

**MISCELLANEOUS WATER AND POWER BILLS**

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

ON

<b>S. 2680</b>	<b>H.R. 29</b>
<b>S. 2805</b>	<b>H.R. 123</b>
<b>S. 2814</b>	<b>H.R. 1803</b>

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APRIL 24, 2008



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## MISCELLANEOUS WATER AND POWER BILLS

THURSDAY, APRIL 24, 2008

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

The subcommittee met, pursuant to notice, at 2:15 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Senator Tim Johnson presiding.

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

Senator JOHNSON. I call to order this hearing before the Water and Power Subcommittee. It is my pleasure to welcome everyone here this afternoon. Today's hearing involves six different bills that are pending before the subcommittee.

These bills cover a broad range of issues. As is typical for a hearing on miscellaneous bills we've got several which deal with basic water supply. Others promote water conservation and address water quality needs.

I'll briefly summarize these bills for the record.

One, S. 2680, the Leadville Mine Drainage Tunnel Improvement Act sponsored by Senator Salazar.

Two, S. 2805, the Rio Grande Pueblos Irrigation Works Improvement Act sponsored by Senator Bingaman.

Three, S. 2814, the Eastern New Mexico Rural Water Authorization Act sponsored by Senator Bingaman and Senator Domenici.

Four, H.R. 29, authorizing a water supply project for the Fallbrook Public Utility District.

Five, H.R. 123, to authorizing the San Gabriel Basin Restoration Fund.

Six, H.R. 1803, the San Diego Water Storage and Efficiency Act.

These bills are just a sample of the intense demand that exists for our constricted partnership with the Federal Government that addresses long term water needs. The subcommittee will take a closer look at these bills and work with the sponsoring members to try and make progress toward enactment. I'll turn to Senator Corker, the Ranking Member for his opening comments and then proceed to other members of the subcommittee if they wish to make a statement.

Senator Corker.

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

Senator CORKER. Mr. Chairman, thanks for having this hearing. I want to thank the witnesses who are coming to enlighten us. I'm glad to be here with Senator Bingaman. I think Senator Domenici is coming. Because I know he's going to be here the entire time, I've left a seat here for him right beside you.

I don't want you to think I don't want to be next to you. I always enjoy serving with you and with that I look forward to hearing this variety of bill presentations that I know are important to many, many members. Thank you.

Senator JOHNSON. Senator Bingaman.

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

The CHAIRMAN. Thank you very much, Senator Johnson. I appreciate you doing this hearing and you and Senator Corker both for your leadership on this subcommittee. Let me just make a very short statement.

I'm particularly focused today on two of the bills that you listed there, S. 2805 and S. 2814. In the interest of time I'll submit a complete statement for the record.

[The prepared statement of Senator Bingaman follows:]

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

Thank you Senator Johnson, for convening today's hearing, and including as part of the agenda, two bills that I am sponsoring—S. 2805 and S. 2814. In the interests of time, I'll submit a written statement for the record and just make a few brief comments now.

The witnesses on the second panel include a couple of New Mexicans who I'd like to welcome. We have Governor Michael Chavarria of Santa Clara Pueblo, and Mayor Orlando Ortega of Portales, New Mexico. Accompanying Mayor Ortega, is Mayor Gayla Brumfield of Clovis, New Mexico. Thank you all for being here today.

The Subcommittee will hear testimony today describing the critical water needs facing the communities represented by Governor Chavarria, Mayor Ortega, and Mayor Brumfield. They will also talk about their efforts at the local level to address these issues. What's now needed is the active participation of the federal government to achieve success in solving the problems they face. Unfortunately, the Administration's testimony will not offer any assistance, but instead, tells these communities that basically, they are on their own. I think this is a short-sighted approach to a critical set of issues and look forward to discussing this further during the hearing.

Thank you again Mr. Chairman for convening today's hearing.

The CHAIRMAN. Let me just say we do have two witnesses today from New Mexico who I'm very proud to have here. Governor Michael Chavarria, who's Governor of Santa Clara Pueblo is here to testify on one of the two bills. Mayor Orlando Ortega of Portales, New Mexico is here to testify on the other.

Mayor Ortega is accompanied by Mayor Brumfield, Gayla Brumfield from Clovis, New Mexico. Of course Mayor Ortega is from Portales. We thank all of those witnesses for being here.

I am disappointed as we will hear in the testimony that I believe the Administration's position is that they do not support Federal Government help with the projects involved here. I think that's unfortunate. But I think we'll get good testimony and I hope we will

have strong support on the committee to move ahead with this legislation, both pieces of legislation.

Again, thank you for having today's hearing.

Senator JOHNSON. We'll now turn to the first panel of witnesses for today's hearing. Representing the Administration is Bob Johnson, the Commissioner of Reclamation will speak to all the bills on today's agenda. We also have Susan Bodine, the Assistant Administrator for Solid Waste and Emergency Response at the Environmental Protection Agency. Ms. Bodine is here to address the issues involving S. 2680.

Welcome to both of you. Thank you for making yourself available. Before starting I would like to quickly note that the subcommittee has received additional written testimony on several of the bills before us today. That testimony as well as the written submission of all of today's witnesses will be made a part of the official hearing record.

Mr. Johnson, please go ahead and summarize your written.

Mr. JOHNSON. Thank you.

Senator JOHNSON. Wait a minute.

Senator Domenici.

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

Senator DOMENICI. Mr. Chairman, Senator Bingaman, I first wanted to tell you that I came. But I won't be able to stay very long. I wanted to make sure that the New Mexico witnesses knew that I was involved, but won't be here very long.

I have an opening statement regarding S. 2814 that I'd like to make part of the record.

[The prepared statement of Senator Domenici follows:]

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

Mr. Chairman, I want to thank you for holding this hearing. Senator Bingaman has a bill before this subcommittee today, S. 2814—of which I am proud to be a cosponsor—that intends to address a serious issue we are dealing with back in our state.

Eastern New Mexico faces the growing prospect of insufficient water supplies. It also faces competition between agriculture and municipal demands for those water supplies that do exist. This is a fact. It is not up for debate. What is up for discussion is how these needs will be addressed.

Some of you will remember, in fact some of you were there; this Committee had a field hearing on this subject in Clovis last August. In that hearing I expressed my concern that the Administration has not been very supportive of addressing this issue. Frankly, I do not feel that the situation has improved.

I would like to reiterate several points that I made during that hearing.

Over the last 5 years or so, the State Engineers Office has been a strong supporter for the use of Ute Reservoir water to supply the needs of communities in the Clovis and Portales region. The Bureau of Reclamation, on the other hand, has been a reticent participant in this process.

Had the leadership been engaged, the full feasibility work for this project could have been accomplished many years ago. Instead Congress has had to push, pull, cajole and wrestle with the agency to get even the minimum amount of attention.

I look forward to hearing from the Administration on these issues and hope that we can work together to find financially responsible, technically feasible solutions for the water supply challenges of Eastern New Mexico.

I thank all of our witnesses for being here today, especially the Honorable Orlando Ortega for coming all the way from Portales. I would also like to thank Governor Chavarria for making the trip as well to testify before us today.

Senator DOMENICI. It's pretty straight forward. Just a quick observation regarding the water pipeline that you and I have introduced a measure on.

I hope that the government's witnesses come to the conclusion that they've studied it enough. In spite of the fact that we don't have a method of paying for it that they at least indicate we're ready and that we don't have to spend more time studying or evaluating it. If I'm not here, I would hope that one of you would ask that question or I would leave it and ask it. Thank you very much.

Senator JOHNSON. Mr. Johnson, please go ahead and summarize your report and testimony. Following that we'll have a brief question and answer period for you and Ms. Bodine. Proceed.

**STATEMENT OF ROBERT W. JOHNSON, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY SUSAN PARKER BODINE, ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY**

Mr. JOHNSON. Thank you, Mr. Chairman and members of the committee. It's a pleasure to be here. I will try to summarize our written testimony quickly.

S. 2680 would direct the Interior Department to implement actions of the remedy selected by the Environmental Protection Agency for the California Gulch Superfund site. The Administration cannot support S. 2680. However I can report to the subcommittee that Reclamation and EPA are aggressively taking action to address any immediate risk.

Public safety dictates every action Reclamation and EPA take at the Leadville Mine Drainage Tunnel. We have had an emergency action plan for the tunnel since 2001. Reclamation is making every effort to make a science based determination regarding whether there is an elevated public safety risk below the drainage tunnel. Reclamation's ongoing risk assessment which began in November 2007 is aimed at understanding how complex geology and extensive subsurface mine passages affect the quantity and quality of drainage inside the tunnel. The results of that study are going to be available this June.

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

In addition to these actions Reclamation and EPA are evaluating long term solutions and will have a better understanding of the long term safety requirements once the analysis is completed. We're working to develop a permanent solution. We will submit proposed legislation if any legislative authority is needed to implement it.

S. 2805 would authorize agreements with the Rio Grande Pueblos to rehabilitate or reconstruct existing irrigation infrastructure. The Department supports the goals of this bill. Installing proper

drainage, replacing ditches with pipes or concrete linings and having conveyance facilities capable of efficiently supplying water at both high and low flows would result in greater efficiency for the Pueblos. However, the bill as presently written contains some unclear provisions and funding requirements which are outlined in our written testimony. For this reason, the Department cannot support S. 2805.

S. 2814, the Eastern New Mexico Rural Water Project Act would authorize rural water project for several Eastern New Mexico municipalities. Reclamation has been working with the State of New Mexico and local parties on a number of studies on this evolving project over the years. Since 1998 Congress has provided \$1.76 million for planning and technical assistance, of which more than \$1.2 million has been transferred directly to the city of Clovis for work on the project.

Reclamation has previously expressed concerns with the adequacy of the conceptual design report and posed some critical questions outlined in detail in our written testimony that need to be considered before construction should proceed. Much progress has occurred and Reclamation continues to work with the local entities to develop answers to our concerns. The Administration is concerned about becoming the primary source of funding for these types of project and because of this project's high Federal cost of \$327 million, the Department cannot support S. 2814.

H.R. 29 would authorize construction of facilities to provide water for irrigation, municipal use and military uses from the Santa Margarita River in California. Engineering, economic and environmental analyses are currently underway for this project and are not yet complete. Since 2003, Reclamation has been working with the Marine Corps and the district to analyze alternatives capable of implementing the Conjunctive Use Project.

It is anticipated that implementation could assist in settling the long standing water rights claims of the Marine Corps and the district and help reduce the use of imported water supplies from the Colorado River and the Bay delta in California. However, primarily for fiscal reasons, we cannot support H.R. 29 at this time.

H.R. 1803, the San Diego Water Storage and Efficiency Act of 2007 would authorize a feasibility study to design and construct a four reservoir intertie system to improve water storage opportunities, reliability and water yield in San Diego County. The Department supports the goals of this bill and would support the bill if amended as described in my written statement. Reclamation recommends that this bill be amended to provide that before undertaking a full feasibility study and appraisal investigation should be complete to determine the prudence of a feasibility study. Only if the appraisal investigation recommends that the proposed intertie system be studied further should the Secretary undertake a full feasibility study.

H.R. 123 would increase the ceiling on funds authorized to be appropriated to the San Gabriel Basin Restoration Fund. The Administration does not support H.R. 123. Ground water contamination was first detected in the San Gabriel Valley in 1979. As part of this effort to clean up the ground water contamination in San Gabriel Basin, Congress established the restoration fund in 2001.

The Administration has not budgeted for the San Gabriel Restoration Fund in any fiscal year. The Department believes that resources should be allocated to achieving priorities within Reclamation's traditional mission area and does not support the 61.2 million cost ceiling increase proposed in the bill. Reclamation, however, will continue to work with the Water Quality Authority and the district when possible to advance the goal of ground water clean up in the San Gabriel Basin.

Thank you again for the opportunity to comment on these six bills. I would be happy to answer any questions.

[The prepared statements of Mr. Johnson follow:]

PREPARED STATEMENTS OF ROBERT W. JOHNSON, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

S. 2680

Mr. Chairman and Members of the Subcommittee, I am Robert Johnson, Commissioner of the Bureau of Reclamation. I am pleased to be here today to present the Administration's views on S. 2680, the "Leadville Mine Drainage Tunnel Environmental Improvement Act of 2008." We recognize the intense public interest in the Leadville Mine Drainage Tunnel issues addressed by this bill, and support the goals of this bill of ensuring public safety and accomplishing the expeditious and efficient cleanup of the California Gulch Superfund site. The Administration cannot support S. 2680 at present because we have not yet determined what further actions are needed to provide a long-term solution.

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

In view of the recent concerns of rising groundwater and mine pool levels, EPA and the Bureau of Reclamation, in coordination with the State of Colorado, are now conducting removal actions. This work commenced in February 2008 and includes two major activities. First, EPA installed a pumping system in the Gaw mine shaft and has been pumping at a rate of 450 gallons per minute since late February. This action may lower water levels in the mine pool. In addition, it appears to have diminished seeps and springs that had recently appeared in the lower California Gulch. Second, EPA is taking steps to drill a relief well into the LMDT to lower the level of water in the LMDT and mine pool. EPA plans to have the relief well, pump and pipe to the LMDT installed and ready to operate in Summer of 2008.

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

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

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

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

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

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

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

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

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

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

The Administration cannot support the specific language in S. 2680 at present because we do not yet know what additional specific safety measures and funding requirements may be needed. Once the EPA relief well is completed in June and water can be pumped from the LMDT, any immediate risk should be alleviated and more information about the needs for ensuring the safety of the tunnel and long-term water treatment options can be assessed. It is possible that the particular solutions referenced in section 4 of S. 2680, which calls on Reclamation to implement portions of the remedy selected by the Administrator of the Environmental Protection Agency in 2003, may turn out not to be necessary. We look forward to working with the Congress and the State of Colorado to find the best outcome for the citizens of Leadville.

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

S. 2805

Mr. Chairman and Members of the Subcommittee, I am Robert W. Johnson, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to appear today to present the Department of the Interior's views on S. 2805, a bill to authorize the United States to enter into agreements with the Rio Grande Pueblos to repair, rehabilitate, or reconstruct existing irrigation infrastructure. While the Department supports the goals of this bill, we cannot support this legislation.

The Rio Grande Pueblo Irrigation Infrastructure Improvement Act would provide an assessment of the irrigation infrastructure of 18 Pueblos in New Mexico and provide grants to repair, rehabilitate, reconstruct, or replace existing infrastructure. In 1999 and 2000, Reclamation spent \$100,000 in cost share with the Bureau of Indian Affairs for an appraisal level study and cost estimate for irrigation infrastructure work on the 18 Pueblos.

Diversions of the Rio Grande River and many of its tributaries supply the water for irrigation. Irrigated agriculture remains the primary source of Pueblo-grown produce for family consumption and local sales, while also serving important cultural purposes.

Many factors now make Pueblo farming more difficult. Often, there is not enough flow available for Pueblo ditches to work properly. Despite the incorporation of the six Middle Rio Grande Pueblos into the Middle Rio Grande Conservancy District's water delivery system, poor Pueblo irrigation facilities have, in some cases, hindered the delivery of water for efficient production on Pueblo lands.

Installing proper drainage, replacing inefficient ditches with pipes or concrete lined ditches, and having conveyance facilities capable of efficiently supplying water at both high and low flows would result in greater efficiency for the Pueblo. Work done to date between Reclamation and the Pueblos is primarily done through Public Law 93-638 contracts. These contracts are the preference of many of the Pueblos. Work done under this bill would be subject to Public Law 93-638. Section 5(a) of this bill describes cooperative agreements and grants with the Pueblos. Reclamation is concerned that it lacks the word "contracts," which could be problematic with issuing Public Law 93-638 contracts.

The scope of work that would be covered under the bill could vary significantly depending on the definitions for some key words included in this bill. Reclamation would request definitions for major impoundment structures (Sec.5(b)1), on-farm improvements (Sec.5(b)2), drainage facility (Sec 3(4)), and historically irrigated lands (Sec.5(b)3). The definitions for each of these could have different interpretations and could significantly change the boundaries, costs and workload associated with these projects. Section 4 also does not describe any cost share requirements for the study, which includes creation of the list and work with the Pueblos to gain their consent of the list.

Sections 4(a) and 5(c) direct Reclamation to conduct a study and compile a list of projects based on priority and with the consent of the Pueblos. The results of the study, priority list and any other findings must be reported to Congress within 18 months of the enactment. This time frame is not reasonable to conduct an adequate feasibility study, prepare cost estimates, comply with the National Environmental Policy Act, and perform a value engineering analysis, all of which are required by Reclamation. The bill would provide DOI with the authority to award grants to the Rio Grande Pueblos to plan, construct or repair Pueblo irrigation infrastructure. S. 2805 would authorize the Federal government to pay up to 75 percent of project construction/repair costs, and to waive the non-Federal cost share requirement if the Pueblo demonstrates financial hardship that would prevent the Pueblo from cost sharing. S. 2805 authorizes an appropriation of \$60 million for the proposed projects and \$4 million for the study.

The list mentioned in sections 4(a) and 5(c) must have the consent of the Pueblos. The legislation's wording does not specify whether all Pueblos must approve the entire list or each Pueblo is required to approve only its portion of the list. The outcomes could also vary depending on whether approval of the list would require unanimous consent of all the Pueblos, or only the consent of a majority of the Pueblos. Under Public Law 93-638, the Pueblos can request that they determine the priorities and overall list of projects to be completed. Reclamation would like clarification on the level of consent required from the Pueblos, individually and corporately.

Reclamation agrees that this legislation could help improve the efficiency of the Pueblo irrigation systems and could therefore serve as a water conservation measure along the Rio Grande. However, as described above, the bill as presently written contains many unclear provisions and leaves some important factors open to interpretation. The Department also can not support the addition of new projects which would result in the reduction of funding for other ongoing Reclamation projects. This concludes my testimony. I am happy to answer any questions.

S. 2814

Mr. Chairman and Members of the Subcommittee, I am Robert W. Johnson, and I am Commissioner of the Bureau of Reclamation. I am pleased to be here to provide the Department of the Interior's views on S. 2814, the Eastern New Mexico Rural Water Project Act. The Department cannot support S. 2814.

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

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

In 2004, Reclamation testified on legislation (HR 4623) to authorize construction of the Eastern New Mexico Rural Water Supply Project. During that hearing, Reclamation cited concerns with the adequacy of the Conceptual Design Report to support authorization and identified some critical questions that needed to be answered before construction should proceed, such as whether all economically viable alternatives had been considered, whether design and construction costs were consistent with comparable projects, and whether the communities that would be sharing project costs had an accurate estimate of how much those costs might be. Reclamation also expressed concerns with the proposed cost sharing formula, which assumed an 80% federal share for construction of the project. The federal cost share in the new legislation (S. 2814) is 75%.

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

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

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

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

Reclamation is committed to working with its customers, States, Tribes, and other stakeholders to find ways to balance and provide for the mix of water resource needs in the future. The Administration is concerned, however, about becoming the primary source of funds for these types of projects. Because of this project's high cost, with a federal cost share of \$327 million, and because this project would compete with ongoing work by Reclamation in New Mexico and across the west, the Department cannot support S. 2814. However, we are working with the Authority and the State to bring the project to a point where a feasibility determination is possible.

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

H.R. 29

Mr. Chairman and Members of the Subcommittee, I am Robert W. Johnson, Commissioner of the Bureau of Reclamation. I am pleased to be here today to give the Department's views on H.R. 29, to authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California.

Engineering and economic feasibility investigations, and environmental analysis that is currently underway for this project, are not yet complete. In addition, general stream adjudication for the Santa Margarita River is ongoing, and the claims

of the Pechanga, Cahuilla and Ramona Indian Bands have yet to be determined, leaving uncertainty as to ownership of water rights in this river system. Also, this project would have to compete for funds with ongoing projects. In view of these factors, the Department cannot support H.R. 29.

H.R. 29 authorizes \$60 million of Federal funding for construction of this project, as may be adjusted for engineering cost indices, conditioned upon the following:

1. The Fallbrook Public Utility District (District) and the Department of the Navy (Navy) entering into a repayment contract with the United States for its allocation of the construction costs, with interest, as applicable;
2. The State of California granting permits to Reclamation for the benefit of the Navy and the District to use the water developed by the project;
3. The District agreeing not to assert any prior appropriative right it may have to water in excess of the quantity deliverable to it under this Act; and
4. The Secretary of the Interior determining that the project has economic, environmental, and engineering feasibility.

The project would be located on the lower Santa Margarita River on Camp Joseph H. Pendleton Marine Corps Base (Marine Corps), the Fallbrook Annex of the Naval Weapons Station (Weapons Station), and surrounding lands within the service area of the District. The project, as proposed by the Act, would consist of features for the conjunctive use of ground and surface water, the yield of which would be allocated 60 percent to the Navy and 40 percent to the District.

In 1974, the California State Water Resources Control Board (SWRCB) assigned four water rights permits to Reclamation held in trust for the Marines and the District. The permits were originally granted to construct two dams on the Santa Margarita River as part of a proposed settlement of *United States v. Fallbrook*. Since 2003, Reclamation has been working with the Marine Corps and the District to analyze alternatives capable of implementing the conjunctive use project under a feasibility investigation authority. It is anticipated that implementation could assist in settling the long-standing water rights claims of the Marine Corps and the District.

Mr. Chairman, the Department understands the importance of reducing the use of imported supplies from the Colorado River and the Bay-Delta in the Santa Margarita River basin. However, for the reasons stated above we cannot support H.R. 29. This concludes my testimony. I would be happy to answer any questions.

H.R. 1803

Mr. Chairman and Members of the Subcommittee, I am Robert W. Johnson, Commissioner of the Bureau of Reclamation. I am pleased to be here today to present the Department's views regarding H.R. 1803, the San Diego Water Storage and Efficiency Act of 2007. The Department supports the goals of this bill, and would support the bill if amended as described in this statement.

H.R. 1803 would authorize the Secretary of the Interior to conduct a feasibility study to design and construct a four reservoir intertie system for the purposes of improving the water storage opportunities, water supply reliability, and water yield in San Diego County, California. In cooperation and consultation with the City of San Diego and the Sweetwater Authority, the investigation would determine whether a system of pumps and pipelines interconnecting four non-Federal reservoirs (San Vicente Reservoir, El Capitan Reservoir, Loveland Reservoir, and Lake Murray) would improve water management opportunities. The legislation authorizes an appropriation of \$3 million for the investigation.

