESIDENT, BOARD OF DIRECTORS, CENTRAL ARIZONA WATER COLNSERVATION DISTRICT

S. 300, THE LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM ACT

I am pleased to present this statement on behalf of the Central Arizona Water Conservation District ("CAWCD") in support of S. 300, the Lower Colorado River Multi-Species Conservation Program Act. S. 300 protects and implements the Lower Colorado River Multi-Species Conservation Program ("MSCP"). The MSCP is a comprehensive, cooperative effort among 50 federal and non-federal entities in Arizona, California and Nevada to protect 26 endangered, threatened and sensitive species along the Lower Colorado River and to provide assurances to the non-federal entities involved that their essential water and power operations on the River may continue if they comply with the Program's requirements. The participants in the Program include The Metropolitan Water District of Southern California, the Southern Nevada Water Authority and the Central Arizona Project.

CAWCD is the Arizona political subdivision responsible for operating the Central Arizona Project ("CAP"), and is the underwriter of Arizona's share of the costs of the MSCP. The CAP is a massive water delivery project, constructed under the authority of the Colorado River Basin Project Act of 1968, to enable Arizona to make full use of its Colorado River entitlement. In a normal water supply year, the CAP will deliver about 1.5 million acre-feet of Colorado River water to the citizens of Ari-

zona, at the rate of 3,000 cubic feet of water per second, almost two billion gallons per day. The CAP is the largest single source of renewable water supplies in the State of Arizona, serving 80 percent of the State's water users and taxpayers, including the Phoenix and Tucson metropolitan areas.

CAWCD strongly supports S. 300 because the bill assures continued compliance by the United States with the requirements of the MSCP. That, in turn, provides protection to the non-federal participants in the Program, who, like CAWCD, have agreed to provide substantial amounts of non-federal monies for the conservation of endangered species in return for receiving a permit under the Endangered Species Act for their water and power operations.

The Secretary of the Interior approved this 50-year conservation initiative on April 2, 2005. The overall Program costs, $626 million, will be adjusted for inflation, with the three lower basin states paying 50 percent of the costs and the federal government paying 50 percent. Of the states' share, Arizona and Nevada will each pay 25 percent, while California will pay 50 percent. In return for their funding commitments, the non-federal participants have received a 50-year permit, issued by the U.S. Fish and Wildlife Service under Section 10 of the Endangered Species Act, which authorizes their existing and future water and power operations to continue. All of the Arizona participants have made a financial commitment to the MSCP, but CAWCD has agreed to guarantee payment of Arizona's share of the Program costs.

Although the MSCP is already in effect, this bipartisan legislation has been introduced by Senators Jon Kyl, Dianne Feinstein, Harry Reid and John Ensign to protect the substantial financial commitments that the non-federal parties are making to species protection. The bill specifically authorizes federal appropriations to cover the federal share of the Program costs, directs the Interior Secretary to manage and implement the Program in accordance with the underlying Program Documents, and provides a waiver of sovereign immunity to allow the non-federal parties to enforce the agreements they have entered into with the federal agencies, should that become necessary. The bill does not allow money damages.

A companion bill has been introduced in the House (H.R. 2515) by Congressman Dean Heller of Nevada, that is cosponsored by Congressmen Harry Mitchell, Trent Franks, John Shadegg and Rick Renzi of Arizona, Congressman Jon Porter and Congresswoman Shelley Berkley of Nevada, and Congressmen Ken Calvert and George Radanovich of California. Since the time that similar legislation was introduced last year, two significant developments have occurred. First, subject to final review and approval within the Interior Department, the non-federal parties have reached agreement with the United States on an agreement to provide Colorado River water for MSCP purposes, as authorized by Section 3(b) of the bill. Second, Section 5(b) of the bill, which relates to the impact of future legislative actions on the MSCP, has been modified and narrowed significantly to meet the concerns of some members.