The Bureau of Reclamation recommends that this bill be amended to provide that before undertaking a full feasibility study, Reclamation should first carry out an appraisal investigation to determine the prudence of a feasibility study for the proposed intertie system. Only if the appraisal investigation recommends that the proposed intertie system be studied further should the Secretary undertake a study, as authorized in this bill, to determine the feasibility of the intertie system.

As part of the feasibility authorization in this bill, the Federal cost share will not exceed 50 percent of the total study costs. The proposed legislation only authorizes a feasibility investigation. The outcome of the feasibility investigation would be an important factor in whether the Secretary would recommend that Congress enact further authorization for construction of the proposed reservoir and intertie project.

The Department is aware of local efforts to study various ways to increase local water supplies and reliability in southern California. As Watermaster of the Colorado River, the Department would benefit from improved efficiency of use of imported water in California. An intertie system such as the project proposed might allow San Diego County, located at the end of the Colorado River, and State Water Project distribution systems, the ability to better manage their imported supplies,

improve reliability and move water more effectively within several reservoirs to receive the benefits of available storage. This project, if found to be feasible, could be a valuable tool under the California 4.4 Plan to improve and better utilize imported water from the Colorado River.

The Bureau of Reclamation is currently working with the City of San Diego and the Sweetwater Authority on other unrelated water recycling projects that help with the future needs for water of the region.

The Department supports the goal of this legislation to authorize a new feasibility investigation, and requests that the legislation be amended so that the feasibility investigation will only go forward if, on the basis of an appraisal investigation, Reclamation determines that the proposed intertie system should be studied further.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 1803. I would be happy to answer any questions at this time.

H.R. 123

Mr. Chairman and Members of the Subcommittee, I am Robert Johnson, Commissioner of the Bureau of Reclamation. I am pleased to be here today to give the Department's views on H.R. 123, a proposal to increase the ceiling on funds authorized to be appropriated to the San Gabriel Basin Restoration Fund. The Administration does not support H.R. 123.

Groundwater contamination was first detected in the San Gabriel Valley in 1979. Following this discovery, the U.S. Environmental Protection Agency designated major portions of the region's groundwater as Superfund sites. Between 1990 and 1997, EPA identified Potentially Responsible Parties at the site who then engaged in negotiations with local water agencies and began initial design work on an EPA-developed basin-wide plan to set cleanup priorities. After reaching a detailed agreement with seven local water agencies in March 2002, design work was completed and construction work began. Construction of the four planned groundwater extraction and treatment facilities was largely completed in 2006.

As part of this effort to clean up the groundwater contamination in the San Gabriel Basin and prevent the contamination from spreading into the adjacent Central Basin, the San Gabriel Basin Restoration Fund (Fund) was established in 2001 by P.L. 106-554. Originally established as a Defense Department account and subsequently transferred to the Interior Department, this interest-bearing account reimburses the San Gabriel Basin Water Quality Authority (WQA) and the Central Basin Municipal Water District (District) for designing and constructing facilities that help with groundwater cleanup efforts in the Basin. The Fund is also authorized to reimburse the WQA and District for operating and maintaining these facilities for up to 10 years. A 35 percent non-Federal share is required for projects. This cost-share can be met by credits given to the WQA for expenditures used for water quality projects that have already been built in the San Gabriel Basin, in lieu of depositing the required 35 percent non-Federal share for these projects into the Fund. To date, the entire non-Federal share has been met by credits that have been certified by Reclamation.

In Fiscal Year 2001, Congress appropriated \$23 million for deposit into the Fund. The Energy and Water Appropriations Act for Fiscal Year 2002 (P.L. 107-66), transferred administrative responsibility for the fund from the Secretary of the Army to the Secretary of the Interior, and appropriated an additional \$12 million. Appropriations in fiscal years 2003-2008 brought the total deposits to the Fund to \$71.71 million. In addition, the Fund has accumulated over \$2.8 million in interest.

Reclamation has executed six grant agreements under the Restoration Fund authority. One grant agreement is with the Central Basin Municipal Water District, covering design, construction, operation, and maintenance of their facility, up to the \$10 million ceiling established by the legislation for this component. The other five agreements are with the WQA. Four cover the design and construction of specific facilities, and the fifth agreement covers operation and maintenance of those four facilities.

The total estimated cost of the project authorized by the legislation is about \$204 million. Based on this cost estimate, about \$69 million would be allocated for the completion of all five facilities, and about \$135 million would be allocated to fund the operation and maintenance of all five facilities for 10 years, as authorized.

The San Gabriel Basin Restoration Fund is and will continue to be used for important local projects. Reclamation must allocate its scarce budget toward funding already authorized projects within the agency's traditional mission of delivering water and power in an environmentally responsible and cost-efficient manner, with emphasis on the needs of aging infrastructure, the safety of existing facilities and dams, and ongoing environmental restoration efforts. The Administration has not

budgeted for the San Gabriel Basin Restoration Fund in any of the preceding fiscal years. The Administration believes that resources should be allocated to achieving priorities within Reclamation's traditional mission area and does not support the \$61.2 million cost ceiling increase proposed in H.R. 123. Reclamation, however, will continue to work with the WQA and the District when possible to advance the goal of groundwater cleanup in the San Gabriel Basin.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 123. I would be happy to answer any questions at this time.

Senator JOHNSON. I yield to the full chairman of the committee.

The CHAIRMAN. Thank you very much, Mr. Chairman. I do have a couple of questions about the two bills that relate to our circumstance in New Mexico. First, let me ask Mr. Johnson, this Rio Grande Pueblo bill which I think you testified on. I think the Bureau of Reclamation and the Bureau of Indian Affairs first completed an initial assessment of the Pueblo's irrigation facilities back in 2000. So this is not a new item.

I guess the obvious first question is why has nothing been done to implement the results of that study since 2000?

Mr. JOHNSON. I understand that we have had some interaction with the Pueblos but have never been able to find the resources to move forward with any of the programs that were identified in there.

The CHAIRMAN. I guess I would ask if, I think in your testimony on this bill, you indicate that there are still a series of technical problems with the bill. Are those clearly identified someplace where we could talk back and forth about those? See if we could resolve at least some of them because my sense is that many of them are fairly ephemeral disagreements.

I think for example you state the need to define some key terms when those terms were actually taken directly from the 2000 report that Bureau of Reclamation did. So, I mean, we ought to be able to find some way to resolve that concern at least. Is it possible to get a real, definitive itemization of the problems you folks still have with that bill?

Mr. JOHNSON. I think it is, Senator. I think we'd be happy to work with you to get language that is clear in our minds as to the intent of the legislation. I think that can be done.

You know, I think, ultimately, we still have the concerns about the fiscal impacts and costs. But I think the technical issues that we've—and the comments that we've made on the bill, I think we could certainly work with you on it. I agree with you. I think we could probably find solutions to those.

The CHAIRMAN. That would be very helpful. I know that the Administration has tried to make grants under this Water 2025 program in the last several years. Could you tell me how much of that, how many of these grants or what percentage of these grants have gone to Indian tribes?

Mr. JOHNSON. I can't give you a specific figure on that. But I can certainly provide one for the record. We have given some Water 2025 grants to tribes. I don't think it's a lot. It's probably a few. But we can get you that information for the record.

The CHAIRMAN. Ok. That would be very helpful if we could get that. Let me ask about the other legislation that I'm concerned about the Eastern New Mexico Rural Water bill. I'm surprised, frankly, that we have had a great deal of interaction. I think you

acknowledged that in your testimony, between the Administration and the local communities involved on this legislation.

I was surprised that your testimony says, "The Administration is concerned about becoming the primary source of funds for these types of projects." My recollection is that 16 months ago the President signed into law the Rural Water Supply Act of 2006 which contemplates a Federal cost share of up to 75 percent on rural water projects. This bill was crafted in part from legislation that was proposed by the Administration which suggested a 65 percent cost share for rural water projects.

It seems to me that this is a pretty clear change of position from what the President signed 16 months ago. Am I missing something here?

Mr. JOHNSON. You're right about the Rural Water legislation. I think it says up to 75 percent. I think our hope was that we could find projects that wouldn't require that high of a percentage or projects that we could provide technical assistance with.

Then also part of that act had the potential of providing loan guarantees to help provide non-Federal dollars for financing for rural communities and that sort of thing. So I think we saw those as tools in that act that could in fact provide some assistance without costing hundreds of millions of dollars. I think one of the things that we struggled with is we have a number of rural water projects that are already authorized. We have a \$2 billion backlog. We're really struggling finding the funding for the ones that are already authorized.

You know, I think there's a concern about these new ones coming along that are again in the hundreds of millions of dollars and what our ability is going to be to fund those if they get authorized as well. I think it really comes back primarily to a fiscal concern.

The CHAIRMAN. So it's really not a concern about becoming the primary source of funds for these types of projects. It's concern about becoming the primary source of funds for any more of these types of projects. Is that it? Is that what you're saying?

Mr. JOHNSON. I think it's overall. Certainly we have a number of projects that are already authorized. We're behind the eight ball on them. Quite frankly, we're not funding them at real significant levels. We're not keeping up with the backlog that we have. Adding more exacerbates that problem.

We would like to use the Rural Water Supply Act to provide assistance to rural communities in planning water supply needs. Then maybe, hopefully using some of the other tools that that act provides that maybe wouldn't commit such large percentages and such large dollars to future funding. So certainly the act does provide up to the 75. I don't deny that. I think it's our hope that we can use percentages that end up with maybe smaller fiscal impacts on our budget.

The CHAIRMAN. Last year Reclamation's Albuquerque area office sent a letter to the authority stating that its engineering report demonstrated that the project was technically viable" and "the least costly and most sustainable way to meet long term water needs in the project area." You still agree with that?

Mr. JOHNSON. I'm sure if that our project office said that, I'm certain that that's correct. I know there has been a lot of study that's been done on this project. Yes.

The CHAIRMAN. It is my impression, based on the research we've been able to do, that this project has received more scrutiny, undergone more analysis, than any other rural water project that's ever been authorized by the Congress. Would you agree with that?

Mr. JOHNSON. I know it's undergone a lot of study, going back for a very long period of time. Not knowing the complete history I don't know that I would say it's the one that's received the most, but I would say it's fair to say it's received more than most. I don't know if it's absolutely the most.

The CHAIRMAN. I guess the sort of final concern I have is if we do further delay, which I believe your testimony is urging, further delay this project, the concern you've got about the cost is going to only increase. I mean every time this is put off another year, the cost goes up. The quicker we can go ahead and begin the development and construction of the project, I think the more likely we are to get it done at some reasonable cost. So I have that concern. Let me stop with that. Thank you, Mr. Chairman.

Senator JOHNSON. Senator Corker.

Senator CORKER. Mr. Chairman, what I'd like to do with the same interest from Senator Domenici is submit a number of questions that he had for the record that they can respond directly back to us with.

Senator JOHNSON. Senator Bingaman and Senator Salazar have a number of questions regarding the bills they are sponsoring. I will defer to them on those matters. But I do have a general question on BOR's Rural Water Program.

In December 2006 we enacted the Rural Water Supply Act which required BOR to determine how to build the criteria by December 2007 and feasibility criteria for rural water projects by June 2008. What is the status of those actions called for in the original legislation?

Mr. JOHNSON. We are preparing a set of Federal regulations to lay out the criteria under which to administer the Rural Water Supply Act. That criteria has been drafted. It's undergoing review. Our schedule calls for that to be available as an, what we would call an interim final rule in September of this year.

So we've got ongoing work on that. We did provide, I think, a short letter report to the Congress a few—a month or so ago explaining the status of where we are on that. Another part of that is the loan guarantee program and the regulations to deal with the loan guarantees that would be associated with Reclamation facilities. But also the Rural Water Program. It could be connected to the Rural Water Program.

We've run into a determination that funding—that our seeking of appropriations for that loan guarantee program would have to be 100 percent of the loan guarantee. So we're in the process of reconsidering how we develop that rule and move forward with it. So that's the status of the rulemaking processes that we're working on under that act.

Senator JOHNSON. Your testimony indicates that the construction of the Santa Margarita project is contingent on the State of Cali-

ifornia granting permits necessary to use water for the project. You also mentioned that Reclamation currently holds permits to construct dams to disrupt water supply on the Santa Margarita River for the Fallbrook district and Camp Pendleton. Can Reclamation use the permits it presently holds from the State of California for the project proposed in H.R. 29?

If so, is it true that activity under those permits must be initiated by the end of this year or the permits may not longer be valid?

Mr. JOHNSON. Yes. The permits that Reclamation currently holds would be used as the water supply for the Santa Margarita Project. Those permits do expire at the end of this year. When you're not putting water right permits to use there is always the risk that we could lose those permits. They could be awarded to somebody else if we're not showing action on putting those permits to use.

We certainly would approach the State of California, the Water Resources Control Board, to seek renewal of those permits before they expire.

Senator JOHNSON. You note that the engineering studies and the environmental analysis for the Santa Margarita Project had not yet been completed. What is the status of those studies at a minimum has an appraisal level and has an analysis been completed?

Mr. JOHNSON. Yes, the feasibility studies are scheduled to be completed in June of 2009. The draft feasibility report is going to be available late this summer. We did do a pre-feasibility study. I don't know if we called it an appraisal study, but we did a pre-feasibility study that did show that the further analysis and that the project did have promise.

Senator JOHNSON. Your testimony indicates that the Administration opposes reauthorizing the San Gabriel Basin Fund because Reclamation's budget is not the appropriate place for this funding. That withstanding, which agency provides the funding? Is there a Federal responsibility to help clean up the ground water contamination in Southern California?

Mr. JOHNSON. Mr. Chairman, that's something I'd like to do some research on and provide an answer for the record.

Off the top of my head I'm not sure what Federal responsibilities might exist on that project. But we'd certainly get back for the record on that.

Senator JOHNSON. Yes. Get back to us.

Senator Salazar.

Senator SALAZAR. Thank you very much, Chairman Johnson and Ranking Member Corker for holding today's hearing. Let me first say on the second panel we will have Martha Rudolph from the Colorado Department of Health and Environment. I want to welcome her here today to testify on our legislation here.

Let me also, Commissioner Johnson, thank you for the work that you have done at Leadville and with all the other Bureau Reclamation facilities that we have in Colorado. I will have a number of questions to ask you. Let me also say here at the outset that you should know I'm disappointed in the fact that at last night we received the official confirmation from the Bureau of Reclamation that you were opposed to this legislation to deal with what could potentially be a huge human and environmental catastrophe for Colorado.

If the Leadville mine drainage tunnel bursts it not only will put into danger the lives of people who live immediately below the water treatment plant of the Leadville mine drainage tunnel, but also has all the potential of killing a river downstream of that point throughout the entire Arkansas River Basin. If that were to happen the communities from Leadville, through Buena Vista, through Salida, through Pueblo all the way to the Kansas line and beyond could in fact be affected by the blowout of this tunnel. So want to just at the outset express that I am disappointed and hope that what we can do with the Bureau of Reclamation is to work with you to see how we might be able to modify the legislation in a way that we can get this legislation through the Congress. So that we can provide some clarity about who has the responsibility in moving forward with what is a very dangerous situation in our State.

Today a collapsed part of the Leadville mine drainage tunnel poses a grave and environmental threat to many citizens of Colorado. Leadville sits at the headwaters of the Arkansas River. Thus the affluent into the river there is a fair amount of importance to millions of people. The deterioration of the tunnel has received enormous attention throughout Colorado and indeed throughout the country over the last several months.

The tunnel is just over two miles long. It was a tunnel constructed during the 1940s and the 1950s by the U.S. Department of the Interior's Bureau of Mines, the drain that flooded mines and the Leadville mining district in Lake County Colorado. In 1959 the Bureau of Reclamation took full custody and full responsibility for the LMDT in order to obtain additional water rights for the Fryingspan Arkansas project under the condition that the Bureau would not spend its own funds to maintain or repair the tunnel.

In the early 1990s, however, litigation compelled the Bureau to take responsibility for the quality of the water that was discharged from the tunnel. In 1995, a major collapse of a segment of the tunnel was detected and since then mine water has pooled behind the blockage. Today the EPA estimates that close to one billion gallons of water contaminated with toxic levels of cadmium, zinc, manganese has collected in that tunnel.

The citizens of Leadville and Lake County and the counties and communities downstream of Leadville are rightly worried and concerned that the building pressure of the voluminous quantity of water will cause the blockage to burst and flood the town resulting in a public health and environmental disaster. This winter's heavy snowfall has many of us concerned that spring snow melt will further balloon the quantity of toxic water and exacerbate the risk. I want to thank the Bureau of Reclamation, Commissioner Johnson and your staff for the swift and decisive action that you have taken up to this point to begin pumping and treating water behind the tunnel blockage.

These operations have provided some measure of relief and some piece of mind to the citizens of Leadville. But we must not however lose sight that we need a long term solution to this problem. We are not out of the woods in terms of the danger that is created because of the blockage.

My bill focuses on making sure the long term solution for the tunnel moves forward as expeditiously as possible. My bill gives

the Secretary of the Interior and the Bureau of Reclamation clear authority and responsibility to maintain the LMDT in a manner that protects human health and the environment. For many years the Bureau has maintained that it is not responsible for changed conditions within the LMDT, specifically the legislation directs the Bureau to participate in the long term remedy that has already been approved by the EPA, the Colorado Department of Public Health and Environment and has been vetted over many years through many public meetings.

The bill also authorizes the necessary funds for implementation of a long term remedy. The long term solution for the LMDT specified under the fully approved and vetted EPA Superfund record of decision is much more extensive than the pumping and water treatment activity that is currently now underway. It will involve construction of a bulkhead in the tunnel to isolate the contaminated pool, backfilling the tunnel, as well as several other actions.

The bill also directs the Secretary of the Interior in cooperation with the State and EPA to conduct a study to determine whether any blockages in the tunnel have affected or are affecting water quality and aquatic life in the Arkansas River. We must ensure that the problems with the blockage do not impact the water quality of the Arkansas River which is a life blood of so many that rely on that river. The study that we propose in the legislation will help us improve our understanding of the conditions of the headwaters near the tunnel.

Above all, my bill directs the Bureau and the Environmental Protection Agency to come to a consensus on implementing a long term remedy that I believe we all agree is necessary to safeguard the LMDT from becoming an environmental and public health disaster. A permanent solution to the problems with the LMDT has long been stymied by jurisdictional and liability questions related to EPA's remedies selected in the California Gulch Superfund site record of decision for the area that we commonly refer to as Operational Unit Nine. Specifically Reclamation's legal ability under CERCLA or as the owner of the tunnel and EPA's ability to spend Superfund remedial action funds on Operational Unit Six appear to be in dispute.

Since I introduced my legislation we've had dialog about how we might be able to resolve the dispute. It is my view that our legislation would end the dispute and sometimes the finger pointing that occurs between one agency and the other about who has what responsibility for the LMDT. I am hopeful, Mr. Chairman, that we will be able to move forward with this legislation.

I have a number of questions that I wanted to ask. But I know that I'm already in overtime. So I'll wait for the next round.

Senator JOHNSON. Does the chairman of the committee have follow up questions for this round?

The CHAIRMAN. I do not, Mr. Chairman. I've got questions for the second panel, but not for this panel.

Senator JOHNSON. Commissioner Johnson and Ms. Bodine, you are excused.

Senator SALAZAR. Excuse me, Mr. Chairman. I was not done if I could have additional questions on the second round.

Senator JOHNSON. The second round. You are now invited to ask your questions.

Senator SALAZAR. Thank you, Chairman Johnson. So let me just say, Commissioner Johnson and you are the Honorable Susan Bodine. So it's an administrator. I was trying to look up your title.

Here is the reality as I see it with respect to this tunnel. The Bureau of Reclamation bought the tunnel because of the fact that there were water rights associated with the tunnel. It was part of the Bureau of Reclamation's efforts to try to enhance its capacity to deal with water rights on the Arkansas River. That predated the passage of CERCLA. Once CERCLA was passed we had the Bureau of Reclamation that had bought this tunnel that had a water right associated with it, but there's always been some question in the mind of the Bureau of Reclamation as to who has the ultimate CERCLA responsibility.

It would be no question in most cases under CERCLA law that the owner of the drainage tunnel would have full responsibility. You buy it. You own it.

The liability under CERCLA comes with it regardless of whether you were the one that created the condition for the pollution that you're trying to govern under CERCLA. It seems to me that's basic CERCLA law. So what we are trying to do in our legislation, Commissioner Johnson and Ms. Bodine, is to try to make sure that we avoid the ambiguity that we sense has existed between the Bureau of Reclamation and EPA. In my mind it is clear here that the Bureau of Reclamation, as the owner of this tunnel that now contains these billion gallons of toxic water, has the responsibility for dealing with the remedy.

My question to you, Commissioner Johnson and Ms. Bodine, is whether or not you see you see the clarity of responsibility in the same way that I see it.

Mr. JOHNSON. I think I would start by saying that I think EPA and Reclamation have been working very closely on this issue. We are speaking with one executive branch voice. I would say that we are moving forward to implement whatever provisions are required to ensure the public safety and to also address the issues associated with the Superfund site.

That's something that we're doing together and we are going to sort out the details of that over time. As we need legislation, as Reclamation needs legislation, if we need legislation we're going to come back to the Congress with the request for that. But that will not slow up our activities and our actions to make sure that we're dealing with the public safety and Superfund site issues.

Senator SALAZAR. So it would be correct then, Commissioner Johnson to say that with respect to the long term goal of stabilizing the tunnel, installing the permanent plug, drilling the well, constructing the pipeline, putting the water from the pipeline into the Water Treatment Plant and treating that water through the Water Treatment Plant, the Bureau of Reclamation is in fact committed to taking those actions on. Is that correct?

Mr. JOHNSON. I think I said that we were going to move forward expeditiously to deal with the issues. EPA is already pumping water out of the GAW shaft that's—and in fact EPA has actually stepped up and begun implementing a number of actions imme-

diately. They're removing water from the GAW shaft. I think they're very close to issuing a contract to put the first well in.

Senator SALAZAR. Ms. Bodine.

Ms. BODINE. Yes, in terms of putting in the relief well and pump and a pipeline to the Reclamation Treatment Plant, yes, we are moving ahead with that and expect to have that construction work completed this summer. That will then begin to pump water out of the drainage tunnel, lowering the water levels.

So that has to happen, irrespective of if ultimately the plug is needed for safety purposes or not. That well has to go in. The water levels have to go down. So we're comfortable with doing that work which is going to alleviate the pressure and has to happen and then looking at the results of Reclamation's study on the risks associated with the tunnel.

We're comfortable with that because that does not constitute any delay at all. The relief well will go in. The pumping will happen, all that. The water levels have to be lowered and all that will take time. So there isn't any delay in any action while Reclamation completes its study of the risks and then we can look together and see what else has to happen to address the safety risks.

Part of the confusion over this, the project, in Operating Unit Six is that our record of decision doesn't mention safety or even risk of blowout at all. The remedial action objectives, the objectives of the project are to control the migration of contamination from surface waste rock piles and to control that runoff that had been going to service water and ground water. The purpose of the plug in the record of decision is just—

Senator SALAZAR. If I may just interrupt you. The reality of it is that the Bureau of Reclamation here bought the Bureau of Mines bought this tunnel.

Ms. BODINE. Yes.

Senator SALAZAR. They bought it during a time of national need. The Bureau of Reclamation came in and stepped into the position of the Bureau of Mines later on because of the interest of the Bureau of Reclamation in the water rights associated with the Leadville Mine Drainage Tunnel. They did not at the time recognize that they were also stepping into, potentially, what was a huge liability with respect to CERCLA.

Indeed, I think, as has happened since then, the Bureau of Reclamation found out that we weren't really dealing with two distinct water sources. The water within the tunnel is considered to be tributary to the Arkansas River. So in effect the Bureau of Reclamation ended up with the water right that really had no value in it whatsoever.

But we are dealing now with an issue of billion gallons of toxic water behind this tunnel and trying to figure out how we can move forward together with one voice as a Federal executive government, EPA and Bureau of Reclamation to make sure that we have the right remedy to fix the problems at the tunnel. There is in fact, you may not want to admit it on the record, but there is in fact a major problem in terms of how the Bureau of Reclamation and EPA have historically tried to figure out the responsibility with respect to this drainage tunnel. It hasn't been until very recently when we've had the major outcry and the media focus that has been placed on the

Leadville mine drainage tunnel that we've seen the kind of working relationship.

I will not go through the entire timeline that we've—that I'm sure you know as well as I do. But the final record of decision from EPA that dealt with Operational Unit Six was published in September 2003. That's 5 years ago. In November, many meetings since then.

October 2007, the U.S. Bureau of Reclamation, Commissioner Johnson, this is October 2007. That wasn't that long ago, a few months ago. A few months ago the Bureau of Reclamation says the U.S. Bureau of Reclamation says it doesn't have the authority to treat the water pump from the mine tunnel.

November 2007, a month later, the EPA Regional Administrator, ok, writes to the Bureau of Reclamation expressing concern "of a potentially catastrophic release of water from the tunnel." That's November 2007. In January 2008, the Bureau of Reclamation Regional Director writes back asking for the rationale behind EPA's concern about a catastrophic release." These are all recent. I could keep going. There's lots of other examples I could use.

But part of the problem, Ms. Bodine and Commissioner Johnson, that we have here is that we don't have a legal framework that creates the delineation of responsibility that then allows the two agencies essentially to speak with one voice as you deal with both the media and the long term problem. I mean, we're dealing with an issue here that's going to be a multi-decade issue that's going to involve responsibilities that are immediate now. You're taking those actions as you drill the relief well, when you construct the pipeline and you expand the usage of the Water Treatment Plant to its capacity and all those actions that you're taking place now.

But if you look at it 5 years from now, 10 years from now, where's that responsibility going to be for water treatment. It seems to me that the legislation that we crafted would give you that legal framework. I would hope, Commissioner Johnson, that you might take another look at that legislation along with EPA to see whether we can get President Bush as the President of our country and this Administration to take another look at this legislation and hopefully come on board and support it.

Mr. Chairman, I have a number of other questions, but I don't want to keep us here too long. So what I will do is I will submit my other questions for the record.

I appreciate your indulgence in giving me this additional time.

Senator JOHNSON. Commissioner Johnson and Ms. Bodine, you are excused.

Mr. JOHNSON. Thank you.

Senator JOHNSON. Since there are no more questions. Let's have our second set of witnesses take a seat. On the second panel we have Mayor Orlando Ortega of Portales, New Mexico. Governor Michael Chavarria of Santa Clara Pueblo, representing the Eight Northern Indian Pueblos Council in New Mexico. Three, Martha Rudolph with the Colorado Department of Public Health and Environment and Milt Davies, with the Fallbrook Public Utilities District in California. Welcome to each of you.

Mayor Ortega, please start by summarizing your testimony. We'll then proceed with our other witnesses. After all of you have com-

pleted your statements we'll proceed with questions from members of the subcommittee.

Mayor Ortega.

**STATEMENT OF ORLANDO ORTEGA, EASTERN NEW MEXICO  
RURAL WATER AUTHORITY, PORTALES, NM**

Mr. ORTEGA. Chairman Johnson, Senator Bingaman, Senator Domenici and members of the committee, my name is Orlando Ortega and I am the Mayor of Portales, New Mexico. I serve as the Vice Chairman of the Eastern New Mexico Rural Water Authority. I will be presenting the testimony on behalf of the authority with regard to Senate bill 2814. A bill to authorize the Bureau of Reclamation to assist in the construction of the Eastern New Mexico Rural Water System, commonly referred to as the Ute Water Pipeline Project.

Joining me today is the newly elected Mayor of the city of Clovis, New Mexico, Mayor Gayla Brumfield, behind me. The city of Clovis is the largest population among the cities in the authority and serves as the fiscal agent for the project. The authority was created in 2001 for the purposes of building and operating the Ute Water Pipeline Project to serve the communities of Clovis, Portales, Melrose, Texico, Grady, Elida and throughout Curry and Roosevelt Counties in Eastern New Mexico.

I would like to express our deep appreciation to Senators Bingaman and Senator Domenici for sponsoring Senate bill 2814 and championing efforts to establish a sustainable supply of water to preserve the socioeconomic future of Eastern New Mexico. A sustainable supply of water is critical to the future of our region which supports a number of industries including dairy, large scale food production and processing, ethanol refining, a critical military presence at Cannon Air Force Base and colleges and universities among others. Providing a sustainable water supply for Eastern New Mexico is our most significant challenge. Our communities rely solely on water reserves located in the Ogallala Aquifer.

Over the last 40 years numerous studies have clearly demonstrated that this aquifer is being depleted and that the Ute Water Pipeline Project is the most efficient, cost effective and dependable solution for these water challenges. Anticipating the potential water needs in Eastern New Mexico and in the interest of maximizing New Mexico's use of water from the Canadian River Stream System, the New Mexico Interstate Stream Commission completed construction of the Ute Dam and Reservoir in 1962 at a present day cost of over \$140 million. Significant progress has been made on this project.

Working together the New Mexico legislature and Governor Bill Richardson have invested millions of dollars in the Water Trust Fund which seeks to provide funding for water projects across New Mexico. Since 2002 the State of New Mexico has provided direct funding to the Eastern New Mexico Rural Water System Project in excess of \$12 million which includes \$4.5 million that was appropriated by the New Mexico Water Trust Board just yesterday indicating continued strong support by the New Mexico State Legislature and Governor.

If the authority is prepared to undertake the local financing operations and maintenance of the proposed project over the years the individual communities have contributed financial resources and in kind resources to the project. Clovis, Portales, Texico and Melrose have increased water and waste water rates in order to generate new revenue for the project. The city of Clovis has enacted a gross receipts tax increment and has dedicated revenue to the project. These actions are solid evidence of a high level of commitment from the local governments to provide a portion of the non-Federal funding of the project.

We have been studying the efficacy of the Ute Water Pipeline Project for a number of years. With over 30 volumes of technical memoranda on the project that examines ground water conditions, population growth and water demand, conservation and re-use, existing water systems, evaluation of alternatives, environmental issues, Ute Reservoir operations, water treatment needs, power service and wind power potential, cost estimating in hydraulic optimization. In short, our plans for the Ute Water Pipeline Project have been very thorough and comprehensive.

Just last year the United States Bureau of Reclamation commented in a letter to the authority that the project is the least costly and most sustainable way to meet long term water needs in the area. They also agreed with our design consultants preliminary design level of completeness, cost estimates and that no special environmental issues have been identified. Momentum to build this project is very high. We are extremely hopeful that this legislation will become law this year in what will be the final chapter of a most outstanding and distinguished career of our senior Senator, Pete Domenici.

We are at a critical point in the development of the project and appear before you today to urge Congress to expeditiously pass Senate bill 2814, which would authorize the financing, planning, design and construction of the Ute Pipeline Project. We cannot emphasize strongly enough how important this project is for our member entities and for the citizens and businesses of Eastern New Mexico.

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

[The prepared statement of Mr. Ortega follows:]

PREPARED STATEMENT OF ORLANDO ORTEGA, EASTERN NEW MEXICO RURAL WATER AUTHORITY, PORTALES, NM

S. 2814

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

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

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

ENMRWA members are saddled with ongoing expensive and unsustainable development of existing groundwater resources while actively pursuing conservation and wastewater reuse projects. The member communities have collectively incurred costs

of approximately \$22 million since 2005 in purchasing groundwater water rights, converting existing wells and completing new wells.

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

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

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

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

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

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

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

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

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

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

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

- Executive Summary
- Planning Memoranda
  - ENMRWA Member Existing Water System Facilities
  - Fresh and Brackish Groundwater Resource Assessment
  - Conservation and Reuse Assessment
  - Member Needs for Project
  - Conceptual Cost Estimating Guide
  - Dynamic Simulation Hydraulic Modeling
  - Treatability Testing and Water Treatment Plant Alternatives Evaluation
  - Alternatives Evaluation Summary
  - Alternative Pipeline Route Analysis
  - Wind Energy Feasibility Study

- Environmental Issues
- Benefit Cost Comparison
- Reservoir Operations
- Financial Analysis
- Best Technical Alternative (BTA) Preliminary Engineering (10%) Technical Memoranda
  - Raw and Finished Water Pipelines Process/Mechanical
  - Raw and Finished Water Pump Stations Process/Mechanical
  - Water Treatment Plant Process/Mechanical
  - Structural Preliminary Engineering
  - Architectural
  - Civil/Site Preliminary Engineering
  - Building Mechanical/Plumbing
  - Electrical Preliminary Engineering
  - Instrumentation and Controls
  - Corrosion Protection
  - Cost Opinion
- Best Technical Alternative Preliminary Engineering Drawings (10% design)
- Surveying and Mapping
  - Survey Control Map
  - Land Ownership Maps
  - Utility Mapping
  - Geophysical Test Sites Map
  - Survey Report
  - Topographic, planimetric and digital orthophoto mapping
- Geohazard and Geotechnical
  - Geologic Hazards Report
  - Schematic Level Geotechnical Investigation Report
- Schematic Level Design (30%)
  - Pipeline Design Criteria Technical Memorandum (TM)
  - Pipeline Hydraulics TM
  - Draft and Final Pipeline Alignment Selection TM
  - Pipelines Plan and Profile Schematic Design
  - Pressure Control, Metering, and Member Interconnections
  - Updated Cost Opinion
  - Pipeline Standard Details
  - Pipeline Master Specifications
  - Pump Stations
  - Water Treatment Plant
    - Process Schematic Design TM's
    - Engineering Disciplines Schematic Design TM's
    - Cost Opinion
- SCADA System

Environmental Assessment (EA) activities began in mid-2007, with approval of a scope of work for the NEPA consultant. Scoping, the first step in the NEPA process, was initiated in September 2007. Three public meetings were held in Logan, Clovis and Portales from September 18 through 20, 2007. The public provided feedback on the project and asked questions about the process. Meetings were held with area experts in hydrology, cultural resources, and socioeconomic resources to elicit information. Agency meetings have been ongoing since September 2007. A meeting was held in Santa Fe with State Historic Preservation Officer (SHPO) representatives to commence early communication about the project. Coordination with New Mexico Department of Transportation, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and other agencies is ongoing. Reclamation is preparing to initiate contracts necessary to complete U.S. Fish and Wildlife Service Coordination Act requirements. A report summarizing scoping activities is now available on the project website.

Three “methods of analysis” technical memos for hydrology, cultural resources, and socioeconomic have been prepared and approved by Reclamation. Work is continuing on the first two chapters of the EA; Purpose and Need (Chapter 1) and Alternatives (Chapter 2). Compilation of current and project water supply, demand, conservation, and background information, as well as a summary of required project

permits, is included in Chapter 1. A meeting among Reclamation, NMISC, and ENMRWA to discuss the alternatives and options available to meet the purpose and need for the project is scheduled for April 28. In addition, information collection for resource studies is underway. Detailed field studies will commence in the spring, following finalization of the pipeline alignment. At this time, a public review for the EA is anticipated by September 2008, and an EA/FONSI is anticipated by February 2009.

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

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

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

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

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

To date, the State of New Mexico has provided significant investment in the project having authorized or appropriated approximately \$11 million to advance the planning and design of the project and to prepare associated environmental investigations and documentation (NEPA). This does not include the major investment the State made in the 1950's and 1960's (approximately \$140 million in 2008\$) to construct Ute Dam creating the water supply storage reservoir. Out of hundreds of projects submitting applications for funding through the NM Water Trust Board since its inception, the ENMRWS has consistently ranked in the very top tier of projects.

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

Unlike many other water projects in New Mexico and the southwest, the proposed ENMRWS project has no known or anticipated significant environmental issues, no associated Native American settlement, and no water rights disputes. The water in Ute Reservoir is owned by the State and administered by the NM Interstate Stream Commission (ISC). The ISC and the members of the Ute Reservoir Water Commission, which includes the eight ENMRWA members, have a relatively straightforward water purchase agreement in effect.

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

Senator JOHNSON. Mr. Chavarria.

**STATEMENT OF HON. JOSEPH MICHAEL CHAVARRIA, GOVERNOR, SANTA CLARA PUEBLO, CHAIRMAN, EIGHT NORTHERN INDIAN PUEBLOS COUNCIL, ESPANOLA, NM**

Mr. CHAVARRIA. Un Bi Agin Di, Un Sengi Thee', with due and proper respect and good afternoon. Greetings to all of you, in my Tewa language. Good afternoon, Chairman Johnson, Ranking member Corker and members of the committee. Out of respect I come before you to testify in support of Senate bill 2805 titled Rio Grande Pueblos Irrigation Infrastructure Improvement Act.

My name is Joseph Michael Chavarria. I am the Governor of Santa Clara Pueblo in the great State of New Mexico. We are located 25 miles northwest of the city of Santa Fe.

I also serve as Chairman of the Eight Northern Indian Pueblos Council and also represent 1/19th of the all new Pueblos Council in New Mexico. Before I proceed, Chairman, may I say a few words in my Tewa language?

[Prayer in Tewa language]

In my prayer I have asked the Creator to look down upon us today to give us the strength and courage and wisdom that are needed to give each and every one of us the insight to examine how Senate bill 2805 will positively impact the Pueblos located along the Rio Grande River from Taos to Silva.

Thank you for scheduling this hearing pertaining today to learn more about the critical irrigation infrastructure needs of the Indian Pueblos in New Mexico. I also want to thank our Senator, Jeff Bingaman, who of course, serves as Chairman of the Energy and Natural Resources Committee for introducing this important bill and to commend Senator Domenici and the rest of our delegation in New Mexico for the great support they have shown to the Pueblos over the years.

As Chairman of the All Indian Pueblos Council the Honorable Joe A. Garcia wanted to be here today to testify in support of this bill for the All Indian Pueblos Council. However he was unable to do so. He asked me to convey his best wishes and concerns of the Pueblos for him. In my capacity as Chairman of the Eight Northern Indian Pueblos Council I will try to speak generally for all the Pueblos that could benefit from the enactment of this legislation. I hope I do justice for both the Northern and Southern Pueblos in New Mexico.

This bill is vitally important to the health, welfare and cultural survival of the Pueblos in the Rio Grande River Drainage Basin. Since time immemorial all of the Pueblos located along the Rio Grande River and its tributaries have utilized irrigation structures to irrigate the many thousands of agricultural acres located within aboriginal and current land holdings. Agriculture has played a significant role by providing the sustenance needed to survive and continue to be an important part of our traditional and cultural activities within our communities.

The cultural activities of the Pueblos are linked to the water and to the growing of certain crops that we use in our practices throughout the year. Today because of the importance of our traditional way of life, the Pueblo communities continue to farm our land even though our irrigation systems have fallen into disrepair due to age, deterioration and lack of adequate fundings to ensure

proper maintenance. But the many funding cuts experienced within the Department of the Interior through the Bureau of Indian Affairs the Pueblos have struggled to maintain our current irrigation infrastructure.

At least since 1995 which is when Santa Clara Pueblo started consistently tracking the BIA line item with very few exceptions for a few pre-existing contractual obligations or mandates, zero dollars have been appropriated to the BIA irrigation program. To assist the Pueblos in maintaining our irrigation structures and extremely limited dollars have been allocated to New Mexico from BIA for irrigation engineering work. Currently many of the Pueblos have to utilize funds from other agencies or in other ways in order to address emergency repairs on the many hundreds of miles of degraded irrigation systems. This has resulted in a band aid approach at the best.

This legislation introduced by Senator Bingaman will greatly benefit the Pueblos along the Rio Grande River. It will direct the Secretary of the Interior through the Bureau of Reclamation to assist Pueblo irrigation infrastructures within a set timeframe. Then authorizes the provisions of grants or cooperative agreements to the Pueblos to repair, rehabilitate or reconstruct existing, deteriorating irrigation infrastructure. Participation by any of the affected Pueblos is optional.

For those Pueblos that want to participate this legislation provides a means for the Bureau of Reclamation to work with the Pueblos to look comprehensively at the problems, establish priorities for the actual projects within a set time line and provide the necessary authorization of funding so that appropriations can be sought to finally get the job done. The bill also provides a mechanism to allow for partnering with other Federal and State agencies to maximize limited dollars. While there is a cost share element to the bill, which is unfortunate, given the Department of the Interior's trust responsibility I am pleased to see that the in kind contributions of the Pueblos can be recognized as cost share. There is an ability to waive that cost share requirement if any of the Pueblos have financial hardship.

I have also submitted for the record a written testimony which includes additional and more detailed information regarding the need for this legislation, a document in the form of a resolution from the All Indian Pueblos Council asking for this legislation back in 2000. Also a survey of all the Pueblos conducted in 2000 identify the damaged irrigation systems and outlining infrastructure problems the Pueblos have experienced through the severe funding cuts to the BIA. Postponing resolution of this irrigation infrastructure problems will only result in additional deterioration which will only increase the cost of rehabilitation at a later date.

Thank you, Senator Bingaman, who has been a champion of many Native American issues, for introducing this bill. Chairman Johnson and members of the committee, it is an honor to testify before you on this very important legislation which will benefit the Pueblos located along the Rio Grande River in New Mexico. We ask for your support.

Ku' Da' Wo' Haa'. Thank you very much. I now stand for any questions the Chairman or the members may have at this time. Thank you.

[The prepared statement of Mr. Chavarria follows:]

PREPARED STATEMENT OF HON. JOSEPH MICHAEL CHAVARRIA, GOVERNOR, SANTA CLARA PUEBLO, CHAIRMAN, EIGHT NORTHERN INDIAN PUEBLOS COUNCIL, ESPANOLA, NM

S. 2805

Un Bi Agin Di, Un Sengi Thee': With due and proper respect and good afternoon. Greetings to all of you in my Tewa language.

Chairman Johnson, Ranking Member Corker, and distinguished members of the Senate Committee on Energy and Natural Resources Subcommittee on Water and Power, I am pleased to testify in support of S. 2805, the Rio Grande Pueblos Irrigation Infrastructure Improvement Act.

I would first like to thank Chairman Johnson for scheduling this hearing and thank the members of the Committee for attending today to learn more about the critical irrigation infrastructure needs of the Indian Pueblos in New Mexico. I also want to thank our Senator, Jeff Bingaman, who is, of course, the Chairman of the Energy and Natural Resources Committee, for introducing this important bill and to commend Senator Domenici and the rest of our delegation in New Mexico for the great support they have shown for the Pueblos over the years.

The Honorable Joe A. Garcia, who serves not only as the President of the National Congress of American Indians but is also the Chairman of the All Indian Pueblo Council in New Mexico, wanted to testify about the importance of this bill to all of the Pueblos in the Rio Grande drainage basin but he was unable to do so today. He asked me to convey his best wishes and the concerns of the Pueblos for him.

My name is Joseph Michael Chavarria. I am Governor of Santa Clara Pueblo. We are located approximately 25 miles to the northwest of the City of Santa Fe in the Land of Enchantment in the Great State of New Mexico. My people are blessed to live along the mainstem of the Rio Grande. Santa Clara Pueblo also receives its water from two tributaries that feed into the Rio Grande, the Santa Clara Creek and the Santa Cruz River. As Governor of Santa Clara, I represent 1/19th of the All Indian Pueblo Council in New Mexico. However, I am here today in my capacity as the Chairman of the Eight Northern Indian Pueblos Council. In 1961, the Eight Northern Indian Pueblos Council was established as a collaborative effort of the Pueblos of Ohkay Owingeh, Nambe, Picuris, Pojoaque, San Ildefonso, Santa Clara, Taos, and Tesuque. Since then, the Council's monthly meetings have become an ongoing forum where Pueblo leaders from the Northern Pueblos discuss common issues.

In my capacity as the Chairman for the Eight Northern Indian Pueblos Council, I will try to speak generally for all the Pueblos that can benefit from enactment of this legislation and I hope I do justice for both the Northern Pueblos and the Southern Pueblos. I must note there are some distinctive twists on the irrigation infrastructure issues for those six Southern Pueblos, Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta, that are part of the Middle Rio Grande Conservancy District and have to interact with the Conservancy District, which the legislation recognizes. However, the basic need for rehabilitation of our existing deteriorating irrigation infrastructure is similar for all of the Pueblos, from Taos Pueblo all the way south to Isleta Pueblo, and it is that issue I will address today. If I use examples from Santa Clara Pueblo to illustrate the problem, it is simply because I am the most familiar with my home, but similar problems exist throughout all of the Pueblos. This bill is vitally important to the health, welfare, and cultural survival of the Pueblos in the Rio Grande drainage basin.