The MSCP is a worthy and important program for protection of endangered species. It provides for the creation of over 8,100 acres of riparian, marsh and backwater habitat for the species covered by the Program, and includes plans for the rearing and stocking of over 1.2 million fish to augment populations of two endangered fish covered by the Program. The MSCP also provides for maintenance of existing, high-quality habitat, and a research, monitoring and adaptive management effort to ensure that Program elements are effective in helping covered species. At the White House Conference on Cooperative Conservation in August 2005, the MSCP was recognized as an "Exemplary Initiative." Implementation of the MSCP is critical to the long term needs of those of us in the southwest that depend on the Lower Colorado River for a major portion of their water and power. As the Secretary said in her Record of Decision approving the Program——

> The importance of the Colorado River to the southwestern portion of the United States cannot be overstated: the Colorado is the lifeblood of the southwest. The Colorado River provides water and power to over 20 million people (in such cities as Los Angeles, San Diego, Las Vegas, Phoenix and Tucson), irrigates over 2 million acres, and generates up to 10 billion kilowatt hours of electricity annually.

The MSCP represents a fifty-year commitment by all of the parties involved. It is essential that that commitment be fully and faithfully met. S. 300 will help ensure that that occurs.

WESTERN BUSINESS ROUNDTABLE,
Golden, CO, July 25, 2007.

SENATOR Tim Johnson,
Chairman, Senate Energy Committee, Subcommittee on Energy and Water, 304 Dirksen Senate Building, Washington, DC.

DEAR CHAIRMAN JOHNSON: I am writing, on behalf of the Western Business Roundtable's diverse membership, to express our support for S. 1258, legislation amending the Reclamation Safety of Dams Act of 1978 to address current inequities in security cost allocations.

Your Subcommittee colleague Senator Maria Cantwell (WA) is lead sponsor of this bipartisan legislation. She is joined in this effort by other Western Senators: Senator Wyden (OR), Senator Gordon Smith (OR), Senator Orrin Hatch (UT) and Senator Wayne Allard (CO).

The Bureau of Reclamation ("Reclamation") is the nation's largest wholesale water supplier with a large inventory of water resources infrastructure. The inventory includes five National Critical Infrastructure (NCI) facilities, and 471 dams and appurtenant facilities which could threaten the public if they were to fail. The inventory also includes 58 hydroelectric power plants which generate 42 billion kilowatt hours annually. Reclamation's reservoirs have a capacity of 245 million acre feet of storage which is enough to serve 31 million people and 10 million farm land acres.

State, local and project roads, as well as water and land-based recreation activities, bring the public in close proximity to these dams and power plants. Ensuring the security of these federal facilities is of utmost importance to all citizens of the United States.

S. 1258 provides the necessary Congressional oversight and cost-sharing for expenditures made to prevent and deter threats to employees, visitors and vital facilities and infrastructure, as well as detect impeding danger before attacks or incidents occur. Without this oversight and cost-sharing, Western power purchasers and consumers bear a disproportionate brunt of the costs of these important security measures.

On behalf of the many member organizations of the Western Business Roundtable, thank you for giving attention to this issue, so important to the West. We urge you to move S. 1258 forward and looking forward to working with you in that regard.

Sincerely,

JIM SIMS,
President and CEO.

WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION,
Seattle, WA, July 23, 2007.

HON. Ken Salazar,
Acting Chairman, Senate Energy and Natural Resources Subcommittee on Water and Power, United States Senate, 304 Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SALAZAR: On behalf of the Washington Public Utility Districts Association (WPUDA), I would like to express support for S. 1258, a bill to amend the Reclamation Safety of Dams Act of 1978 to authorize improvements for the security of dams and other facilities.

WPUDA represents 28 nonprofit, community-owned utilities that provide utility services including electricity, water, sewer and wholesale telecommunications to over 1.7 million people in the state of Washington.

We agree with the premise of the legislation: the U.S. Bureau of Reclamation's (Reclamation) costly and non-transparent record of administering the enhanced dam security program warrants a more reasonable cost-sharing formula, greater customer involvement and congressional oversight. We agree that it is important for Reclamation to protect these critical projects; however, Reclamation's projects are multi-purpose federal facilities that serve a wide range of public purposes, including flood control, recreation, fish and wildlife, water supply, power generation and others, and the burden of paying for post-9/11 enhanced security measures should not be borne solely by the water and power ratepayers. The water and power users are willing to pay a fair share, but the remainder should be paid for by other beneficiaries—or by the federal government, if it chooses not to create mechanisms to recover costs from the non-paying functions.

In the Northwest, we have been working hard to control the Bonneville Power Administration's (BPA's) costs. BPA's electric rates are affected by many factors, including drought, fish and wildlife obligations and contracts with the direct service industries. As stewards of the public trust, we are trying hard to make sure that the cost of the Bureau's enhanced security measures at Grand Coulee Dam, which also affect our rates, receive close congressional scrutiny and are fair to our ratepayers.

WPUDA supports this legislation because we believe it helps to address our concerns about the lack of cost controls, authorization ceiling, sunset date, and congressionally-approved parameters to limit or control the amount of money Reclamation can spend for increased security. We are not seeking to circumvent our responsibilities; however, we firmly believe that the burden our power customers are being asked to shoulder for these counter-terrorism measures are above and beyond normal operation and maintenance functions.

Thank you for your leadership in holding a hearing on this very important issue. We look forward to working with you and your staff as the legislation advances.

Sincerely,

STEVE JOHNSON,
Executive Director.

STATEMENT OF GERALD R. ZIMMERMAN, EXECUTIVE DIRECTOR, COLORADO RIVER BOARD OF CALIFORNIA

S. 300, THE LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM ACT

Thank you for providing the Colorado River Board of California (CRB) the opportunity to submit written testimony for the hearing record regarding S. 300. As the subcommittee is aware, S. 300 authorizes appropriations associated with long-term implementation the Lower Colorado River Multi-Species Conservation Program ("LCR MSCP"). The LCR MSCP is a comprehensive, cooperative effort among fifty federal and non-federal entities in Arizona, California and Nevada to protect 26 endangered, threatened and sensitive species along the Lower Colorado River and to provide assurances to the non-federal entities involved that their essential water and power operations on the River may continue if they comply with the Program's requirements and agreements.

As background, I am the Executive Director of the CRB; and I served as the Chairman of the LCR MSCP Steering Committee throughout the program-development phase and the first two years of the implementation phase. The CRB is the agency in California created by State statute to protect California's rights and interests in the resources provided by the Colorado River and to represent California in discussions and negotiations regarding the Colorado River and its management. California's rights and interests in the water and power resources of the Colorado River System are vital to the State's economy. Seven counties in Southern California, with more than half of the state's population, nearly 20 million residents, receive water and hydroelectric energy from the Colorado River, in support of a service area economy in excess of $850 billion per year. All ten members on the Colorado River Board of California are appointed by the Governor.

It should be pointed out that in a normal water year California is entitled to the use of up to 4.4 million acre-feet of water from the mainstream of the Colorado River. This valuable water supply is utilized by several large southern California agricultural districts, as well as The Metropolitan Water District of Southern California, the wholesale distributor of water supplies to municipal providers that meet the needs of nearly 18 million residents in Southern California.

The CRB strongly supports S. 300, because this legislation, if passed, assures continued compliance by the United States with the program documents and agreements that have been developed as part of the LCR MSCP. That, in turn, provides protection to the non-federal participants in the Program, who like the CRB, its member agencies, and all of the Colorado River water and hydroelectric power contractors, have agreed to provide substantial amounts of non-federal monies for the conservation of endangered species in order to receive an incidental take permit under the terms of the Endangered Species Act for their continued water and power operations.

On April 2, 2005, Secretary of the Department of the Interior, Gale A. Norton, approved this major collaborative and innovative 50-year conservation initiative. The overall Program costs, $626 million, will be annually adjusted for inflation, and will be shared by the three lower basin states paying 50 percent of the costs and the federal government paying 50 percent. Of the states' share, Arizona and Nevada

will each pay 25 percent, while California will pay the remaining 50 percent. In return for their funding commitments, the non-federal participants have received a 50-year incidental take permit, issued by the U.S. Fish and Wildlife Service under Section 10 of the Endangered Species Act, which authorizes their existing and future water and power operations to continue. All of the California participants have made a significant long-term financial commitment toward the implementation of the LCR MSCP that has been memorialized in a California LCR MSCP Funding Agreement, executed on April 2, 2005.