There are actually nineteen Indian Pueblos in New Mexico, but there are eighteen Pueblos which farm in the Rio Grande drainage basin and are therefore included in this bill. The drainage basin includes the Rio Grande and all of the tributaries that feed into the Rio Grande. Since time immemorial, all of the so-called Rio Grande Pueblos have utilized irrigation structures to irrigate the many thousands of agricultural acres within our aboriginal and current landholdings. Our ancestors at Santa Clara Pueblo first used farming techniques that others refer to as dry-land farming when our ancestors lived in the mesa tops before they moved closer to the rivers (in the 1300s, long before the Europeans arrived) but we have always had to grow certain crops that are necessary for our religious practices. The culture and

traditional way of life of all of the Pueblos is linked to the water and to the growing of certain crops to share within our community and that we use in various practices throughout the year. Agriculture has played a significant role by providing the sustenance needed to survive and continues to be an integral component of our traditional and cultural activities within our communities. Today, because of the importance of our traditional way of life, the Pueblo communities continue to farm our lands even though our irrigation systems have fallen into disrepair due to age, deterioration, and lack of adequate funds to ensure proper maintenance. We know there are over 900 miles of ditches belonging to the 18 Rio Grande Pueblos.

The level of disrepair is shocking. At Santa Clara Pueblo, we have a pull gate to divert water off of our main irrigation conveyance system that is so deteriorated that we have to cover up the gate opening with sand bags so that the water is not wasted. It is not rare to find diversion structures and conveyance ditches that are unsafe or barely operable on all of the Pueblos. Some of the Pueblos have diversion structures made only of rock and brush or bermed-up materials that wash out during thunderstorms every single year. Those of us with concrete ditches are not in better shape, however. At many of the Pueblos, our concrete ditches are so deteriorated and structurally deficient that they no longer divert water efficiently or dependably. In fact, at Santa Clara Pueblo and for many of the Pueblos along the mainstem Rio Grande, the turnouts that we have to divert water onto our fields are now far above the actual water flow because of the way the river has incised over the years. Because of the poor state of our systems, we and other Pueblos often find that our fields that we've used for many generations now end up being either too high or too low so that some historic fields are too easily flooded and others cannot get water at all.

This is very upsetting to the Pueblos on many fronts. At many Pueblos, we simply cannot get the water conveyed onto those historic fields reliably or efficiently anymore because of the sad state of our irrigation system, not because we don't need or want to use those fields. It is also upsetting to us when it takes too much water to get the job done. Water supplies are very limited in New Mexico. What is a "creek" here in Washington D.C. would be a mighty river in New Mexico. Pueblo people understand the importance of water conservation. You will not see lush green lawns at the homes of Pueblo people. Water is precious to the Pueblos and, culturally, as native people, we hold water to the highest degree of reverence. It is holy to us.

The poor condition of the Pueblo irrigation facilities is not the result of lack of care or interest on the part of the Pueblo users. Pueblo people have traditional cleaning of their ditches every year. This is a very important activity for the Pueblos. The deterioration of our infrastructure has resulted from a lack of adequate funding through the Bureau of Indian Affairs to ensure adequate irrigation operation and maintenance.

The Pueblos actually brought this up as a key issue with Secretary Bruce Babbitt during a national consultation with tribes regarding Indian water rights in the late 1990s. In 1998, Secretary Babbitt directed that an assessment be made of the status of those irrigation water systems along the Rio Grande and its tributaries that are used by eighteen of the Indian Pueblos in New Mexico. That assessment was completed by the Commissioner of Reclamation and the Assistant Secretary for Indian Affairs in 2000 and confirms the problems I've described here.

Has BIA funding improved since that study was issued in 2000? No, it has actually gotten worse. Except for situations involving pre-existing contractual obligations or existing Congressional mandates, there has been no Bureau of Indian Affairs dollars for irrigation operation and maintenance at all since 2000. Occasionally, BIA could reprogram a few dollars here and there but it has been done in a shoestring approach, unreliable and unknown from year to year, which does not allow for any real planning or methodical rehabilitation work. The Pueblos have done what we could with Tribal funds to deal with emergencies and to search out limited funds from other agencies but that has resulted in a band-aid approach at best.

Again, I can offer an example from Santa Clara Pueblo to illustrate the point. Our Pueblo is one of the few self-governance compacting Tribes in New Mexico and we remain one of the few self-governance Tribes in the nation. Self-governance means we assume responsibility for carrying out various programs instead of the BIA, such as irrigation, but based only upon our share of BIA funding allocated to assist the Tribes in our area. As a self-governance compacting Tribe, Santa Clara Pueblo does not have access to more resources than do other Tribes or Pueblos; we only take responsibility for our share of the funding that is appropriated to the BIA. Thus, we have actually searched the BIA budget for funding for our irrigation system for a long time, but our search has largely produced no results.

In fact, BIA funding for irrigation systems has always been minimal and is only getting worse over time. The Irrigation Maintenance line item in the BIA budget for our region and our agency has been zero dollars (\$0) every year since we first looked at this budget item in 1995 and remains zero dollars continuing through today. So, in an attempt to do emergency repairs for our irrigation system, Santa Clara Pueblo has taken responsibility since 2002 for our share of the BIA's Irrigation Engineering/Supervision program line item. However, that irrigation line item is also dwindling over time. 2002 marked our high point when we received approximately \$9,600 of year-end money. After that, for four years, from 2003 to 2006, we received approximately \$8,000 per year through our self-governance compacting process but then the funds fell to an all-time low of just \$547 in 2007. In 2008, BIA operation and maintenance funding for irrigation was again zero dollars so our portion was zero also, and our portion of the BIA's Irrigation/Engineering program line item rose to the paltry sum of \$858. There are 45 miles of ditches within Santa Clara Pueblo. Think about that: \$858 to address long-standing rehabilitation needs for 45 miles of ditches within my Pueblo. We have done what we can to reallocate funding within our compact process to allow for emergency repairs and maintenance of our irrigation system but you can imagine just how little we can do with the kind of funding that has been available.

That is why S. 2805 is so important to the Rio Grande Pueblos. It will direct the Secretary of the Interior, through the Bureau of Reclamation, to work with the 18 Pueblos to assess Pueblo irrigation infrastructure within a set timeline and then authorize the provision of grants or cooperative agreements to the Pueblos to repair, rehabilitate, or reconstruct existing deteriorated irrigation infrastructure. Participation by any of the affected Pueblos is optional. For those Pueblos that want to participate, this legislation provides a means for the Bureau of Reclamation to work with the Pueblos to look comprehensively at the problems, establish priorities for actual projects within a set timeline, and provide the necessary authorization of funding (a total of \$10 million dollars, with part allocated to the study and the rest allocated to actual projects) so that appropriations can be sought to finally get the job done. It also provides mechanisms to allow for partnering with other federal or state agencies to maximize limited dollars. While there is a cost-share element to the bill, which is unfortunate given the Department of Interior's trust responsibility, I am pleased to see that in-kind services of the Pueblos can be recognized as cost-share and there is an ability to waive the cost-share requirement if any of the Pueblos has financial hardship. We hope the assessment portion of this process will not take too long since some initial work was already done for the 2000 report but we are encouraged by the fact that bill specifies timelines for completion. This work is long overdue.

There are many benefits that can be achieved by enacting this bill into law, including improved safety, increased water use efficiency and agricultural productivity as well as the preservation of the culture for the Pueblos and the opportunity for our community to continue an important way of life which we have maintained for many generations. The Pueblos understand that we have many neighbors now on the river and that all have to do their part for better water management. Neglecting this problem or postponing the issues for another day will only result in further deterioration, increasing the cost of rehabilitation at a later date.

We thank Senator Bingaman for introducing this bill. This is an issue that has long been supported by the All Indian Pueblo Council. I am including with this testimony a copy of a resolution\* of the All Indian Pueblo Council from the year 2000 in which the All Indian Pueblo Council urged our Congressional delegation to support the authorization and funding of a rehabilitation program to repair the irrigation systems of the Pueblos of New Mexico. Chairman and members of the Committee, it is an honor to testify before you on this important legislation which will benefit the Pueblos located along the Rio Grande and its tributaries in New Mexico.

Ku' Da' Wo' Haa': Thank you very much. We ask for your support for this important legislation.

Senator JOHNSON. Thank you.  
Ms. Rudolph.

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\* Resolution and document entitled "Pueblo Irrigation Facilities Rehabilitation Report" have been retained in subcommittee files.

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

Ms. RUDOLPH. Thank you, Mr. Chairman and members of the subcommittee. My name is Martha Rudolph. I am the Director of Environmental Programs for the Colorado Department of Public Health and Environment. I would like to thank you today for the opportunity to present Colorado's views on S. 2680, the Leadville Mine Drainage Tunnel Environmental Improvement Act of 2008.

I am here today to express Colorado's firm support for this bill. This bill provides the clear authority and direction to the Secretary of the Interior and through the Bureau of Reclamation to take action necessary to reduce the current level of the mine pool associated with the Leadville mine drainage tunnel. But more importantly to maintain the mine pool at a safe water level and to operate and maintain the tunnel in a manner to protect the public health and the environment and also to participate in the implementation of the California Gulch Superfund site selected remedy.

As you heard before this tunnel was constructed in the late 1940s and early 1950s as part of the war effort to support mining in support of the war effort. The tunnel was used to drain water from the mine workings in the Leadville Mining District. In 1959, the Bureau of Reclamation acquired ownership of this tunnel, hoping to acquire water rights associated with the tunnel. With that acquisition, we believe, the Bureau of Reclamation also took over the requirements to maintain that tunnel.

In 1979, the Bureau of Reclamation began treatment of the discharge at the mouth of the tunnel pursuant to requirements under the Clean Water Act, largely after a suit was brought by the Sierra Club. The tunnel unfortunately has fallen into disrepair, largely, we believe, to poor maintenance. Many collapses began in the 1960s and have continued through today.

The most recent collapse has resulted in a significant increase in the mine pool that feeds into the tunnel, the highest ever seen raising ground water levels to historic proportions and resulting in many new seeps and springs in the California Gulch area. Because of this elevated mine pool, EPA wrote to the Bureau of Reclamation last fall expressing its concerns that the tunnel would experience a catastrophic blow out.

The Lake County Commissioners declared a state of emergency and Governor Ritter sent letters to both President Bush and Secretary Kempthorne urging them to take action to treat the water behind the collapse to reduce this mine pool. Action is now being taken to reduce this mine pool and we are grateful for that. But we are very disappointed that the Administration is not supporting this bill because we think it is necessary to preserve and to maintain and to enhance this tunnel.

Colorado also supports the Bureau's participation in the remedy for the California Gulch Superfund site. The upper reaches of the tunnel are under several waste piles that are part of the Superfund site that contaminate surface water runoff, particularly in the spring. Both EPA and Colorado have identified as the remedy to deal with this contaminated surface runoff the pumping of this water into the Leadville mine drainage tunnel through a mine

shaft and to treat this water at the facility owned and operated by the Bureau of Reclamation.

S. 2680 will accomplish several things that are very important to address issues related to the Leadville mine drainage tunnel. It will require the Bureau of Reclamation to take immediate action to reduce the water level in the mine pool associated with this tunnel. But again, more importantly, to maintain the water level at a safe level in the future and to operate and maintain the tunnel in a manner to protect public health and the environment, a responsibility that Colorado believes the Bureau of Reclamation already has.

It will require the Bureau of Reclamation to participate in the remedy for the California Gulch OU 6. It will require the Bureau of Reclamation to study the tunnel to determine whether and how any blockages in the tunnel has or are affecting the water quality and the aquatic life in the Arkansas River watershed. It will, importantly, provide the necessary funding to accomplish these goals.

We believe this bill addresses an important issue to the people of Colorado. Its passage is critical to the long term protection of the local residents in Lake County and to the long term protection of the Arkansas River ecosystem. Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

[The prepared statement of Ms. Rudolph follows:]

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

Mr. Chairman and members of the Subcommittee, I would like to thank you today for the opportunity to present Colorado's views on S. 2680, the Leadville Mine Drainage Tunnel Environmental Improvement Act of 2008. I am here today to express Colorado's support for this bill. This bill provides the clear authority and direction to the Secretary of the Interior, through the Bureau of Reclamation to take action necessary to reduce the current level of the mine pool associated with the Leadville Mine Drainage Tunnel (LMDT), to maintain the mine pool at a safe water level, and to participate in the implementation of the California Gulch Superfund Site selected remedy. We believe this bill addresses an important issue to the people of Colorado, and its passage is critical to the long-term protection of local residents in Lake County and to the long-term protection of the Arkansas River ecosystem.

To understand the significance of this bill to the people of Colorado, some background information is required. The LMDT is located in Lake County, just outside the City of Leadville. Located at an elevation of 10,152 feet, Leadville is the highest incorporated city in the United States. It is currently home to 3000 people. Leadville's history centers around mining. So much so that, during World War II, miners in Leadville were given exemptions from the draft in order to support the war effort by producing strategic metals.

To facilitate the mining of these strategic metals, the U.S. Bureau of Mines began construction of the LMDT in 1943 to provide continuous drainage of the mines in the Leadville Mining District. The LMDT was completed in 1952 to a length of approximately 12,000 feet. In 1959 the Bureau of Mines declared the LMDT excess real property, and the Bureau of Reclamation acquired ownership of the LMDT to augment its potential sources of water supply for the Fryingpan-Arkansas project. Following the passage of the Clean Water Act in 1972, the EPA issued the first National Pollutant Discharge Elimination System (NPDES) permit for the LMDT in 1975. After several years of attempting to meet the limitations in this permit, the Bureau of Reclamation eventually constructed a water treatment plant at the mouth of the LMDT and began to treat the drainage in 1979.

In the early 1980s, another mine drainage tunnel, the Yak Tunnel, had what was called a "surge event" discharging enough tainted water to turn the Arkansas River red for 20 miles. This caught the attention of the EPA's Superfund Program, and in 1983 the site was added to the National Priorities List. The listed elements of

the Superfund site were the Yak Tunnel, mine waste piles in California Gulch and its tributaries, the waters in California Gulch that empty into the Arkansas River, and 11 miles of the Arkansas River directly below the confluence with California Gulch. The EPA specifically excluded the Leadville Mine Drainage Tunnel from the Superfund site based on the Bureau of Reclamation's then existing responsibilities to treat the LMDT discharge under the Clean Water Act.

Some confusion about whether the LMDT is part of the Superfund site has arisen because one of the selected remedies for an area overlying the LMDT sought the use of the LMDT and would require the Bureau of Reclamation to treat contaminated surface water from the Stray Horse Gulch area of the Superfund site. The Stray Horse Gulch area of the site (called Operable Unit 6) has many mine waste piles contributing contaminated surface runoff to California Gulch. The EPA and Colorado identified different remedies to handle this surface runoff, and ultimately selected the remedy that would collect contaminated water from the area and direct it down a mine shaft connected to the LMDT. In order to implement this remedy, the Bureau of Reclamation's cooperation was needed to treat this contaminated water at its existing plant.

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

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

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

Unfortunately, despite many attempts by Colorado and EPA to convince the Bureau of Reclamation to participate in this proposed remedy for Operable Unit 6, the Bureau contends that it lacks the statutory authority or mandate to treat this additional contaminated surface water from the Stray Horse Gulch area. This long-standing position of the Bureau of Reclamation has stymied Colorado's and EPA's efforts to implement the selected remedy for Operable Unit 6. S. 2680 is needed to provide the Bureau of Reclamation with the clear authority, mandate and funding to take responsibility for the LMDT, and to participate in the selected remedy for Operable Unit 6.

This Congressional action is more critical now than ever before. Since the Bureau of Reclamation assumed ownership of the LMDT in 1959, there have been many concerns regarding tunnel safety and potential environmental threats. Due to a lack of maintenance, the condition of the LMDT has deteriorated over time. There have been many collapses within the LMDT beginning in the 1960's. Most recently, the mine pool that feeds into the LMDT has increased to a level never before seen, resulting in many new seeps and springs in the area, likely due to a recent collapse within the LMDT. In November, 2007 the EPA sent a letter expressing its concerns regarding the potential for a catastrophic blowout of the LMDT to the Bureau of Reclamation, and on February 13, 2008 the Lake County Commissioners declared a state of emergency. Colorado Governor Bill Ritter sent a letter to President Bush asking him to request Secretary Kempthorne to direct the Bureau of Reclamation to treat the water accumulating behind the blockage in the LMDT at its water treatment plant to help reduce the build up of water draining into the LMDT. Governor Ritter made the same request directly to Secretary Kempthorne.

Fortunately, to address the immediate concerns of the high levels of the mine pool and the pressure within the LMDT, EPA has begun pumping water from the Gaw shaft located near the LMDT, and EPA is poised to commence drilling directly into the LMDT to pump water from the upper reaches of the LMDT and to transfer the water through a pipeline to the Bureau of Reclamation's treatment facility where the Bureau has agreed to treat this water before it is discharged into the Arkansas. While this action responds to the immediate concerns of a LMDT blowout, it will

not address the long-term need for LMDT maintenance and a commitment to reduce the mine pool and to treat contaminated mine and surface water discharging from the LMDT in perpetuity. S. 2680 would provide the Bureau of Reclamation with the necessary funding and the requisite statutory authority to make that long-term commitment.

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

Senator JOHNSON. Thank you.

Mr. Davies.

**STATEMENT OF MILTON G. DAVIES, DIRECTOR, BOARD OF DIRECTORS, FALLBROOK PUBLIC UTILITIES DISTRICT, FALLBROOK, CA**

Mr. DAVIES. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to come here and summarize the benefits of H.R. 29 today. One of the two primary objectives of the project presented to you today is the resolution of 80 years of water rights disputes and litigation on the Santa Margarita River. Over 60 years of which have been with the Federal Government.

Second this project will provide an environmentally sound and financially feasible water resource development for where it is most needed in coastal Southern California. The availability of supplemental water source from the Santa Margarita River has become increasingly important to the district's capability to meet all the water demands at a reasonable price. A long term safe yield for this project will provide 100 percent of Camp Pendleton's water supply and 20 to 40 percent of the district's total needs.

1954 Public Law 83547, the Santa Margarita Project Act authorized the Bureau to construct a dam on the Santa Margarita River at a cost of \$22 million. That's approximately 330 million in today's dollars. With a yield of 14 to 16,000 acre fee the Conjunctive Use Project that this bill authorizes replaces that project and produces the same amount or possibly a little bit more water at a lower cost. The four major components of this project are, one, enhance to recharge system and enhance ground water recovery system, advance water treatment facilities and finally distribution facilities that have been enhanced.

We have two independent ground water models that predict an average annual project yield of 16,000 acre feet a year. The current Camp Pendleton demand and the use of the ground water for the base is less than 8,000 acre feet of water per year. So the project results in 8,000 acre feet of new water for Southern California reducing the demand on Northern California water and the Colorado River.

The current project cost is estimated between \$120 and \$150 million—which gives us a higher yield than the 1954 project. Camp Pendleton's share of the project cost would primarily come from already approved MILCON funds for the facilities that will be needed by Camp Pendleton regardless of whether the Conjunctive Use Project proceeds.

These facilities, if used by the Conjunctive Use Project will provide a credit against the total project cost in Camp Pendleton's favor. I believe I heard Commissioner Johnson say that his only objection to this project was the fact that the fiscal element. Of the

six bills before you today, I believe H.R. 29 is the only one that will repay itself over the term of the project.

The benefits of this is it will finally settle the Federal case of 1950 case of the U.S. vs. Fallbrook. Some of the environmental benefits that we hope to achieve with this is. It will preserve the entire riparian length of the Santa Margarita River from the city of Temecula to the Pacific Ocean and public ownership.

No. 2, it will provide 1,400 hundred acres of mitigation lands for this and future military construction projects on Camp Pendleton.

Third, it will provide operating the ground water basins on Camp Pendleton to preserve critical habitat for the largest population of Lease Bell's Vireos in the United States.

No. 4, permitting periodic high flows of the Santa Margarita River to flow unimpeded across Camp Pendleton will scour the lower river valley opening and flushing the estuary and providing nourishing sands to the beaches of Oceanside and Camp Pendleton.

Over time the project will improve the ground water quality on Camp Pendleton, assist in removing the estuary from the listing of impaired waters and preserve the endangered nesting habitat of the Least Tern on the estuary bar.

Finally the Fallbrook portion of the Santa Margarita River including the Sandia and Rainbow Creek tributaries will provide an extensive network of hiking and riding trails as well as educational and open space benefits.

In summary, the need for this project, the project facilities will provide supplemental local water sources. This has become particularly important due to the dwindling imported water supplies in Southern California. In addition the economics and metrics of this project are as good or better than future imported water costs.

I am confident that the current effort underway by the Bureau of Reclamation to update the economic and environmental aspects of the feasibility study will show the cost benefit ratio to be extremely positive and that the extra study time that has been required to achieve a superior solution will prove to be very beneficial to all the stakeholders. Gentlemen, we've had this before the House on three separate Congresses. It has passed all three times without any controversy, this bill.

We need this now. As mentioned by Commissioner Johnson, the State is holding our permits for this, the Bureau is. I think they want to see some positive movement on this so we don't lose those permits. Thank you very much for letting me testify today.

[The prepared statement of Mr. Davies follows:]

PREPARED STATEMENT OF MILTON G. DAVIES, DIRECTOR, BOARD OF DIRECTORS,  
FALLBROOK PUBLIC UTILITIES DISTRICT, FALLBROOK, CA

H.R. 29

Mr. Chairman, I am Milton Davies, Chairman of the Board of Directors of the Fallbrook Public Utility District (FPUD). The people of Fallbrook appreciate this opportunity to discuss the need for the Santa Margarita River Conjunctive Use Project. It appears there really may be a light at the end of the tunnel for this project after 80 years of water rights litigation, studies, hearings, re-studies and much frustration. The spirit of cooperation between the Bureau of Reclamation, the Navy Department, local Marine Corps officials and the District has never been better. The time to move forward on this project is not only ripe, but has reached the

point of absolute necessity. Exhibit A\* is a vicinity map showing the general location of this project. Exhibit B depicts the proposed Conjunctive Use Project.

#### *Project History*

This process started in 1930 when the state of California issued the first water appropriation permit on the Santa Margarita River to the Fallbrook Irrigation District (later to become FPUD) for a dam on the River.

In 1926, the Vail Ranch, a large land grant occupying almost the whole Temecula Valley was sued by the Rancho Santa Margarita (later to become Camp Pendleton), over water rights to the Santa Margarita River. The Fallbrook Irrigation District was unsuccessful in trying to resolve the dispute amicably. This litigation was settled in 1940 with a stipulated judgment dividing the water resources between the litigants but setting the stage for the present, unresolved dispute since it failed to account for the 1930 appropriative permit issued to Fallbrook. (include 2.5 cfs direct diversion at the sump)

Since 1941 numerous attempts have been made to develop a “physical solution” to the water rights issues between Camp Pendleton and FPUD. From the 1940’s through the 1980’s these included a 2 dam project and a 1 dam project on the river. There were many studies, starts and stops during those 4 decades but no project was completed. High costs, and environmental concerns were the main deterrents to completing any dam project.

In 1990, a two-party agreement was signed by FPUD and Camp Pendleton which recognized that if upstream dischargers put recycled water into the Santa Margarita River, then these two parties would benefit from the water supply out of those discharges and that they would enter into a joint project to operate the groundwater basin and treatment facilities. This was the birth of the Conjunctive Use Project. At that point it was necessary to pursue feasibility and environmental work. The Conjunctive Use Study was prepared in 1994 as a follow-up to the two-party agreement. This study was the basis for the project that is being proposed today.

One of the two primary objectives of the project presented to you today is the resolution of eighty years of water rights disputes and litigation on the Santa Margarita River, over 60 years of which involve the federal government. Secondly, this project will provide for an environmentally sound, financially feasible, water resource development where it is most needed, in coastal Southern California.

The availability of a supplemental local water source from the Santa Margarita River has become increasingly important to the District’s capability to meet all water demands at a reasonable price. The long-term safe yield from this project will provide 100% of the needs of Camp Pendleton and 20 to 40% of the District’s total needs.

#### *Project Description*

The proposed Santa Margarita Conjunctive Use Project provides for enhanced recharge and recovery through aggressive groundwater management strategies on Camp Pendleton to provide a water supply for both Camp Pendleton and Fallbrook to resolve a long-standing water rights dispute between the United States and Fallbrook. In 1954, P.L. 83-547, the Santa Margarita Project Act, authorized the Bureau of Reclamation to construct a dam on the Santa Margarita River at a cost of \$22 million (approximately \$333 million in 2008 \$) with a yield of 14-16,000 acre-feet. The Conjunctive Use Project that this bill authorizes replaces that project and produces the same amount or possibly more water at a lower cost.

The project, as proposed, is financially feasible, environmentally beneficial and will result in the conservation and preservation of the entire Santa Margarita River riparian zone from Temecula to the Pacific Ocean, while at the same time providing 16,000 acre-feet per year (AF/yr) of vitally needed local supply in coastal Southern California.

#### *Project Facilities*

The project facilities include:

- **Enhanced Recharge.**—Groundwater recharge is enhanced by the construction of a new collapsible diversion weir and 46 acres of new recharge ponds. The enhanced recharge potential is 14,000 AF/yr in addition to the naturally occurring recharge. The collapsible weir will divert low flows and permit flood flows to pass, flushing the lower river and estuary as well as providing beach sand replenishment.

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\* Exhibits have been retained in subcommittee files.

- **Enhanced Groundwater Recovery.**—Groundwater recovery is enhanced by the construction of up to five new wells, predictive monitoring, monitoring, and a collection system to provide a total of 18,000 AF/yr of extraction capability.
- **Advanced Water Treatment.**—Treatment will be provided to exceed all requirements of the Safe Drinking Water Act. The construction of membrane filtration, disinfection, and brine disposal facilities at the Rattlesnake Canyon site on Camp Pendleton will allow treatment of 20 million gallons per day.
- **Distribution Facilities.**—Project water will be distributed to the existing Camp Pendleton and Fallbrook distribution systems through construction of two pump stations and approximately nine miles of transmission pipeline. This pipeline will also provide Camp Pendleton with a critically needed connection to San Diego County Water Authority's imported water delivery system in case of emergency, thus ensuring uninterrupted water service at one of our country's most important military establishments.

#### *Project Yield*

Two independent groundwater models predict an average annual project yield of 16,000 acre-feet (AF/yr). The current Camp Pendleton demand and use of the groundwater system is less than 8,000 AF/yr so the project results in 8,000 AF/yr of new water, reducing demand on diversions from imported supplies from Northern California and the Colorado River.

#### *Project Cost*

The current project cost estimate is \$120-\$150 million resulting in a higher project yield than the 1954 project, then estimated at \$22 million, an amount that equates to approximately \$333 million today. Camp Pendleton's share of the project cost will primarily come from already approved MILCON funds for facilities that will be needed by Camp Pendleton regardless of whether the Conjunctive Use Project proceeds. These facilities, if used by the Conjunctive Use Project will provide a credit against the total project cost in Camp Pendleton's favor.

#### *Current Project Status*

The Conjunctive Use Project is in the fourth year of management by the Bureau of Reclamation's Southern California office in Temecula, California (located in the upper Santa Margarita River basin). Project funding currently comes from several Federal sources, including Camp Pendleton, Military Construction, and Reclamation Planning, as well as local funds contributed by FPUD. At the direction of Congress, the Bureau is conducting this feasibility analysis.

The major current activity is the Bureau's in-house feasibility assessment as well as management of the EIS/EIR outside contract. This work involves the Bureau's project team completing the preliminary design of the necessary facilities and alternatives in order to complete a jointly managed EIR/EIS/FA. The Bureau and Camp Pendleton are joint Federal leads and FPUD is the state lead agency on the environmental documentation. An agreement has been reached to codify this effort to produce an environmental ROD/NOD and completion of the Feasibility Assessment.

Reclamation staff is conducting these planning operations and administering the EIR/EIS contract by outside contract funded by Camp Pendleton and FPUD. This effort is overseen and directed by an Executive Management Team comprised of Reclamation, Camp Pendleton, and FPUD.

#### *Project Benefits*

The Santa Margarita Project is somewhat unique among water resources projects in that the benefits are vast and project liabilities are almost non-existent. The project has failed to proceed over the preceding eighty years because of institutional, political, and legal disagreements among and between the basin's stakeholders. At this point, these issues are largely resolved and the success of H.R. 29 will provide for the final settlement of the case of U.S. v. Fallbrook. In identifying project benefits, this settlement should not be overlooked—it is the action from which all other project-related benefits flow.

Other benefits include:

- **Water Supply.**—The project develops a new supply of 8,000 AF/yr from local resources in San Diego at a cost that is competitive with today's cost for imported water. San Diego, like much of coastal Southern California, is largely dependent upon water imported great distances from the Colorado River and Northern California. The recent drought in the Colorado River Upper Basin and the emergence of the Quantification Settlement Agreement, along with the recent cutback in Delta deliveries due to endangered species protection, have demonstrated the limits and risks attendant to this imported supply.

In addition to the new component of supply, the total project yield of 16,000 AF/yr will receive advanced water treatment prior to distribution. Water quality in the Camp Pendleton distribution system will be dramatically improved and the operational costs related to water hardness will be eliminated.

- **Project Cost.**—The current preliminary studies indicate this new supply can be developed for roughly one-third to one-half the cost of the project Congress authorized in 1954 (P.L. 547, Chapter 593) for the same project yield, making it one of the most cost-effective new water supply projects that you will be asked to consider.
- **Environmental Benefits.**—The proposed project has no opposition from environmental interests and is generally supported by them because, aside from localized, construction-related impacts, the project is environmentally beneficial. These benefits include:
  1. Preserving the entire riparian length of the Santa Margarita River from Temecula to the ocean in public ownership.
  2. Providing 1400 acres of mitigation lands for this and future military construction projects on Camp Pendleton.
  3. Operating the groundwater basins on Camp Pendleton to preserve critical habitat for the largest population of Least Bell's Vireos in the United States.
  4. Permitting periodic high storm flows of the Santa Margarita River to flow unimpeded across Camp Pendleton, scouring the lower river valley, opening and flushing the estuary, and nourishing the beaches.
  5. Over time, the project will improve groundwater quality on Camp Pendleton, assist in removing the estuary from the listing of impaired waters, and preserve the endangered nesting habitat for the Least Tern on the estuary bar.
  6. The Fallbrook portion of the Santa Margarita River, including the Sandia and Rainbow Creek tributaries, will provide an extensive network of hiking and riding trails, as well as education and open-space benefits.

In summary, the need for the Project facilities to provide a supplemental local water source has become particularly important due to dwindling imported water supplies. In addition, the economics of the Project are as good, or better, than future imported water costs.

I am confident that the current effort underway by the Bureau of Reclamation to update the economic and environmental aspects of the feasibility study will show the benefit-cost ratio to be extremely positive and that the extra study time that has been required to achieve a superior solution will prove to be very beneficial to the stakeholders.

I urge your speedy favorable action on HR 29 so that final planning and design can begin on this project that is so vital to the well being of our District and the Marine Corps.

Thank you very much for this opportunity to appear before you today and offer this testimony in support of H.R. 29.

Senator JOHNSON. Thank you. I yield to the chairman of the full committee.

The CHAIRMAN. Thank you very much, Mr. Chairman. Let me just ask, Mayor Ortega a few questions and then Governor Chavarria also. Mayor Ortega, let me just give my impression. Maybe you could just comment on it.

My impression is that the construction of this pipeline project is really, absolutely essential to the communities that are going to benefit from it. That you have a depleting, vanishing water supply in Eastern New Mexico which is not getting any better. Unless this is done, unless we get on with this project, there really is no alternative way to provide water for those communities. Am I right about that?

Mr. ORTEGA. Mr. Chairman, Senator Bingaman, you're absolutely right. Our situation is permanent depletion. Recharge is very, very minimal. We have looked at it and recharge is about half an inch per year in the Ogalalah, in that area. We're depleting it about two to four feet per year on average.

The CHAIRMAN. In this legislation that we've introduced, Senator Domenici and I have introduced, we call for a 75 percent Federal share and 25 percent State and local cost share. Then we call for the State and local government to cover 100 percent of the operation and maintenance from then on. If we're able to enact legislation with these provisions in tact are the participating communities going to be able to cover their share of this cost?

Mr. ORTEGA. Mr. Chairman, Senator Bingaman, we've been working, each community has been working with financial consultants that know and understand our communities finances. With that we've already put measures in place that have started to generate funds that will go toward our portion. We feel very confident that our communities can afford this project.

The CHAIRMAN. Now am I also right that if the Federal Government does not agree in this project as they have in many other Western rural water projects to go ahead and be a sizable and takeover a responsibility for a sizable portion of this project then what would be the result there if—is the project just a non-viable? Is it unachievable if the Federal Government backs away from any responsibility here?

Mr. ORTEGA. Mr. Chairman, Senator Bingaman, I tell you that without a sustainable supply of water, we would suffer tremendously. Not only economically, but we would begin to lose population. We have already experienced some events where industry has looked in our area of the State for coming in and doing business with us, but we haven't been able to meet their water demands or water requests. As time goes on, you know, our future looks very bleak.

The CHAIRMAN. Let me just ask on one other question. I think the Bureau of Reclamation testimony is that they think more studies are needed. What's your perspective, as Mayor of Portales?

I noticed that the first study by the Bureau of Reclamation was done, completed in 1966. That was the first year I was in law school. I wondered if you think that we need a few more studies before we decide what to do here?

Mr. ORTEGA. Mr. Chairman, Senator Bingaman, no, I don't think so. I think we've studied this thing to death, quite honestly. As was mentioned by the Bureau of Reclamation, Commissioner Johnson, he mentioned the conceptual design. He also mentioned that there were critical questions about that.

We are way beyond the conceptual design. In fact we completed a 10-percent and are in the process of completing a 30-percent design on this project. You know, again we feel that this project, for some reason, has been looked at and has been just asked so much of. We feel that we are ready to move forward with construction of this project.

The CHAIRMAN. Thank you very much. Let me ask, Governor Chavarria about the bill which he's here testifying on today. First I take it from your testimony that you believe part of the Federal trust responsibility includes helping the Pueblo with maintaining this irrigation infrastructure that we're talking about here. Is that an accurate interpretation of what you said?

Mr. CHAVARRIA. Yes, that's correct, Chairman, Senator.

The CHAIRMAN. The other thing—my impression is that theoretically at least there are two Federal sources of funds that you can look to, you the Pueblo or the eight Pueblos that you're here representing can look to. One would be the Bureau of Reclamation and that's what our bill contemplates, but also the BIA is available to provide funds. Now, why do you conclude that the BIA assistance is not adequate?

Mr. CHAVARRIA. I have information from the South Government Office here in Washington that clearly shows since 2000 those Federal fundings have been dwindling. An example is 2000 we had zero dollars. 2001 was zero dollars again. 2002 actually went up to \$9,619. Recently in 2008 we actually got \$858 through our self governance compact to help irrigation infrastructure needs within Santa Clara Pueblo.

The other Eight Northern Pueblos have also probably got that same limited amount of funding. So it is a trust responsibility through the Department of the Interior, BIA, to assist the Pueblos in that responsibility of taking care of the infrastructure needs.

The CHAIRMAN. So you don't believe that the \$858 that you got for the current year is enough—

Mr. CHAVARRIA. I think—

The CHAIRMAN [continuing]. To maintain this infrastructure?

Mr. CHAVARRIA. We could probably only do about a foot.

The CHAIRMAN. I see.

Mr. CHAVARRIA. It's very limited, sir.

The CHAIRMAN. Alright. I would tend to agree with that. I hope very much we can succeed with enacting this legislation. I think that I asked the head of the Bureau of Reclamation what portion of the Water 2025 grants had gone to Indian Pueblos. Do you happen to know the extent to which any of the Eight Northern Pueblos have received grants under that?

Mr. CHAVARRIA. I am not knowledgeable on that, sir. Myself and former Governor Viarrial spoke about this before the testimony and we haven't received any information from the Santa Clara Pueblo.

The CHAIRMAN. We'll try to run that down and ask them what grants they've made to the Eight Northern Pueblos because I think that would be good information for us to have on the record.

Mr. CHAVARRIA. Thank you.

The CHAIRMAN. Let me thank Governor Chavarria and Mayor Ortega and also Mayor Brumfield for being here and testifying on this. I think this is very useful testimony for us and again, Mr. Chairman, thank you for giving us so much time to consider these bills in this hearing.

Senator JOHNSON. Senator Salazar.

Senator SALAZAR. Thank you very much, Chairman Johnson. In a letter\* dated November 8, 2007, from the United States Environmental Protection Agency, EPA Region Eight stated the following and I quote, "we are concerned that an uncontrolled, potentially catastrophic release of water to the Arkansas River from the LMDT is likely at some point, not only endangering human life, people living at the East Fork trailer park and BOR employees. The sudden

\* EPA letter, EPA Superfund Record of Decision, and the Third Five-Year Review Report have been retained in subcommittee files.

release of water, rock, sediment and heavy metals to the Arkansas River would be an environmental disaster.” Mr. Chairman, I would ask unanimous consent that this letter be included as part of the record.

Senator JOHNSON. Ok.

Senator SALAZAR. Mr. Chairman, I’d also ask unanimous consent that the EPA Superfund record of decision\* of March 15, 2003 also be included in the record. That is September 25, 2003.

Senator JOHNSON. Ok.

Senator SALAZAR. I would ask for unanimous consent that the third, 5-year review report\* on California Gulch dated September 28, 2007, also be included as part of the record.

Senator JOHNSON. Ok.

Senator SALAZAR. I have a question, Ms. Rudolph. First of all, thank you for coming from Colorado all the way to Washington, DC., to testify in connection with this bill. My question to you is simply this, would this legislation improve, from your point of view, the understanding of the respective obligations of the Bureau of Reclamation with respect to the Leadville mine drainage tunnel and the responsibilities of EPA?

Ms. RUDOLPH. I believe it would. I believe it’s necessary for that purpose so that we will have a clear understanding of the responsibilities. Who needs to do what with regard to the tunnel and with regard to the OU Six facility.

Senator SALAZAR. Thank you, Ms. Rudolph. Thank you to all the witnesses and thank you, Mr. Chairman.

Senator JOHNSON. Mr. Davies, BOR does not support H.R. 29, in part because the engineering, economic and environmental studies have not yet been completed. Your testimony indicates that the project is financially feasible and environmentally beneficial and that the current estimated cost of the project is at the \$120 million to \$150 million range. Do you believe that the project is ready to proceed based on the studies that have been completed and how certain are you of the accuracy of the cost estimates?

Mr. DAVIES. Mr. Chairman, we’ve been studying this for 4 years now and of course the feasibility study has not yet been completed. But the preliminary analysis and design is indicating that we’ll be able to come in within budget. Our portion is \$60 million of that and the Bureau was going to complete that and we’re assured that that will be an excellent joint project for both the military and the district.

Senator JOHNSON. I have no additional questions. Thank you to all the witnesses for your participation today. For the information of Senators and their staffs questions for the record are due by close of business tomorrow. With that this hearing is adjourned.

[Whereupon, at 3:53 p.m. the hearing was adjourned.]



## APPENDIXES

### APPENDIX I

#### Responses to Additional Questions

RESPONSES OF THE ENVIRONMENTAL PROTECTION AGENCY TO QUESTIONS FROM  
SENATOR SALAZAR

S. 2680

I appreciate the swift and decisive action that EPA and Reclamation have taken to begin pumping and treating water behind the LMDT blockage. These operations have provided some measure of relief and peace of mind to the citizens of Leadville and the communities downstream of the LMDT. We must not, however, lose sight of the need for a long-term solution to the problem.

A permanent solution to the problems with the LMDT has long been stymied by jurisdictional and liability questions related to EPA's remedy selected in the California Gulch Superfund Site Record of Decision for Operational Unit (OU) 6.

Regrettably, the Administration's testimony today suggests that many of those questions remain unanswered.

*Question 1.* Have the agencies reached any agreement with respect to the federal government's responsibility for a long-term solution to the LMDT?

Answer. U.S. Bureau of Reclamation (Reclamation) and the Environmental Protection Agency (EPA) will have a better understanding of long-term actions needed for the LMDT now that the draft risk assessment conducted by Reclamation is complete and EPA has an opportunity to review and comment on the document during the public comment period this summer. The agencies have also been working to pump and treat some of the water to reduce water levels inside the LMDT this year, and Reclamation recently submitted changes to Congress that would amend existing law to better fit the existing conditions.

EPA is taking action to address immediate risk. EPA will complete two removal actions that are underway, including the construction of a relief well, pump and pipeline to transport water from the Leadville Mine Discharge Tunnel and mine pool to Reclamation's treatment plant. Reclamation will operate and maintain the treatment plant, relief wells, pump and pipeline, and will determine future actions based on the risk assessment.

In addition, EPA also installed a pumping system in the nearby Gaw mine shaft and has been pumping at a rate of 450 gallons per minute since late February. This action may lower water levels in the mine pool and it appears to have diminished seeps and springs that had recently appeared in the lower California Gulch.

*Question 2.* What is EPA's position with respect to the Bureau's legal liability under CERCLA (as an owner of the LMDT) for the remedy selected in the OU6 ROD?

Answer. The LMDT is owned by Reclamation as is the LMDT treatment plant. Pursuant to CERCLA Section 120 and E.O. 12580, Federal agencies have authority to address releases or threatened releases of hazardous substances from sites which are not on the National Priorities List, and removal actions other than emergencies, where either the release is on or the sole source of the release is from a facility subject to that agency's jurisdiction, custody or control. Section 9(i) of the Executive Order provides that the Administrator of EPA can "pay for removal actions for releases or threatened releases from facilities...under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substances Superfund by such Executive department or agency."

*Question 3.* Did the Bureau of Reclamation concur in the remedy selected for OU6? Was Bureau concurrence necessary?

Answer. Concurrence from Reclamation was not required to select the remedy and complete the OU6 ROD. Although Reclamation submitted comments, they did not provide concurrence on the OU6 ROD.

*Question 4.* Has EPA determined what is needed for a long-term solution for LMDT? What is it?

Answer. Reclamation and EPA will have a better understanding of what actions may be needed for the LMDT now that the draft risk assessment conducted by Reclamation is complete and is being reviewed by EPA and others in July.

*Question 5.* Did EPA perform an analysis of the risk of a sudden discharge of water from the LMDT?

Answer. No. Based on experience with other mine drainage tunnels throughout the Rocky Mountain region, EPA believes that there is a potential for tunnel failure. The Reclamation risk assessment will provide a more thorough evaluation of this risk.

*Question 6.* What is the status from your point of view of EPA's negotiations with the Bureau with respect to this issue?

Answer. EPA and the Bureau continue to discuss appropriate steps to address the situation at this site, and both agencies are coordinating closely to ensure continued protection of human health and safety. State and local stakeholders will also have an important responsibility in devising future actions that may be part of the safety solution. The safety of the Leadville community is our top priority.

*Question 7.* Does EPA intend to reopen the ROD for OU6 or otherwise to modify its proposed remedy for treating contaminated water entering the LMDT?

Answer. Not at this time.

*Question 8.* Would this legislation, in your opinion, address BOR's concerns regarding its legal liability and responsibility for the remedy, as it relates to LMDT? Would it provide the necessary funding to implement the remedy and treat the water in perpetuity?

Answer. No. The Administration does not support the legislation as drafted for the reasons provided in the Commissioner's testimony submitted to the Subcommittee.

*Question 9.* What is your current estimate of the cost of a long-term solution for LMDT/OU6? Is the \$40 million authorized in the legislation sufficient?

Answer. Reclamation and EPA will have a better understanding of actions that may be needed for the LMDT once we review Reclamation's draft risk assessment this summer. We are not in a position to discuss proposed funding levels.

*Question 10.* The legislation does not specifically mention drilling at the Canterbury Tunnel (either vertical or horizontal whichever is more cost effective over the long-term) or fluming in Evans Gulch to prevent large volumes of surface water from entering the mine pool. Does EPA believe these options would be important to permanently resolving the mine pool problem?