From California's perspective, S. 300, as written, provides several key elements that are important toward ensuring the long-term effective implementation of this important Program. First S. 300 provides an authorization of appropriations for the federal share of Program costs and directs the Secretary of the Interior to manage and implement the Program in accordance with the executed Program Documents and Agreements. These documents and agreements, executed by all of the federal and non-federal parties reflect the long-term commitment to implement this important Program through 2055. California believes that, through this legislation, it is important that the Congress formally recognize the value of the Program to the citizens of the United States and the overarching responsibilities that the Secretary of the Interior and the Bureau of Reclamation (Reclamation) have toward long-term Program implementation.

Second, S. 300 establishes a process for the Secretary of the Interior and Reclamation to acquire and provide adequate water supplies associated with the restoration and maintenance of habitats created pursuant to the Program documents. In these times of limited water supplies in the Lower Basin States, this process will allow for the creation and maintenance of the 8,132 acres of aquatic, wetland, and riparian habitats within the Program planning area along the Lower Colorado River, and yet ensure that lawful entitlement holders in the three states can continue to manage and effectively utilize their important Colorado River apportionments over the fifty-year period. Specifically, there is language in S. 300 ensuring that the habitat water acquisition and use policies established by the Secretary of the Interior will not impair any right to mainstream water established under any compact, treaty, law, decree, or contract in effect as of enactment of this Act.

Third, S. 300 acknowledges that a long-term cooperative effort, involving the federal and non-federal Program participants, will be required in order to successfully implement this Program over the fifty-year period. This will be accomplished through periodic meetings of the LCR MSCP Steering Committee and Reclamation's LCR MSCP Office staff. These meetings, several of which have occurred since inception of Program implementation in April 2005, are the primary focal point for decision-making regarding the preparation and adoption of annual work plans, budgets, and Program implementation status reports. It is in the Steering Committee where consensus-based decisions will be made associated with the results of ongoing monitoring and research activities and the utilization of adaptive management in suggesting modifications to implementation activities based upon the best available science.

Finally, since the time that similar legislation was introduced in 2006, two significant developments have occurred. First, subject to final review and approval within the Department of the Interior, the parties have reached agreement with the United States on an agreement to provide Colorado River water for LCR MSCP habitat restoration and maintenance purposes, as authorized by Section 3(b) of the bill. Second, Section 5(b) of the bill, which relates to the impact of future legislative actions on the LCR MSCP, has been modified and narrowed to meet the concerns of some members. Both of these sections are essential elements of the legislation.

California is fully committed to carrying out its responsibilities toward long-term implementation of the LCR MSCP over the fifty-year period, and looks forward to working with representatives and agencies within the States of Arizona and Nevada, as well as the participating federal agencies in carrying out those goals and meeting our collective obligations. Toward this end, California believes that S. 300 is of vital importance to all of the LCR MSCP participants committed to the Program's success. California urges the Subcommittee and the Committee, as well as the full House to approve this important legislation.

It is worth noting that at the White House Conference on Cooperative Conservation in August 2005, in St. Louis, Missouri, the LCR MSCP was recognized by the Administration as an "Exemplary Initiative." Implementation of the LCR MSCP is critical to the long-term needs of those in the southwest that depend on the Lower Colorado River for a major portion of their water and power resources. As Secretary Norton said in her April 2005 Record of Decision approving the Program:

> The importance of the Colorado River to the southwestern portion of the United States cannot be overstated: the Colorado is the lifeblood of the southwest. The Colorado River provides water and power to over 20 million people (in such cities as Los Angeles, San Diego, Las Vegas, Phoenix and Tucson), irrigates over 2 million acres, and generates up to 10 billion kilowatt hours of electricity annually.

The LCR MSCP represents a fifty-year commitment by all of the parties involved. It is essential that this commitment be fully and faithfully met. Passage of S. 300 will help ensure that this occurs and is considered by the CRB to be very important in protecting California's long-term interests and rights in the water and power resources of the Colorado River System. Again, thank you for the opportunity to have this statement included in the hearing record.

REPORT FROM THE OREGON DEPARTMENT OF FISH AND WILDLIFE*

FISH SCREENING AND PASSAGE PROGRAM

FRIMA FUNDING STATUS AS OF APRIL 27, 2007

SUMMARY

The FRIMA Program is a valuable source of funding for improving fish survival at water diversions and dams throughout Oregon. These federal matching funds along with state and local resources have resulted in the installation of fish screens at water diversions and will ensure future fish passage at dams.

The Oregon Department of Fish and Wildlife appreciates efforts taken to increase this valuable funding for installing fish protection devices.

Total FRIMA funding received by Oregon 2002-2006.—$3,229,903.

Total Matching partner contributions (includes estimated projects under construction).—$7,883,102.

Species Benefited

ESA-listed species

- Coho salmon
- Steelhead
- Short nose suckers
- Lost River suckers
- Lamprey
- Warner suckers

Other Species

- Redband trout
- Cutthroat trout
- Misc. native fish

FRIMA PROJECTS

CENTRAL OREGON IRRIGATION DISTRICT, SWALLEY IRRIGATION DISTRICT, AND LONE PINE IRRIGATION DISTRICT (ID)

Description

This joint fish screening project involves two fish screens that are operated by three Irrigation Districts: Central Oregon ID, Swalley ID, and Lone Pine ID. The diversions are in the Deschutes River in the Deschutes River Basin. The redhand trout support a recreational fishery.

Species Benefited

Redband trout and other native species.

Partners

Central Oregon ID, Swalley ID, and Lone Pine ID.

Funding

- FRIMA.—$274,950.
- Match.—$148,842.
- Total.—$423,792.

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* Photos have been retained in subcommittee files.

Completed

July 2004.

EAGLE POINT IRRIGATION DISTRICT

Description

The District operates a combined irrigation and hydroelectric water diversion in South Fork Big Butte Creek in the Rogue River Basin. Two fish screens and one fishway were installed. Benefits include protection for migratory fish, restoration of access to spawning and rearing areas and enhancement of important commercial and recreational fisheries.

Species Benefited

ESA-listed coho salmon and steelhead, as well as native cutthroat trout.

Partners

Eagle Point Irrigation District.

Funding

- FRIMA.—$306,800.
- Match.—$178,818.
- Total.—$485,618.

Completed

March 2004.

LAKESHORE GARDENS DRAINAGE DISTRICT

Description

The Lakeshore Gardens Drainage District operates an irrigation diversion in Upper Klamath Lake near Klamath Falls. A fish screen was installed. Suckers are a culturally important fish to local tribes and the redband trout support a recreational fishery.

Species Benefited

ESA-listed shortnose and Lost River suckers, as well as redband trout.

Partners

Lakeshore Gardens Drainage District.

Funding

- FRIMA.—$19,971.
- Match.—$10,754.
- Total.—$30,725.

Completed

December 2004.

LOST AND BOULDER

Description

The Lost and Boulder Ditch Improvement District operates an irrigation diversion in Boulder Creek in the Deschutes River Basin. A new fish screen and fishway have been installeld in the White River Basin. Eight miles have been made accessible to fish.

Species Benefited

A genetically unique stock of redband trout.

Partners

Lost and Boulder Ditch Improvement District

Funding

- FRIMA.—$61,084.
- Match.—$53,834.
- Total.—$114,918.

Completed

November 2005.

MEDFORD IRRIGATION DISTRICT NORTH FORK LITTLE BUTTE

Description

The Medford Irrigation District operates an irrigation water diversion in the North Fork of Little Butte Creek in the Rogue River Basin. A fish screen and fishway have been installed. Benefits include protection for migratory fish, restoration of access to spawning and rearing areas and enhancement of important commercial and recreational fisheries. Ten miles of additional excellent habitat have been made accessible to fish.