Answer. EPA does not believe these items are necessary for the solution for the LMDT.

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RESPONSES OF ORLANDO ORTEGA TO QUESTIONS FROM SENATOR DOMENICI

S. 2814

*Question 1.* Do you think that the bill should move forward, even if the full design has not yet been completed?

Answer. Yes, federal authorization is a critical milestone in the development of the project and time is of the essence. Planning and design is far advanced on this project relative to other similarly authorized regional rural water supply projects around the country. The current cost estimate, based on a Preliminary Engineering Report and 10% level design, includes a 20% contingency factor or approximately \$70 million. Both S.2814 and HR. 5710 recognize the likelihood of a multi-year construction period and accordingly include a clause to index future funding levels to construction costs. This is recognized and accounted for at the state and local levels as well. The 30% level design and environmental efforts are well underway and thus far indicate no unusual technical or environmental "fatal flaws".

*Question 2.* Please describe the willingness of the State to secure the funding necessary to fund their share of the project.

Answer. The State of New Mexico is strongly in support of the project on several levels. The state made a considerable investment around 1960 in the construction of Ute Dam to create the reservoir intended to store New Mexico's share of Canadian River water for exactly the type of use envisioned by this project. In today's dollars that investment is likely worth around \$140 million. Additionally, we have

in hand over 45 letters of support from the Governor's office on down. On April 23rd, as we were traveling to Washington, DC to provide testimony to your committee, the NM Water Trust Board took action to appropriate \$4,525,828 toward the continued development of the project. This brings the State's investment in the project to a little over \$12 million since 2002.

*Question 3.* Are all the communities involved in the Project supporting the bill?

Answer. Absolutely. Please understand that the eight member agencies of the Eastern NM Rural Water Authority are facing a very uncertain future without this project. All of the realistic alternatives to this project evaluated for providing a long term sustainable water supply to the eastern NM region—including 'status quo' groundwater development—are more expensive and not sustainable. There is strong recognition that no viable alternatives exist. The member agencies support the bill and its financial consequences including the local commitment to operate and maintain the infrastructure facilities once constructed over the long term at approximately \$8-9 million annually.

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RESPONSE OF MARTHA RUDOLPH TO QUESTION FROM SENATOR JOHNSON

S. 2680

Your testimony indicates that the LMDT is not part of the Superfund site, but that the EPA/Colorado remedy for Operable Unit 6 still requires Reclamation to participate in its implementation.

*Question 1.* Is Reclamation's participation required under the Superfund law or because, as you reference, it makes practical sense and will ultimately decrease its operating costs?

Answer. The remedy for Operable Unit 6 (OU 6) of the California Gulch Superfund site addresses the control of contaminated surface water runoff from mine waste piles in an area known as Stray Horse Gulch. Originally, EPA and the Colorado Department of Public Health and Environment ("CDPHE") had preferred a remedy that called for the consolidation and capping of these waste piles. This remedy would have controlled the source of contamination by eliminating the contact between mine waste and surface water. This remedy would have been more expensive than the current remedy, but it would have dealt with the problem in the most permanent fashion and would have required little continuing operation and maintenance. However, this remedy was not selected due to local opposition that was based on protection of historic resources.

As an alternative, the EPA and CDPHE selected the current remedy. Instead of controlling the source of contamination, this remedy recognizes that the surface water will become contaminated, and treats the contaminated water. The most cost effective way to provide that treatment would be to utilize Reclamation's existing treatment plant, rather than to construct a new treatment plant for that purpose. During the development of this remedy concept it became apparent that by constructing the bulkhead within the LMDT we could also address the historic issue of potential blowouts of the LMDT, and substantially decrease Reclamation's water treatment volumes and costs. EPA and CDPHE believed that by lowering Reclamation's overall treatment costs, and by significantly reducing or eliminating the risk of a blowout of the LMDT, for which, as the owner of the LMDT, Reclamation would be responsible, Reclamation would be more inclined to participate in the remedy.

Although EPA and CDPHE believe that this remedy provides sufficient benefit to Reclamation to warrant its participation, and it makes practical sense to use an existing treatment plant instead of constructing and operating a second plant, Reclamation has never expressed any willingness to participate in this remedy, and Reclamation is not legally required to participate in the OU6 remedy under Superfund law. Reclamation has also taken the position that its statutory authority does not allow it to participate in the remedy.

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RESPONSES OF MILTON G. DAVIES TO QUESTIONS FROM SENATOR JOHNSON

H.R. 29

The BOR does not support H.R. 29, in part, because the engineering, economic, and environmental studies have not yet been completed. Your testimony indicates that the project is financially feasible and environmentally beneficial, and that the current estimated cost of the project is in the \$120 million to \$150 million range.

*Question 1.* Do you believe that the project is ready to proceed based on the studies that have been completed, and how certain are you of the accuracy of the cost

estimate? What other studies do you see that are needed before proceeding to construction of the project?

Answer. H.R. 29 anticipated this issue being raised by the Bureau and specifically predicates authorization upon a finding by the Bureau that the project is feasible (H.R. 29-Sec. 2(b)4. Preliminary design, a feasibility study and an EIS/EIR are all currently being conducted by the Bureau of Reclamation. The preliminary Draft EIS/EIR is expected this Fall and the feasibility study (based on the preliminary design) is expected to be completed in Spring 2009. Final design would still need to be done prior to beginning construction. We are confident of the current estimated cost estimate of \$120-150 million in 2008 \$. This is based on the Bureau's preliminary design work which is nearly complete and has not identified any large unforeseen expenditures.

*Question 2.* Reclamation's testimony notes that construction of the project is contingent on the State granting a permit to use water.

What is your view on the status of a water use permit for the project? Does a permit already exist that can be used for the project?

Answer. Fallbrook P.U.D. and Camp Pendleton have 3 existing permits from the California State Water Resources Control Board (SWRCB) authorizing diversion of water from the Santa Margarita River to surface storage. These permits expire on 12/31/08. We are working with staff from the SWRCB to extend the expiration date and amend these permits to allow diversion to underground storage on Camp Pendleton as well as allow direct diversions from the River to our planned treatment plant during high flow conditions. Based on discussions with SWRCB staff we are optimistic that the permits will be extended and modified.

*Question 3.* Your testimony states that "Camp Pendleton's share of the project cost will primarily come from already approved MILCON funds. . . ."

If such funds have already been approved, is it possible that they could be provided up-front to avoid having to appropriate new funds for the Navy's share?

Answer. Yes, that is the intent of the parties. Funds in excess of \$64 million for the inflatable dam, percolation ponds and Camp Pendleton's share of the Advanced Water Treatment Plant have already been appropriated. These portions of the joint project with Fallbrook PUD are necessary for Camp Pendleton even if the joint project does not proceed. They will be built and then Camp Pendleton will receive credit towards their share of the \$120-150 million joint project if it proceeds.

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RESPONSES OF HON. JOSEPH MICHAEL CHAVARRIA TO QUESTIONS FROM  
SENATOR DOMENICI

S. 2805

*Question 1.* In the 2000 BIA/BOR report, several agencies were identified as possible federal partners that could assist with the Pueblo irrigation and infrastructure rehabilitation work. These agencies included the BIA, the National Resources Conservation Service (NRCS), and the Corps of Engineers.

Have any of these agencies assisted you with this work?

Answer. As described more fully in my written statement, BIA irrigation funding has been virtually nonexistent for decades, which is why S. 2805 is desperately needed. As I stated in my testimony, occasionally BIA has been able to offer limited assistance for emergencies for various Pueblos but it has been done in a shoestring approach, unreliable and unknown from year to year, which does not allow for any methodical rehabilitation work. I would defer to the so-called Six Middle Rio Grande Pueblos to describe their relationship with the BIA regarding rehabilitation of structures that are part of the Middle Rio Grande Conservancy District. To the extent that Santa Clara Pueblo has received any BIA irrigation engineering funding, it has only been our fair share of the dwindling pot of BIA irrigation money through our Self-Governance compacting, and it has been less than one thousand dollars (\$1,000) annually in recent years, as described more fully in my written statement.

With respect to the Corps, it is my understanding that existing authorities for the Corps generally cover studies about the feasibility of irrigation repairs but separate Congressional authorization is still needed for actual construction or rehabilitation work. Santa Clara Pueblo, along with Ohkay Owingeh, and San Ildefonso Pueblo, are partners with the Corps in a General Investigation Watershed Feasibility Study for the Espanola Valley, an effort which Senator Domenici and the rest of our New Mexico Congressional delegation have championed. Through that study, the Corps is investigating the feasibility of implementing measures for environmental restoration, and to improve flood control and water quality along the three Pueblos' reach of the Rio Grande and related tributaries. That study also includes investigation of

irrigation improvements for Santa Clara Pueblo. The study is supposed to be completed within the next year or two which will determine the feasibility and costs of various irrigation improvements. However, it may be many years before funding may be available if and when appropriations are requested for the actual final design and construction of specific irrigation improvements for Santa Clara Pueblo's needs. It is important to note that these sorts of irrigation improvement feasibility studies that the Corps can perform under existing authorities could easily be blended into the implementation of actual rehabilitation work through S. 2805.

As for the NRCS, it is my understanding that many of the Pueblos have had small rehabilitation projects throughout the years through the programs that NRCS runs. At Santa Clara Pueblo, we have used NRCS funds from the EQUIP program for pipe and open channel work on a part of our irrigation system.

Although Santa Clara Pueblo has not been the recipient of such funds, it is my understanding that, on occasion, the Bureau of Reclamation, through limited authorities for its Native American Affairs Program, has made limited funds available to some Pueblos to assist with irrigation rehabilitation, but, again, only on a small project basis. Although the Senator's question asks only about federal partners, S. 2805 recognizes that there may be opportunities to partner with the State of New Mexico. Santa Clara Pueblo sought and received direct appropriations from the State to assist with design and planning for irrigation improvements because such improvements are so desperately needed at our Pueblo. Although the State provided some funding for planning, it will take years to obtain sufficient construction funds, and, of course, a \$2 million project today could cost \$4 million by the time it is funded given inflation and other escalating costs. Again, it is important to note that any of these initial planning efforts could easily be blended into the implementation of S. 2805, and would not duplicate efforts.

*Question 2.* Please describe the Pueblo resources that have been used to improve and rehabilitate your existing irrigation works.

*Answer.* For this question, I can only answer on behalf of Santa Clara Pueblo. For our work with the Corps and NRCS, we have had cost-share obligations to meet. Thus, our limited resources are dedicated to that effort. In addition, Tribal equipment and labor crews are used for preventative maintenance. However, because our irrigation system overall is in disrepair, and because BIA irrigation funding does not even cover the cost of diesel for our equipment anymore, our limited resources usually must go to annual emergency patchwork on our irrigation system. We consider this to be, at best, a band-aid approach to rehabilitation, which is why Santa Clara Pueblo strongly supports the enactment of S. 2805.

I hope these answers are helpful in garnering understanding of the critical irrigation infrastructure improvement needs of the New Mexico Indian Pueblos. Please let me know if I can be of further assistance.

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RESPONSES OF BOB JOHNSON TO QUESTIONS FROM SENATOR JOHNSON

*Question 1.* Rural Water General Question.—In December 2006, we enacted the Rural Water Supply Act which required BOR to determine eligibility criteria by December 2007, and feasibility criteria for rural water projects by June 2008.

What is the status of those actions called for in the legislation?

*Answer.* Title I of the Rural Water Supply Act of 2006, P.L. 109-451 (Act), enacted on December 22, 2006, authorizes Reclamation to establish a rural water program and requires us to develop three sets of criteria to implement the program. Section 103 of the Act requires the development of programmatic eligibility and prioritization criteria within one year after the date of enactment; Section 105 requires the promulgation of criteria for the completion of appraisal investigations within one year of the date of enactment; and Section 106 requires the promulgation of criteria for the completion of feasibility studies within 18 months of the date of enactment. The Act requires Reclamation follow the formal rulemaking process as required in the Administrative Procedures Act in developing the criteria for the Rural Water Program. In order to expedite the rulemakings in an efficient manner, Reclamation is completing one comprehensive rulemaking process, instead of doing three separate rulemakings to address each of these three requirements. We believe this is a more timely and efficient option than the alternative. However, because of the specific procedural requirements associated with completing a rulemaking—which includes a 90-day review by the Office of Management and Budget and a 60-day public comment period—Reclamation published the comprehensive criteria in the Federal Register as an Interim Final Rule on November 17, 2008. Reclamation is currently reviewing public comments for the interim final rule.

*Question 2.* H.R. 29 (Santa Margarita Bill).—Your testimony indicates that construction of the Santa Margarita project is contingent on the State of California granting the permits necessary to use water for the project. You also mention that Reclamation currently holds permits to construct dams to develop a water supply on the Santa Margarita River for the Fallbrook District and Camp Pendleton.

Can Reclamation use the permits it presently holds from the State of California for the Project proposed in H.R. 29? If so, is it true that activity under those permits must be initiated by the end of this year or the permits may not longer be valid?

Answer. Reclamation presently holds three water rights permits issued by the California State Water Resources Control Board (SWRCB). Reclamation, in cooperation with Camp Pendleton and the Fallbrook Public Utility District, is presently preparing the documentation for requesting an extension of time for putting the waters to beneficial use. Reclamation will file the request and documentation for an extension of time to exercise the permits with the SWRCB prior to the end of 2008. The river is fully allocated at this time, and if the request is not granted, Reclamation understands that the permits could eventually expire.

As previously stated in our testimony, Reclamation does not support this proposed project.

*Question 3.* H.R. 29 (Santa Margarita Bill).—You note that the engineering studies and environmental analysis for the Santa Margarita project have not yet been completed.

What is the status of those studies? At a minimum, has an appraisal level analysis been completed?

Answer. An appraisal level analysis of the Santa Margarita River Conjunctive Use Project was completed in January 2005. The feasibility analysis is well underway and is scheduled for completion in early 2009. Reclamation has entered into a contract with The Environmental Company (TEC) for the environmental compliance analysis and document. We anticipate that the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) will be publicly distributed in April 2009.

*Question 4.* (Santa Margarita).—Testimony on the 2nd panel indicated that “Camp Pendleton’s share of the project cost will primarily come from already approved MILCON funds . . .”

Has Reclamation had discussion with the Navy regarding its participation and, if so, is it possible that the Navy could pay its share up-front as opposed to receiving a repayment contract?

Answer. Yes, Reclamation has had discussions with the Navy concerning the possibility of the Navy paying its share of construction costs up-front, and it is Reclamation’s understanding that the Navy’s intention to pay construction costs up-front is contingent upon the availability of Military Construction funds.

*Question 5.* H.R. 123 (San Gabriel Basin Fund).—Your testimony indicates that the Administration opposes reauthorizing the San Gabriel Basin Fund because Reclamation’s budget is not the appropriate place for this funding.

Notwithstanding which agency provides the funding, is there a Federal responsibility to help clean-up the groundwater contamination in Southern California?

Answer. The Federal government believes there is a shared public interest in seeing groundwater basins in southern California cleaned so that water from these basins could be used as a source of potable water. However, it is difficult to assert that there is a Federal responsibility to help clean up the groundwater contamination throughout all of southern California, because the situation in each basin is unique. In the San Gabriel Basin, the local water agencies have argued that the Federal government does have responsibility for the groundwater clean up, basing this argument on the belief that a great deal of the contamination (including all of the perchlorate contamination) was a result of the activities of defense contractors. This was the premise behind the establishment of the San Gabriel Basin Restoration Fund and the subsequent appropriations into the fund. It is important to note that the establishment of the fund does not mean that the Federal government, including the Department of the Defense, has a legal responsibility for the clean up when a contractor has polluted in violation of applicable laws.

*Question 6.* S. 2680 (Leadville).—Testimony by the State of Colorado asserts that Reclamation’s participation in the EPA/Colorado remedy for OU6 will “reduce the amount of water treated by the Bureau of Reclamation (thereby decreasing its operating costs)”.

Do you agree with the State of Colorado assessment? If not, has Reclamation estimated the additional costs that it will incur by participating in the remedy for OU6? What is the magnitude of additional cost that Reclamation believes it will incur? What other recommendations does Reclamation have for a long-term remedy for the clean-up of OU6?

Answer. The Record of Decision for OU6 that was prepared by the Environmental Protection Agency (EPA) with concurrence from the State of Colorado, evaluated several remedy alternatives to address the issues associated with OU6. The selected remedy includes the relief well and pipeline that were recently constructed by EPA to address any immediate threat from the rise in groundwater and abundant snowpack. Reclamation will treat the water delivered from the relief well - up to the available, existing capacity of the treatment plant. Reclamation believes it is prudent to evaluate the effects of these recent activities before fully implementing any additional selected remedy actions. Based on the results, it may be necessary to re-evaluate the remedy for OU6. We also believe it may be beneficial to revisit capping the remaining tailings piles to prevent or minimize future contaminated runoff. Reclamation expects to incur additional costs of up to \$1,143,000 per year due to treatment of the additional volumes of water from implementation of the recent actions. Reclamation is evaluating the potential for reduced long-term operation and treatment costs that may result from continued analysis of the facility seeking improved industrial process and water treatment technologies. Reclamation is evaluating with EPA, new hydrologic and water quality data obtained since construction and pumping of the relief well, to determine additional actions that may result in future reduction of water volumes that require treatment.

RESPONSES OF BOB JOHNSON TO QUESTIONS FROM SENATOR BINGAMAN

*Question 1.* S. 2805.—The Bureau of Reclamation and Bureau of Indian Affairs first completed an initial assessment of the Pueblos' irrigation facilities back in 2000. That report identified a substantial number of infrastructure related problems which all result in the need to divert more water than is necessary to support the agricultural needs of the Pueblos.

Given the substantial water supply and environmental issues in the Rio Grande basin in New Mexico, many of which involve Reclamation, doesn't it make sense to facilitate the most efficient use of water possible? If so, why was no action taken by the Department after its 2000 Report?

Answer. Reclamation and BIA completed an initial assessment of the Pueblos' irrigation facilities in 1999, and subsequently issued a summary report in 2000. We agree that with competing demands for water in the Rio Grande River Basin, it makes sense to promote water use efficiency. After the Report was completed, it was presented to the All Indian Pueblo Council. Since then, Reclamation has worked with many of the interested Pueblos to implement those actions described in the report it could carry out, subject to funding and authority limitations, and in some cases taking into account the need to defer certain work pending the outcome of water rights negotiations involving some of the Pueblos. To date, at least \$1.5 million has been expended by Reclamation to carry out this work, with the largest amount coming through its Native American Affairs program.

*Question 2.* S. 2805.—Your testimony on S. 2805 raises several technical issues with the bill. Specifically, you ask for definitions to several terms, including "on-farm improvements"; "drainage facility"; and "historically irrigated lands". These terms were taken directly from your 2000 Report.

Please provide definitions for those terms as you intended them in the 2000 report.

Answer. The 2000 report was a condensed version of a larger report written in 1999 that included these terms. In this context definitions for "on-farm improvements", "drainage facility", and "historically irrigated land" identified in the 1999 report and preserved in the 2000 report are:

**On-farm improvements:** As currently envisioned, the Project will provide for efficient delivery of water to farms, but not on-farm improvements. Examples of on-farm improvements include fencing, creation of borders, installation of sprinkler or drip irrigation systems, provision of tractors and other farm machinery, provision of seed or plants, and planting of windbreaks. The only exceptions to on-farm improvements which might be included in the Project scope of work are these water conserving items: land leveling, land smoothing, and installation of water measuring devices . . . These measures improve the efficiency of the system as a whole by conserving water and thereby maximizing the water available to other users." Thus, any ditch which provides delivery of water to the farm would not be considered an on-farm improvement and would be eligible for improvement under the proposed project. This would take away confusion in classifying ditches as main canals, laterals, farm ditches, etc. for purposes of the proposed project.

**Drainage Facility:** A drainage facility is a drainage ditch which includes either an open ditch drain or subsurface perforated pipe systems or any other

structure which acts to lower the groundwater table in areas where the water table is too high to allow for productive farming. It was envisioned that all drainage facilities be included in the scope of work for the proposed project.

Historically Irrigated Lands: This includes pueblo lands which have been irrigated through a network of ditches from a major water source, such as the Rio Grande, Rio Jemez, Rio Chama, Rio Pueblo de Taos, Rio San Jose, etc. It includes such lands even if there are supplemental wells to supply these areas, provided that the wells are supplemental to the major water source. It does not include lands which were irrigated through dryland farming techniques, i.e., rainfall. It does not include lands sporadically irrigated through the diversion of arroyo flows which only carry water during storm events. It does not include upland areas for which wells are used to provide a water source. It includes lands for which there is a valid water right, such as the prior and paramount lands and the newly reclaimed lands of the six Middle Rio Grande Pueblos (see the Act of March 13, 1928), because these lands are capable of being serviced by existing ditches. It was envisioned in the Act of March 13, 1928 that these lands would be irrigated through the participation of the six Middle Rio Grande Pueblos in the Middle Rio Grande Conservancy District.

*Question 3.* S. 1805.—Over the last 4 years, through its Water 2025 program, Reclamation has provided grants to water users in the West to implement water conservation projects.

What portion of the Water 2025 grants have gone to Indian tribes? If the percentage is low, why do you think that is the case?

Answer. Since 2004, Water 2025 has awarded \$3030 million to fund 137 Challenge Grant projects. Navajo, tribal entities in New Mexico received 3 of these grants totaling \$725,000. While this is a relatively small percentage of the total number of Water 2025 grants that have been awarded, it represents 75 percent of all the proposals received from the tribal entities; this is a much higher percentage than the approval rate for non-tribal proposals. It is likely that Tribes and Pueblos have focused on activities other than those funded by the Water 2025 program, such as rural water projects. It is also important to note that many projects, while not awarded directly to tribes, have provided substantial benefits to tribes, tribal fisheries or tribal lands. Specifically, ten projects totaling \$33 million have benefited tribes.

*Question 4a.* S. 1805.—Pursuant to its trust responsibility, the Department is authorized to provide assistance to Indian tribes to maintain its irrigation infrastructure.