Species Benefited

ESA-listed coho salmon, as well as steelhead and native cutthroat trout.

Partners

Medford ID and Rogue River ID.

Funding, Phase 1, Engineering (X1D7)

- FRIMA.—$163,200.
- Match.—$101,500.
- Total.—$264,700.

Funding, Phase 2, Construction (X1D8)

- FRIMA.—$324,800.
- Match.—$229,819.
- Total.—$554,619.

Total Funding

- FRIMA.—$488,000.
- Match.—$331,319.
- Total.—$819,319.

Completed

- June 2005.

MEDFORD IRRIGATION DISTRICT SOUTH FORK LITTLE BUTTE

Description

The Medford Irrigation District operates an irrigation diversion in the South Fork of Little Butte Creek in the Rogue River Basin. The fish screen and fishway have been installed. Benefits include protection for migratory fish, restoration of access to spawning and rearing areas and enhancement of important commercial and recreational fisheries. 25 miles of habitat were made accessible to fish.

Species Benefited

ESA-listed coho salmon as well as steelhead and trout.

Partners

Medford Irrigation District, Rogue River Irrigation District.

Funding

- FRIMA.—$397,000.
- Match.—$280,131.
- Total.—$677,131.

Completed

September 2004.

ODFW INVENTORY—2002

Description

Comprehensive Barrier Database Development Project

This project combined ODFW natural and artificial passage barriers database into one system that included existing barrier information from other agencies and entities. Resulting information is available and accessible through the ODFW website. ODFW is working with the Oregon Fish Passage Task Force to come up with a conceptual approach to prioritize barrier replacement efforts.

Wood River Water Diversions and Fish Screens Assessment

Water diversions were surveyed in the Wood River—Agency Lake Sub-basin (Wood River, Annie Creek, Sun Creek, Sevenmile Creek, Fort Creek, and Crooked Creek) in the Klamath River Basin for screening status. The ongoing assessment

includes screening needs, estimated screening costs, location maps, and screening priorities.

Little Butte Creek Diversions and Screens Assessment

Eleven Water diversions with fish screens were surveyed in Little Butte Creek in the Rogue River Basin. The fish screens are old and out-of-criteria, so screen replacement was assessed. Landowners were contacted and willing to participate in screens replacement. Screen locations were mapped using GIS.

Funding

- FRIMA.—$44,181.
- Match.—$68,666.
- Total.—$112,347.

Completed

September 2004.

RUNNING Y RANCH, GEARY CANAL

Description

The Geary Canal is an irrigation diversion in Upper Klamath Lake. Screen site analysis and roadwork were completed. Suckers are a culturally important fish to local tribes. The redband trout support a recreational fishery.

Species Benefited

ESA-listed shortnose and Lost River suckers as well as redband trout.

Partners

Running Y Ranch and Wocus Drainage District.

Funding

- FRIMA.—$37,870.
- Match.—$88,365.
- Total.—$126,235.

FRIMA portion completed

September 2006.

SANTIAM WATER CONTROL DISTRICT

Description

The Santiam Water Control District operates a combined irrigation, municipal and hydroelectric water diversion in the North Santiam River in the Willamette River Basin. This 1,050 cfs diversion was the largest unscreened diversion in Oregon. A fish screen has been installed. A tailrace barrier was also installed at the diversion irrigation canal outfall into the river to prevent fish from swimming upstream into the canal. Benefits include protection for migrating fish and enhancement of important commercial and recreational fisheries.

Species Benefited

ESA-listed chinook salmon, steelhead and Oregon Chub as well as who salmon and cutthroat trout.

Partners

Santiam Water Control District, City of Stayton and Marion Soil and Water Conservation District.

Funding

- FR1MA.—$400,000.
- Match.—$1,284,261.
- Total.—$1,684,261.

Completed

September 2004.