How much funding did the Department provide to tribes from 2002–2008 for Indian irrigation operation and maintenance? How much did it request in its budget?

Answer. In general, operation and maintenance (O&M) for Indian irrigation systems is paid for through the collection of irrigation assessments from project beneficiaries by BIA. The regulations governing these annual assessments are at 25 CFR Part 171. Annual assessments are adjusted to reflect increases in O&M costs. These assessments are published in yearly notices, see, e.g., “Rate Adjustment for Indian Irrigation Projects,” 73 Fed. Reg. 32043 (June 5, 2008). In addition to revenues generated from project beneficiaries, there is also a line item in the BIA’s budget for Irrigation Operations and Maintenance. For 2002-2008, the total amount of funding requested for this item was \$75,241,000, and the total amount appropriated was \$76,593,000. A chart showing annual funding levels is provided at the end of this response. This line item primarily funds payments for BIA irrigation projects and tribal irrigation systems that are mandated by court orders and statutes. When discretionary funds are available, they are used principally for water storage and irrigation service-related contracts.

Fiscal Year	Requested	Appropriated
2002	10,055,000	10,513,000
2003	10,072,000	10,007,000
2004	10,096,000	9,972,000
2005	9,239,000	9,111,000
2006	12,237,000	13,042,000
2007	12,480,000	12,074,000
2008	11,062,000	11,874,000

Note: The increases in FY 2006 and 2008 were Congressional add-ons for the Navajo Indian Irrigation Project.

In addition to the BIA funding, there are some project-specific authorizations providing for different payment mechanisms for Indian operation and maintenance costs. For example, the Ute Mountain Ute Tribe is required to pay in advance a por-

tion of the OM&R costs associated with the Towaoc Highline Canal, operated by the Bureau of Reclamation. As part of the 1988 Colorado Ute Water Rights Settlement Act, the Secretary may bear all or part of the O&M in the event the Tribe demonstrates that it is unable to satisfy these costs from gross revenues. The total budgeted by Reclamation for these costs from 2002-2008 was \$1,150,000, and the amount obligated was \$1,780,009.

*Question 4b.* How much funding did the Department provide to the Middle Rio Grande Conservancy District during 2002–2008 to operate and maintain irrigation infrastructure for the benefit of the Middle Rio Grande Pueblos? How much was requested in the budget for this activity?

Answer. Funding for operation and maintenance of the irrigation systems benefiting the Middle Rio Grande Pueblos is provided through BIA. Reclamation has provided no funds to the Middle Rio Grande Conservancy District for operation and maintenance of the irrigation system for the Middle Rio Grande Pueblos.

The following table shows the amounts obligated by the BIA for O&M purposes for the Middle Rio Grande Pueblos for the years 2002 to 2005. These funds were paid out of the BIA Natural Resources Management—Irrigation Operations and Maintenance line item discussed above. The Act of February 14, 1927 (44 Stat. 1098) provided for the designation of an engineer to represent the Department in the development of Indian irrigation infrastructure. The position of a Designated Engineer has been retained and funded subsequently to assist the Department and the Pueblos.

Fiscal Year	Obligated	Paid to MRGCD	BIA Designated Engineer (funded)
2002	\$350,000	\$350,000	\$100,000
2003	\$350,000	\$350,000	\$100,000
2004	\$450,000	\$350,000	\$100,000
2005	\$300,000	\$729,692	\$100,000

For years 2006-2008, funding of over one million dollars per year was obligated by the BIA to support the Pueblos' operation, maintenance, and betterment needs. The payment of this funding to MRGCD must be based on work completed by MRGCD and verified by the BIA, and that process is underway.

*Question 5.* S. 1805.—What obligations does the United States have to help Indian tribes maintain irrigation infrastructure based on its trust responsibility?

Answer. Although developing or rehabilitating irrigation infrastructure has often been a component of Indian water right settlements, generally the goal of providing tribal water infrastructure has been pursued under existing discretionary programs such as those of the Bureau of Indian Affairs and the Indian Health Service. The Bureau of Reclamation, through its Native American Affairs Program, has endeavored to assist tribes in maintaining irrigation infrastructure through its technical assistance program, although it has no general mandate to improve or maintain Indian irrigation systems.

Such infrastructure development is a discretionary function, dependant on Administration policy and Congressional authorization and funding. In the absence of Congressional directives assigning specific fiduciary duties or providing additional Federal funding, the statutes and regulations that establish the framework for the BIA's role in maintaining irrigation infrastructure confirm that the BIA does not have a trust obligation to operate and maintain irrigation projects. See, e.g., *Grey v. United States*, 21 Cl. Ct. 285 (1990), *aff'd*, 935 F.2d 281 (Fed. Cir. 1991), *cert. denied*, 502 U.S. 1057 (1992). See also 25 CFR Part 171 (regulations governing Indian Irrigation and Maintenance and requiring BIA to collect annual operation and maintenance assessments to cover annual costs for each irrigation facility covered by the regulations).

#### RESPONSES OF BOB JOHNSON TO QUESTIONS FROM SENATOR DOMENICI

*Question 1a.* S. 2814, Eastern New Mexico Rural Water System.—Please describe the process underway to establish eligibility criteria for the loan guarantee program that passed during the last session of Congress. In addition, please describe the findings by OMB regarding the implementation of the loan guarantee program issued on April 3, 2008, and how this will impact the establishment of eligibility criteria.

Answer. Loan guarantees provided to water districts to improve Federally-owned assets are financing improvements to Federal assets, and not subject to the Federal

Credit Reform Act. Consequently, such guarantees would be classified as Federal borrowing authority as described by OMB Circular A-11, Appendix B, and would require appropriations up-front for the full amount of the Government's potential liability. The underlying loan guarantee program (authorized in Title II of P.L. 109-451) authorizes Reclamation to offer loan guarantees, subject to the availability of appropriations.

*Question 1b.* Please describe the level of funding the BOR would be willing to request to support the Eastern New Mexico Rural Water System.

Answer. This project has not yet been determined to be feasible. The appropriate level of funding can only be assessed after the determination of the project's feasibility.

*Question 1c.* Please describe other mechanisms the BOR might employ to help develop regional rural water projects in the future.

Answer. Title I of the Rural Water Supply Act of 2006 (Act) authorizes the establishment of a rural water supply program in the Bureau of Reclamation. The Act provides that Reclamation can plan the design and construction, through the conduct of appraisal investigations and feasibility studies, or rural water supply projects in Reclamation States. When the program is fully implemented, we will work closely with rural communities to identify regional approaches to meet rural water needs. This will encourage partnerships between rural communities and take advantage of economies of scale to address water supply needs. The program is focused on allowing Reclamation to collaborate with rural communities early in the project development process, during the planning stages, so that we can help formulate an approach that is efficient, cost-effective, and which brings together dispersed rural communities. The program embraces a wide array of approaches to solving water supply issues, ranging from the more traditional approach of pipelines and pump stations, to newer technology such as locally centered desalination facilities to treat brackish groundwater, or through other, perhaps market-based, mechanisms, that will help rural communities address their water supply needs. Through this program, Reclamation will also explore opportunities to combine resources with programs run by other agencies that take a different approach to rural water supply issues. For example, a group of rural communities may be able to build on assistance they receive from programs focused on individual, municipal rural water supply systems, by participating in this program, to create a region-wide rural water system.

*Question 2a.* S. 2805, Rio Grande Pueblos.—Please describe the findings from the BOR/BIA Pueblo Irrigation Facilities Rehabilitation Report that was issued in 2000.

Answer. The 2000 report identified a need for rehabilitation and repair of Pueblo Indian irrigation infrastructure. Inspection of existing infrastructure shows that many key facilities such as diversion structures and main conveyance ditches are barely operable. Rehabilitating Pueblo irrigation facilities would result in increased efficiency and less water usage per acre. This would make more water available to help prevent water conflicts which might arise through increased urbanization and Endangered Species Act requirements.

*Question 2b.* Please describe the current authorities used by the Pueblos to seek financial assistance in operating and maintaining their existing irrigation and drainage facilities.

Answer. Under the Snyder Act (25 U.S.C. 13), the BIA is authorized to expend appropriated funds for the benefit, care, and assistance of Indians throughout the United States. This legislation specifically mentions Indian irrigation systems. The Bureau of Reclamation, through its Native American Affairs Program, has endeavored to assist tribes in maintaining irrigation infrastructure through its technical assistance program, although it has no general mandate to improve or maintain Indian irrigation systems. The Acts of March 13, 1928 (45 Stat. 312-13), August 27, 1935 (49 Stat. 887) and June 20, 1938 (52 Stat. 778) provide that operation, maintenance and betterment (OM&B) services are to be provided by the Middle Rio Grande Conservancy District at no cost to the Pueblos for the Pueblos' prior and paramount lands. These statutes also authorize the Secretary to enter into an agreement with the District to provide OM&B services for the newly reclaimed lands at a per acre cost not to exceed that charged for non-Indian lands in the District.

*Question 2c.* In 2000, the BOR/BIA estimated the cost of a feasibility study for the Project to be \$3 million, and the estimated time to complete the study at 18 months. Are these estimates still valid?

Answer. No, the estimates that were developed in 2000 are no longer valid. In 2004, the BOR/BIA report was updated and new estimates were given for the feasibility study. As introduced, S. 2805 includes \$4 million for the feasibility study and the estimated time to complete the study has been revised to 24 months.

*Question 3a.* S. 2680, Leadville Mine Drainage Act.—It appears that the volumes, pressures and levels of contamination associated with the water in the Leadville Mine Drainage Tunnel do not, in the opinion of USBR, represent an imminent threat to the town of Leadville and surrounding areas.

Why, in this particular case, is the Bureau of Reclamation the agency to which some people are looking for these types of assessments? Would not the Environmental Protection Agency or an agency like the Department of the Interior more familiar with mining be a better source of information?

Answer. Reclamation is a Bureau within the Department of the Interior. This type of risk assessment is focused on tunnel, rock, and soil engineering issues. Reclamation is recognized within the Department of the Interior, the Federal Government, and worldwide as a leader in these types of risk assessment methodologies. Our methods have been and are being adopted within the Federal government and globally by private and government agencies. Our risk assessment process is based on years of experience with a variety of structures and input from other agencies, such as the Corps of Engineers, research professionals, and consultants who are leaders in their disciplines.

Reclamation has a full staff of experts in geotechnical engineering, rock mechanics, and mining engineering qualified to assess the level of risk. Reclamation has analyzed, designed, and overseen the construction of hundreds of miles of tunnels for dams and other water supply projects.

*Question 3b.* Since we do have you here today, and not one of these other federal entities, does the USBR have an opinion as to what levels of pressure, volume, contamination or combination thereof would, in fact, represent an imminent threat?

Answer. The risk assessment conducted by Reclamation evaluated whether or not the existing tunnel conditions create an imminent threat to public health and safety or the environment. The assessment concluded that there was no imminent public safety or environmental threat posed by the condition of the tunnel, and the document was provided to the Committee in June. If any threat did arise, Reclamation would take action to mitigate that risk and protect the public.

*Question 3c.* What is the nature of the area we are talking about? Is it residential at this point, or is there some anticipation of it becoming residential?

Answer. Adjacent to the tunnel portal and Reclamation's water treatment plant is a trailer park called the Village at East Fork which has approximately 80 mobile or modular home sites. Additionally, a proposed 87 acre, mixed-use subdivision with up to 281 units called the "Gateway Village" is being planned for the area just north of the treatment plant and tunnel portal, and above the tunnel alignment. The subdivision proposal has recently been presented to and initially approved by the Lake County Planning and Zoning Commission, as well as the Lake County Board of County Commissioners.

*Question 3d.* I ask this because the Bureau of Reclamation has been involved with this tunnel since 1959, and we're just now starting to hear about this issue. Why now is it becoming such an urgent matter in the eyes of some who are involved?

Answer. The concern is over a rise in the elevation of water behind a potential blockage within the Leadville Mine Drainage Tunnel. Reclamation conducted a risk analysis in 2005 to examine hillside stability in the vicinity of the mine portal and concluded then that the likelihood of a failure due to increased water levels was low. We conducted the most recent risk assessment to evaluate the conclusions of the previous analysis and address the current concern for a potential sudden failure of a plug of caved material in the tunnel. To the best of Reclamation's knowledge, no other Federal agency or other party has conducted a risk assessment for the likelihood of a sudden release of water due to failure of a blockage within the tunnel.

*Question 3e.* It is my understanding that the bureau of Reclamation has arranged for a 3rd party risk assessment to be conducted and the results of that inquiry will likely be made available in June of this year. If that inquiry were to find that there is, in fact, an imminent threat to Leadville and the surrounding areas, who would be required to pay for the remediation of that problem?

Answer. Reclamation had the draft risk assessment independently reviewed by a three person team consisting of a representative from the US Geological Survey and experts in mining engineering from private industry. The assessment was then released as a draft final report at the end of June, 2008. If Reclamation found evidence of an imminent threat to the residents of the Village of East Fork, Reclamation would have immediately initiated steps to reduce the level of threat. Fortunately, the completed final risk assessment has shown that there is not imminent threat to Leadville and the surrounding areas. Since Reclamation holds title to the LMDT, any public safety concerns associated specifically with the tunnel (as opposed to the surrounding Superfund site) are Reclamation's responsibility. Reclamation is continuing to take a proactive approach to addressing safety issues associ-

ated with the LMDT, including work with other Federal agencies, the State of Colorado, and other affected stakeholders to stakeholders to devise solutions that will ensure the continued safe operation of the LMDT.

*Question 3f.* Parts of the Leadville Mining District have been designated as Superfund sites. How do the activities undertaken by the Bureau of Reclamation in this area interface with the responsibilities of the Environmental Protection Agency for clean-up?

Answer. Reclamation has and will continue to work collaboratively and cooperatively with the EPA and the State of Colorado on appropriate, efficient, and effective actions to address the issues associated with the Site. The EPA is the remedial action lead for the California Gulch National Priorities List Site, including Operable Units (OUs) 6 and 12. The LMDT, which is owned and operated by Reclamation, is addressed by the OU6 remedy. Reclamation has agreed to operate and maintain the treatment plant, relief wells, pump and pipeline, and treat the water delivered as the result of EPA's short-term actions up to the available, existing capacity of the treatment plant. EPA issued a Record of Decision for OU6 in 2003 which includes the following remedy activities:

- Installation of a bulkhead in the LMDT upstream of the Pendery Fault to further confine and segregate the contaminated groundwater,
- Backfilling a section of the LMDT downstream of the Pendery Fault with select materials,
- Construction of an aboveground gravity pipeline to deliver surface and ground water to Reclamation's treatment plant,
- Infrastructure improvements to the treatment plant (with additional operation and maintenance costs) to permit the treatment of waters of greater volume and varying chemistry than have historically been received by the plant, and
- Installation of one or more new wells upstream of the Pendery Fault to convey contaminated groundwater to Reclamation's treatment plant via a gravity pipeline.

#### RESPONSES OF BOB JOHNSON TO QUESTIONS FROM SENATOR SALAZAR

Commissioner, as you know, the Lake County Board of Commissioners is very concerned that a blockage in the LMDT is preventing mine pool water (contaminated water present in the mine workings in and around Stray Horse Gulch) from flowing through the LMDT to the Bureau's treatment plant and that the increasing hydraulic pressure from the LMDT mine pool poses a significant threat to the residents of Lake County living near the LMDT portal if a catastrophic blowout were to occur.

I understand and appreciate that the Bureau, in cooperation with the State of Colorado, Lake County, and the EPA, has taken steps to address the immediate risk of such a catastrophic discharge of contaminated water from the tunnel.

*Question 1.* What is the Bureau's position and what are the Bureau's plans with respect to the long-term goal of stabilizing the tunnel, installing a permanent plug in the LMDT, and treating—in perpetuity—the contaminated water flowing into and out of the LMDT?

Answer. Reclamation has completed a risk assessment of the tunnel's condition and believes at this time that there is not an imminent threat of a catastrophic release from the tunnel. Reclamation is now evaluating with EPA, new hydrologic and water quality data obtained since the recent installation and pumping of the relief well, to determine potential additional actions that may be appropriate for the long-term management of the LMDT and treatment of discharges.

*Question 2.* I have previously asked for a commitment by the Bureau to treat the mine discharge water in perpetuity and for assurance that the Bureau's treatment plant has sufficient capacity to treat that water. You have given those commitments to me personally.

Will you please reaffirm the Bureau's commitments in that regard for the full committee today?

Answer. Reclamation has agreed to operate and maintain the treatment plant, relief wells, pump and pipeline, and treat the water delivered as the result of EPA's short-term actions up to the available, existing capacity of the treatment plant, beyond the amount historically discharged from the tunnel. Reclamation has submitted legislative language to the Congress via a letter to the Committee in 2008 to permanently provide this authority.

*Question 3.* Under current law, does the Bureau have the necessary authority and funding to put in place a long-term solution for the LMDT?

Answer. P.L. 102-575 (1992) authorized Reclamation to build the treatment plant but specified that the plant "shall be constructed to treat the quantity and quality

of effluent historically discharged” from the tunnel. Reclamation is, however, treating water beyond this historical amount. For this reason, Reclamation has already submitted legislative language to the Congress to permanently provide the authority to treat this additional water.

*Question 4.* My legislation (S. 2680) is intended to provide the Bureau with the necessary Congressional authority and funding to implement the remedy for OU6.

Do you agree that it would accomplish those purposes? If not, why not?

Answer. Yes, S. 2680 would provide Reclamation with authority to implement the OU6 Record of Decision. However, in view of the findings from Reclamation’s recently completed LMDT Risk Assessment, as well as progress from EPA actions undertaken this year, the Administration does not believe that enactment of S. 2680 would be an appropriate use of Reclamation’s limited resources. The EPA relief well is completed and water is being pumped from the LMDT, and water levels in the Leadville area are declining. There is no imminent public safety or environmental hazard posed by the current condition of the LMDT. The Department has proposed legislative language to Congress regarding the authorities needed to treat additional mine pool water, and we will continue to work with EPA, the State of Colorado and Lake County to find the best long-term outcome for the citizens of Leadville.

*Question 5.* In your testimony, you say the Bureau does not know what kind of a long-term solution is needed, and that you want to wait for the risk assessment due in June. But the remedy selected by EPA in 2003 includes:

- construction of a permanent bulkhead in the LMDT; and
- dewatering of the mine pool and delivery of the pumped water to BOR’s treatment plant via a buried pipeline

When is BOR going to step up to the plate and take responsibility for repairing and maintaining the structural integrity of the LMDT, to prevent tunnel failure?

Answer. Reclamation believes the LMDT is in no danger of an imminent tunnel failure.

*Question 6.* Does BOR dispute that it is necessary to install a permanent plug?

Answer. Reclamation is now evaluating with EPA, new hydrologic and water quality data obtained since the recent installation and pumping of the new relief well, to determine potential additional actions that may be appropriate for the long-term stability and management of the LMDT.



## APPENDIX II

### Additional Material Submitted for the Record

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#### STATEMENT OF GAYLA BRUMFIELD, MAYOR, CLOVIS, NM

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

I want to thank Senators Bingaman and Domenici for introducing Senate Bill 2814 and leading the effort in Congress to help meet eastern New Mexico's future water needs by authorizing the federal government to build a pipeline that will carry water to several communities in Curry and Roosevelt counties. This legislation is vital to the future of Clovis and eastern New Mexico.

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

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

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

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

After 40+ years of research, planning and design, we are now ready to take the next big step towards making the Project a reality. If we fail to act, the result could mean significant losses to our existing economic base and lost opportunities for future economic development.

Senate Bill 2814 represents the important next step toward addressing the overarching issue of water in the arid West and we look forward to working with Congress and the United States Bureau of Reclamation to secure its passage.

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

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#### STATEMENT OF GREG NORDBAK, CHAIRMAN, SAN GABRIEL BASIN WATER QUALITY AUTHORITY, ON H.R. 123

Mister Chairman, Committee members, and staff, my name is Greg Nordbak, and I am the Chairman of the Board of Directors of the San Gabriel Basin Water Quality Authority. We very much appreciate you holding this hearing on H.R. 123, which

would authorize additional federal funding for the San Gabriel Basin Restoration Fund.

The San Gabriel Basin Water Quality Authority was created and authorized by the California State Legislature in 1993 to address the critical need for coordinated groundwater cleanup programs in the San Gabriel Basin after harmful amounts of contaminants were detected in the region's groundwater. The Water Quality Authority is committed to protecting public health and safety by prioritizing, facilitating, and coordinating groundwater cleanup and supply programs with local water suppliers and the U.S. EPA, while minimizing local financial and economic impacts, including impacts on consumers who rely on local groundwater supplies from the San Gabriel Groundwater Basin.

The San Gabriel Basin underlies 167 square miles of the San Gabriel Valley. The San Gabriel Basin holds hundreds of thousands of acre-feet of local, renewable, public drinking water supplies. In fact, the San Gabriel Basin is capable of providing a reliable, local drinking water supply for the more than one million people who reside and work in the San Gabriel Valley—as long as we are able to implement effective groundwater cleanup to remove the contaminants.

In December of 2000, thanks to the leadership of Senator Feinstein, Representative Dreier, Representative Napolitano and the other members of the San Gabriel Valley Congressional Delegation, Congress enacted the San Gabriel Basin Water Quality Initiative. Senator Feinstein and her colleagues moved to establish the Restoration Fund as a means of expediting the remediation of groundwater contamination caused by industrial solvents and rocket fuel contaminants such as perchlorate. The Restoration Fund, which is administered cooperatively by the Water Quality Authority and the Bureau of Reclamation, uses Federal and non-Federal monies contributed to the San Gabriel Restoration Fund to design, construct, and operate facilities to contain and treat the spreading groundwater contamination in the San Gabriel and Central Groundwater Basins.

The Water Quality Authority has benefited tremendously from the Restoration Fund by enabling us to continue the collaborative approach of merging cleanup with water supply and allowing us to leverage Federal dollars and local funding to bring all parties to the table and work in a manner that addresses multiple issues at the same time. The Restoration Fund has provided an incentive for the Responsible Parties in the San Gabriel Basin to participate in the cleanup and to reach funding agreements with affected water suppliers. It has also allowed the Water Quality Authority and the affected water suppliers to fund projects even before Responsible Parties could be identified or when Responsible Parties are no longer viable, cannot be located, or are recalcitrant. Without this Federal funding the likelihood for additional well closures would be great, leaving only the option of turning to costly and already overburdened imported water supplies.