TUMALO BEND FEED CANAL

Description

The Tumalo Irrigation District operates an irrigation diversion in the Deschutes River in the Deschutes River Basin. The redband trout support a recreational fishery.

Species Benefited

Redband trout and other native species.

Partners

Tumalo Irrigation District.

Funding

- FRIMA.—$40,000.
- Match.—$62,982.
- Total.—$102,982.

Completed

June 2005.

UPPER BENNETT DAM, CITY OF SALEM

Description

The City of Salem operates Upper Bennett Dam, a large dam in the North Santiam River in the Willamette River Basin. The existing fishway needed significant improvement in passing fish upstream. Benefits include improved access for fish to more than 100 miles of natural production habitat and the enhancement of important commercial and recreational fisheries.

Species Benefited

ESA-listed chinook salmon and steelhead, as well as coho salmon and cutthroat trout.

Partners

City of Salem.

Funding

- FRIMA.—$250,000.
- Match.—$1,210,080.
- Total.—$1,460,080.

Completed

December 2005.

RED HOUSE FISHWAY

Description

Fish passage was blocked by the Red House diversion dam on the Chewaucan River in Southeastern Oregon. Redband out spawn and rear in the river, and grow to adult size in the river's end reservoir, which is adjacent to the terminal Abert Lake. Three major diversion dams blocked fish passage on the Chewaucan River. Fish ladders were provided at these three dams. A pool and weir fish ladder was constructed for the Red House dam. More than 82 miles of good spawning and rearing habitat for redbird trout is now accessible.

Species Benefited

Redband trout and other native species.

Partners

ZX Ranch, Lakeview Soil and Water Conservation District.

Funding

- FRIMA.—$97,660.
- Match.—$223,251.
- Total.—$320,910.

Completed

February 2006.

OAK CREEK

Description

This project will remove an existing, unused sheet pile diversion dam in Oak Creek, tributary to Marys River in the Willamette Basin. The dam poses a passage barrier to ESA-listed and other fish. Dam removal will open access to 1.3 miles of fish habitat.

Species Benefited

ESA-listed spring chinook salmon, cutthroat trout, lamprey and other native species.

Partners

City of Corvallis, Willamette Restoration Initiative.

Estimated Funding

- FRIMA.—$23,087.
- Match.—$12,434.
- Total.—$35,521.

Completion

September 2007.

NORTH UNIT IRRIGATION DISTRICT (NUID)

Description

NUID built a large 153 cfs pumping station in 1968 on the Crooked River to provide irrigation water. Each pump has a screened bay. The old 9 rotary drum screens mesh, shafts and gaskets are deteriorating. The screens mesh is compromised and also has 0.25″ openings that are too large to meet fish screening criteria. Bull trout are federally listed as threatened under the Endangered Species Act (ESA). The Crooked River historically supported anadromous chinook salmon, steelhead, and Pacific lamprey. Chinook salmon and steelhead are proposed for re-introduction into the Crooked River and the upper Deschutes River in 2006. Resultant salmonid smolts will migrate downstream through a planned device at Round Butte Dam. A single self-cleaning vertical plate screen should be installed in June 2008 to protect these fish.

Species Benefited

Redband trout, bull trout, mountain whitefish and other species.

Partners

NUID.

Estimated Funding

- FRIMA.—$282,586.
- Match.—$287,000.
- Total.—$569,586.

Completion

June 2008.

LACOMB IRRIGATION DISTRICT

Description

Lacomb Irrigation District (ID) has a large diversion (65 cfs) for irrigation and hydroelectric generation in Crabtree Creek, which flows into the South Santiam River. The existing rotary drum fish screen is deteriorated. The screen mesh is compromised in places and has openings too large to meet fish screening criteria. Chinook salmon and steelhead are federally ESA-listed. A horizontal perforated plate screen should be installed in October 2007 to protect these fish.

Species Benefited

Chinook salmon (spring), steelhead (winter), cutthroat trout and other fish species.

Partners

Lacomb, ID.

Estimated Funding

- FRIMA.—$161,175.
- Match.—$87,325.
- Total.—$248,500.

Completion

October 2007.

CITY OF SUMPTER, FISH SCREEN

Description

The City of Sumpter has a 5 cfs gravity diversion for domestic water. The diversion is in the McCully Fork of the Powder River at Sumpter in northeastern Oregon. An additional fish passage project is planned at the diversion site. A horizontal perforated plate screen will be installed.

Species Benefited

ESA-listed bull trout and redband trout.

Partners

City of Sumpter.

Funding

- FRIMA.—$32,100.
- Match.—$39,690.
- Total.—$71,790.

Completion

September 2007.

CITY OF SUMPTER, FISHWAY

Description

The City of Sumpter has a diversion dam for providing domestic water. This project will replace an existing diversion dam by installing a fishway comprised of multiple full-spanning rock weirs and a re-built stream channel, in conjunction with a separate project for a fish screen, at an existing diversion on the McCully Fork of the Powder River in Northeastern Oregon. Providing a fishway and fish passage will benefit fish species and help stabilize the channel. Removal of the barrier will provide access to approximately 13.2 miles of stream above the site.

Species Benefited

Redband trout and ESA-listed bull trout.

Partners

City of Sumpter.

Funding

- FRIMA.—$25,608.
- Match.—$15,280.
- Total.—$40,888.

Completion

September 2007.

O'KEEFFE/CLELAND

Description

The O'Keeffe/Cleland unscreened diversion takes 25 cfs of irrigation water from Deep Creek in the Warner Valley Basin near the town of Adel. Deep Creek flows into Crump Lake, one of many lakes in the Warner Valley in Lake County in southeastern Oregon. The new fish screen will enhance the survival of ESA-listed species. The new triple bay self-cleaning rotary drum screen array should be constructed and installed during September 2007.

Species Benefited

ESA-listed Warner Suckers and resident redband trout.

Partners

O'Keeffe, Cleland (landowners).

Funding

- FRIMA.—$44,856.
- Match.—$35,010.
- Total.—$152,786.

Completion

September 2007.

TUMALO IRRIGATION DISTRICT, TUMALO FEED LADDER

Description

Tumalo Irrigation District has a diversion dam for irrigation water. This project will replace an existing, non-compliant fish ladder with a new fish ladder, in conjunction with a separate project for a fish screen, at an existing irrigation diversion on Tumalo Creek in the Deschutes River Basin in central Oregon. The fish passage will open up the entire upper 12 miles of Tumalo Creek, making it accessible.

Species Benefited

Redband trout.

Partners

Tumalo ID.

Funding

- FRIMA.—$100,000.
- Match.—$150,000.
- Total.—$250,000.

Completion

September 2008.

MANCOS WATER CONSERVANCY DISTRICT,
July 17, 2007.

TO WHOM IT MAY CONCERN: The Mancos Valley, located in southwest Colorado, is basically high desert with approximately twenty inches of precipitation annually. Agriculture has always been a major industry, which here means irrigation.

Irrigation in the Mancos Valley comes from the Mancos River and its tributaries. Most years the river's summer flows are far from adequate for commercial production; therefore, the United States, in cooperation with the Valley, constructed the Mancos Project in the 1940s.

The Mancos Project stores Mancos River water during times of high flow for use during our crop season. The project is truly the lifeblood of the Mancos Valley, providing water for irrigation and water for homes and businesses. I cannot overstate the importance of this project to the valley.

Although the project was well designed, it has surpassed the design life of some of the structures. The Mancos Water Conservancy District (operator) has practiced diligence in maintaining the project, yet the project is now in serious need of major rehabilitation.

This rehabilitation is beyond the resources of the District and the irrigators in the valley. The District and the irrigators are certainly willing to do what we are able, we do, however, need help.

Our farmers (irrigators) are struggling to survive (myself included). WE are between the proverbial rock and the hard place. On the one hand, we cannot survive without the Mancos Project on the other hand, we cannot pay for the rehabilitation of the project from our own resources.

Thank you for your time,

DEE GRAF,
President.

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