Since the Restoration Fund was made available to the Water Quality Authority, we have received \$74.5 million through the Bureau of Reclamation's construction account. The Water Quality Authority has allocated the use of these funds to 35 projects throughout the Basin, 27 of which have been completed, with another 8 currently under construction. To date these efforts have helped to remove over 21 tons of contaminants, and treated nearly 350,000 acre-feet of groundwater.

For example, with the completion of four major groundwater cleanup projects developed and implemented through the Water Quality Authority with the cooperation of local water suppliers, participating Responsible Parties, and the U.S. EPA, we remove perchlorate and other toxic chemicals from groundwater at the rate of 24,000 gallons per minute on a 24/7 year-round basis. These projects will continue to provide safe drinking water to residents and businesses in Baldwin Park, La Puente, West Covina, the City of Industry, and surrounding areas for decades to come without burdening the public with higher water bills. Even so, a great deal more effort and cleanup is still required.

Early last year, in recognition of the tremendous success of the Restoration Fund and the need to continue the local cleanup efforts, Congressman David Dreier and his colleagues in the San Gabriel Valley Congressional Delegation introduced HR 123. This legislation would increase the authorization ceiling on the Restoration Fund by \$62.5 million from its current level of \$85 million. This additional funding would allow us to continue the progress we've made and avoid costly litigation that only serves to slow down the cleanup.

Without future Federal assistance for the treatment facilities, local water suppliers would be forced to shut down water wells due to migrating contamination. The closures would force purveyors to become reliant on imported water, which would come mainly from the Colorado River and the State Water Project. Water from wells in the San Gabriel Valley is relatively inexpensive to pump and supply to homes and businesses in comparison to imported supplies from the Colorado

River or northern California. The current price for an acre-foot of treated, ready-to-drink Colorado River water in the high-demand summer period is \$549, subject, of course, to its availability. The typical cost to pump and treat an acre-foot of local San Gabriel Basin groundwater is \$65 to \$250 depending on the levels and types of contamination being treated. And as you may know, California's water allotment from the Colorado River is being cut back, and deliveries from the State Water Project are seriously restricted. This would severely impair our ability to provide water for the residents and businesses in the San Gabriel Basin. With your help we have the opportunity today to make certain these closures don't occur, while ensuring our water suppliers have a safe, abundant, and sustainable water supply to draw from in the years to come.

The Federal assistance provided by the Restoration Fund allows us to carry out our mission of facilitating groundwater cleanup and providing a clean, reliable, drinking water supply for the over one million residents of the San Gabriel Basin. Although the Administration has failed to budget for the San Gabriel Basin Restoration Fund since its enactment, it is vital that we continue our efforts to restore the San Gabriel Basin aquifer. Removing harmful contaminants from our communities' groundwater supply should remain a priority of local, state and federal officials. A continued commitment by all parties will allow our local water suppliers to better meet the needs of local residents at affordable rates and make certain that the Basin is able to meet the water supply needs of future generations. Once we are able to remediate the contamination, it is our belief that the local groundwater basin will be able to meet all of the San Gabriel Valley's water needs.

Thank you for allowing me to testify on the successes and on-going progress of the cleanup of the San Gabriel Basin today and the importance of HR 123 to our future.

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STATEMENT OF THE LAKE COUNTY COLORADO BOARD OF COUNTY COMMISSIONERS,  
ON S. 2680

The Lake County Board of County Commissioners in Lake County, Colorado would like to thank the Subcommittee for the opportunity to present Lake County's views on S. 2680, known as "The Leadville Mine Drainage Tunnel Remediation Act of 2008."

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

Leadville and its historic mining district sit in the highest valley of the Arkansas River in the heart of the Rocky Mountains. Leadville is the site of mining activities that have produced gold, silver, lead and zinc. Mining began in the Leadville area in 1859 when prospectors working the channels of the Arkansas River tributaries discovered gold at the mouth of California Gulch.

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

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

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

Lake County has experienced snow pack levels this winter of more than 146% of normal. With spring run off set to break loose at any moment, a large volume of water is about to be added to a mine pool already bursting at the seams. This historic build up of water behind the blockages in the tunnel presents a serious threat to the citizens of Lake County, public and private property, local domestic water supply, and the water quality of the Arkansas River Basin. Approximately 750,000

citizens in Colorado rely on the Arkansas River water quality for their drinking water supply.

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

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

In fact, we are still basically in the same place with the Bureau of Reclamation as we were when previous hearings were held on Capitol Hill in June 1976 to discuss a bill to authorize stabilization and rehabilitation of the Leadville Mine Drainage Tunnel. We refer you to the transcript of the Hearing Before the Subcommittee on Energy Research and Water Resources of the Committee on Interior and Insular Affairs United States Senate on S. 3394, June 7, 1976. A copy of the transcript\* from those hearings is attached as a supplement to this written statement.

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

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

We note that during the April 24, 2008 hearing on S. 2680 before this subcommittee, Reclamation Commissioner Robert W. Johnson testified that "The Administration cannot support S. 2680 at present because we have not yet determined what further actions are needed to provide a long-term solution." Mr. Johnson further states "Reclamation is working to assess the threat level to public safety through a detailed risk analysis."

Yet, the Bureau of Reclamation has nearly 40 years of studies in which over and over its own experts have concluded that if water were allowed to back up in the LMDT three things could happen: 1) catastrophic blowout, 2) contamination of public drinking water supplies, or 3) mine pool groundwater could report to California Gulch in turn contaminating the Arkansas River. We do not understand how further studies are justified to again delay legislation that will finally lead to a permanent fix after all this time.

The U.S. Environmental Protection Agency has recently studied this situation in-depth and determined that implementation of the remedy for Operable Unit 6 of the California Gulch Superfund site is an important part of the long-term solution. The Colorado Department of Public Health and Environment testified at the April 24, 2008 hearing about the importance of the OU6 remedy as a long-term solution necessary to fix the mine pool problem.

S. 2680 presents an opportunity for Congress to finally tell the Bureau of Reclamation that it is their job to maintain the tunnel and to implement the remedy for Operable Unit 6. S. 2680 provides the Bureau with the necessary authority and funding to participate in the implementation of the Operable Unit 6 remedy by treating water behind the blockage. It also directs the Bureau of Reclamation to

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\*Document has been retained in subcommittee files.

take necessary steps to maintain the LMDT in a manner that protects human health and the environment.

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

We appreciate the opportunity to present the local community perspective about this very important matter.

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JOINT STATEMENT OF JERRY SANDERS, MAYOR, CITY OF SAN DIEGO, AND R. MITCHEL BEAUCHAMP, BOARD CHAIRPERSON, SWEETWATER AUTHORITY, ON H.R. 1803

Chairman Johnson, Ranking Member Corker, and members of the Subcommittee, thank you for the opportunity to submit joint written testimony for the record for the legislative hearing on H.R. 1803, the San Diego Water Storage and Efficiency Act of 2007. As the potential local partners for the proposed four-reservoir intertie project in the San Diego region, we strongly support this legislation authorizing a Federal feasibility study for the project through the Bureau of Reclamation.

The City of San Diego Water Department (SDWD) provides potable water to more than 1.3 million residents with an average of 210 million gallons of treated and delivered water per day. With a service territory of over 403 square miles, the SDWD operates a system that includes more than 3,460 miles of pipeline in the potable distribution system and management of nine raw-water reservoirs with total storage capacity of 415,000 acrefeet.<sup>1</sup> Water is pumped across 104 different pressure zones with the assistance of 47 pump stations. SDWD has 274,000 metered service connections. Treated water is also provided to the City of Del Mar, and the California-American Water Company which delivers water to Coronado, Imperial Beach, and portions of southern San Diego.

The Sweetwater Authority is a joint powers, publicly owned, water agency that provides drinking water to approximately 177,000 people in National City, Bonita and portions of Chula Vista, California. Sweetwater Authority owns and operates Loveland Reservoir, Sweetwater Reservoir, a brackish groundwater desalination facility and deep freshwater wells. Water obtained in each of these areas is influenced by the 230-square-mile Sweetwater River Watershed, a land stretching from the Cleveland National Forest to San Diego Bay.

Together, the City of San Diego and the Sweetwater Authority strongly support H.R. 1803, which would authorize the Bureau of Reclamation to conduct a study of the feasibility of an Intertie System in the San Diego region to improve water storage capabilities and water supply reliability. We are joined in this support by the Metropolitan Water District of Southern California, San Diego County Water Authority, and several other water districts.

The history of the San Diego region includes an ongoing search for safe, reliable water supplies in a semi-arid climate. Our county typically imports 90 percent of its water from northern California and the Colorado River. For many years, the region has aggressively developed a diverse supply of local water to add reliability. This includes programs and projects to expand water conservation initiatives, increase the use of recycled water, investigate ocean water desalination, "conjunctive use" activities that store water in underground aquifers for later use, and seeking regionally important agriculture-to-urban water transfers. These activities are significant to improving water supply reliability of both the City of San Diego and Southern California as a whole.

The prospect of long-term drought in Southern California is of greater concern today than ever before. Last season was the driest in California since record keeping was established, and the Sierra Nevada snow-pack was at 30% of normal content. While this season's snowpack has improved, the region anticipates water delivery cutbacks of 30% or more due to recent court-ordered mandates from the San Francisco / San Joaquin Bay-Delta to protect the endangered Delta Smelt and Chinook Salmon during spawning season.

Compounding Southern California's water supply outlook are the anticipated impacts of climate change. The California Department of Water Resources (DWR) re-

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<sup>1</sup> An acre-foot of water is equal to 325,851 gallons and is approximately equal to the amount of water used by two Southern California families in a year.

cently published a report<sup>2</sup> on the matter and concluded that snowpack in the Sierra Nevada mountains will gradually melt earlier each year and additional storage is needed in order to capture the melted snow. Otherwise, California is at risk of losing hundreds of thousands of acre-feet of potable water supplies.

The San Diego region has few groundwater basins as compared to other regions in Southern California. As such, the region has invested significantly in surface storage in order to capture and store as much rainfall as possible. Many of the region's reservoirs have never been connected to the imported water system nor have undersized conveyance connections. Even with aggressive water recycling and conservation programs, the region is approximately 90% dependent on imported water from the Colorado River and State Water Project to meet current demands.

The Intertie System envisioned by H.R. 1803 has the potential to significantly enhance these local efforts by providing new drinking water storage to the San Diego region utilizing existing infrastructure with minimal, if any, negative impacts to the environment or private property, in an economically efficient manner.

#### INTERTIE SYSTEM

The feasibility study authorized by H.R. 1803 would advance a project to tie together four existing water storage facilities—San Vicente, El Capitan, Loveland and Murray Reservoirs—to increase the capability to store and manage imported water, making the region more resistant to drought and water delivery service interruptions. (Please see the attached Figure.)<sup>\*</sup>

Currently, some reservoirs in the proposed system are significantly underutilized. Loveland Reservoir receives only local runoff from the Sweetwater River. El Capitan Reservoir currently receives local runoff and imported water, however due to pipeline limitations the full capacity of the reservoir cannot be utilized. Local rainfall in the watersheds to these reservoirs is inadequate to fill the reservoirs except on an infrequent basis, typically only twice in ten years. This “unused” capacity is a significant water storage volume that could be put to beneficial use if imported water was piped to the reservoirs.

We estimate that the increase in storage capacity from the Intertie System to be about 100,000 acre-feet. This increase in capacity would not occur by the laborious, expensive, and difficult process of siting of new reservoirs, but by increasing the ability to annually store imported water from the Colorado River and/or the State Water Project in existing facilities. Each year, more winter water could be stored for summer use. In addition, storage could be designated for multiple year carry-over to reduce exposures to drought. This improved capability to store imported water serves a Federal interest by reducing impacts on environmentally sensitive resources and the importation of water during times of relative scarcity.

The Intertie System would not create new water supply, but rather provides the opportunity to move and store water during times of relative excess or periods when environmentally appropriate. It would not increase the amount of water imported, only the time of year that importation occurs. At the current time, for example, both the SDWD and Sweetwater Authority have agreements with the Metropolitan Water District of Southern California and San Diego County Water Authority to place water in storage at Sweetwater Reservoir during “offpeak” months for use during summer months when demand is highest. This approach improves the efficiency and effectiveness of existing infrastructure but can only be used when reservoirs are connected to the imported water system.

#### DESCRIPTION OF RESERVOIRS TO BE ENHANCED

**San Vicente Reservoir:** the start of the Intertie System, is owned and operated by the City of San Diego and is currently capable of storing up to 90,230 acre-feet of water. A current project sponsored by the San Diego County Water Authority to raise the San Vicente Dam by 100 feet would provide an additional capacity to supplement emergency storage in the region. This action supports the logic of making the reservoir a part of the Intertie System.

**El Capitan Reservoir:** is the destination of the First Link of the Intertie System. Built in 1934, it is located about six miles north of Loveland and has a capacity of 112,000 acrefeet of water. This isolated facility which receives only local seasonal runoff and limited imported water has filled to capacity only 11 times in 68 years.

<sup>2</sup>July 2006, California Department of Water Resources, “Progress on Incorporating Climate Change into Management of California’s Water Resources. <http://baydeltaoffice.water.ca.gov/climatechange.cfm>

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

Loveland Reservoir: at the end of the Second Link, is located in the foothills of the Cuyamaca Mountains, 21 miles upstream of the San Diego Bay. Built in 1945, Loveland Reservoir impounds water from the Sweetwater River and is capable of storing 26,000 acre-feet. Loveland is also filled by local runoff only, and in the 57 years since it was constructed has filled to capacity only 12 times.

Murray Reservoir: the destination of Link Three, is comparatively small at 4,800-acre feet capacity, but is the site of the Alvarado Water Treatment Plant. Water from Alvarado serves a large central portion of San Diego, the City of Coronado and all of Navy Military Bases in the City of San Diego's service territory.

#### PROJECT BENEFITS

Although these four reservoirs are owned and operated by the City of San Diego and the Sweetwater Authority, the benefits of this project are important to the entire region. In the event of drought, or any other event that would interrupt the ability of the region to import drinking water, the additional storage provided by this project could supply the constituents of other purveyors in the region, including the Helix, Padre Dam and Otay Water Districts. Increasing water supply reliability in San Diego also benefits the Southern California region as a whole because it reduces the burden on already-stressed water supplies for others.

Water agencies in California have long recognized there is a limited supply of water for an increasing population, and have encouraged the development of local sources of supply to ease impacts on the Bay-Delta and the Colorado River. Connecting the San Vicente, El Capitan, Loveland and Murray Reservoirs would allow for an efficient use of existing reservoirs, increase the region's water supply reliability, minimize environmental impacts at both the water's source and in our region, increase water storage capability, and increase the ability to efficiently provide water at the lowest possible cost.

As one example of how the project will help us better manage local water resources, we would like to highlight that when the Lake Hodges Dam spilled in 2005, the City of San Diego lost 68,000 acre-feet of potable water supplies. Since Hodges is linked to the regional system, a significant portion of that water could have been utilized locally if the Intertie System were in place by allowing transfer of water to other reservoirs as the water level at Hodges began to rise.

The improved ability to capture and store water, whether local or imported, would also enhance the protection of the Bay-Delta. It is simply much better to store this water when it is plentiful than when water shortages already cause increased pressure on the sensitive Delta environment.

The project has the potential of benefiting approximately 1.5 million residents in San Diego County, and military bases in San Diego. In addition, the Intertie System would complement California's 2005 Water Plan, which promotes the implementation of regional integrated management of California's water to promote the reliability of water supplies by maximizing the use of available storage in ways that protect the environment.

The City of San Diego and Sweetwater Authority are prepared to partner with the Bureau of Reclamation to conduct the feasibility study of the Intertie System. This study would help document the costs and the benefits of constructing the project, as well as identifying design and implementation issues that would need to be addressed. Connecting the San Vicente, El Capitan, Loveland and Murray Reservoirs would benefit the San Diego region and our military by more efficiently using existing reservoirs. It would create an enhanced and integrated reservoir system with the result of increased water supply reliability. The benefits of increased water storage capability without negative impacts possibly associated with new reservoirs or new storage capacity would be an especially wise investment in arid Southern California significantly dependent on imported water supplies.

We appreciate the opportunity to present this testimony and for the Subcommittee's consideration of H.R. 1803. This concludes our joint statement.

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#### STATEMENT OF JOHN D' ANTONIO JR., NEW MEXICO STATE ENGINEER AND SECRETARY OF THE NEW MEXICO INTERSTATE STREAM COMMISSION, ON S. 2814

Chairman Johnson, Senator Bingaman and Senator Domenici, I am pleased to offer testimony for the record in support of S. 2814, the Eastern New Mexico Rural Water System Authorization Act. I am the New Mexico State Engineer and the Secretary of the New Mexico Interstate Stream Commission. Ute Reservoir is a valuable asset of the State of New Mexico and the Eastern New Mexico Rural Water System Project is an important water supply project for eastern New Mexico communities. The State of New Mexico supports the Eastern New Mexico Rural Water

System Project and has invested funding and staff support toward the planning for this project for several years.

Anticipating the potential water needs in eastern New Mexico and in the interest of maximizing New Mexico's use of water from the Canadian River stream system, the New Mexico Interstate Stream Commission completed construction of Ute Dam and Reservoir in 1962 at a present day cost of over \$140 million. The reservoir was constructed for the specific purpose of providing a sustainable drinking water supply to the people of eastern New Mexico. The Interstate Stream Commission owns and operates the dam and reservoir for the benefit of New Mexico. Pursuant to the Canadian River Compact and subject to the requirements of the Stipulated Judgment and Decree entered by the U.S. Supreme Court in *Oklahoma v. New Mexico*, 501 U.S. 126 (1993), New Mexico is allowed to store up to 200,000 acre feet of water for use in New Mexico from the Canadian River system below Conchas dam. Ute Reservoir stores approximately 200,000 acre-feet of water pursuant to a permit issued by the State Engineer in 1962. New Mexico is committed to maintaining the safety of Ute Dam and beneficially utilizing the waters within Ute Reservoir.

In 1987, the communities of Clovis, Tucumcari, Portales, San Jon, Logan, Texico, Melrose, Elida and Grady and the Counties of Curry, Roosevelt and Quay, entered into a Joint Powers Agreement forming the Ute Water Commission. In 1997, the Interstate Stream Commission entered into a contract with the Ute Water Commission to sell 24,000 acre-feet per year of water from Ute Reservoir to the Ute Water Commission's member communities. Since that time, the Ute Water Commission has paid an option payment of \$36,000 per year to the Interstate Stream Commission to preserve its contractual allocation of water.

The Eastern New Mexico Rural Water Authority, (the Authority), members of Clovis, Portales, Texico, Melrose, Elida and Grady and Curry and Roosevelt Counties should be commended for the efforts they have put forth over the last few years in cooperation with the Interstate Stream Commission toward advancing the Eastern New Mexico Rural Water System Project. The development and conveyance of Ute Reservoir water to eastern New Mexico communities is critical to addressing the future water needs of those communities. Most of eastern New Mexico now relies on non-renewable ground water from the Entrada and Southern High Plains/Ogallala aquifers. Consistent groundwater pumping in the area has caused water level declines that have exceeded 100 feet. At current pumping rates, a recent study by CH2M Hill indicates the remaining saturated thickness of the aquifer near Clovis and Portales will not sustain the existing demand for more than 40 years, much less meet additional demand for future development. The water quality in both aquifers is also deteriorating.

The rapid depletion and deterioration of these aquifers places the economic viability of eastern New Mexico communities at risk. In my capacity as State Engineer, I have been asked about the availability of water rights for economic development projects in eastern New Mexico. On recent occasions, companies have been unwilling to locate in the area because of a lack of a sustainable water supply. Ute Reservoir provides the only reliable source of renewable water in the region, and the pipeline project is necessary to enable communities to utilize that water resource.

Much deeper, brackish aquifers have been considered—and rejected—as potential, future water supply sources. A study by the engineering firm, CH2M Hill, in 2005, determined that the brackish water aquifers in the project area are up to 1000 feet deep with low ground water yields. The conclusion of this investigation was that reliable, cost-effective treatment and development of these saline aquifers is decades away and, in any event, would not provide a renewable water supply.

In 2003, the Authority prepared a Conceptual Design Report of the pipeline project, and in December 2003, the ISC obtained an independent peer review of that report. In 2003, the ISC also completed a sedimentation study of the reservoir indicating that the future capacity of the reservoir will allow the pipeline project to be viable for at least eighty years. In December 2006, the Authority completed a Preliminary Engineering Report for the project. The Interstate Stream Commission and the Bureau of Reclamation reviewed the Preliminary Engineering Report and concurred that the pipeline project was the most economic, environmentally benign, and technologically reasonable solution to eastern New Mexico's water supply problems. Since 2006, the Interstate Stream Commission staff has been working with the Bureau of Reclamation and the Authority to continue progress on the project.

Since 2002, the State of New Mexico has provided funding to the Eastern New Mexico Rural Water System project in excess of \$11 million. Most recently, on April 23, 2008, the New Mexico Water Trust Board allocated \$4,525,828 to the Authority that will be used to complete the 30% design phase for the project and move into the final design and construction phases. New Mexico supports the cost-share provisions in S.2814 and concurrent with federal expenditures, New Mexico will support

additional state and other non-federal funding sources to ensure that the project can be completed in a timely manner. New Mexico commends the local communities for their work developing plans to finance the local obligations.

In addition to work relating to evaluation of the engineering aspects of the project, work has begun on an Environmental Assessment for the project that builds off of preliminary ecological surveys developed by the Interstate Stream Commission. The initial studies revealed no significant environmental concerns, and the Interstate Stream Commission is confident that progress on the current activities will continue expeditiously in order that the Bureau of Reclamation can complete the Environmental Assessment by February 2009. In addition, in 2006, the Interstate Stream Commission joined with the State of Texas, the US Fish and Wildlife Service, and other stakeholders in an Arkansas River Shiner Management Plan for the reach of the Canadian River from Ute Reservoir in New Mexico downstream to Lake Meredith in the Texas panhandle. This plan will provide benefits to the Arkansas River Shiner and has allowed the US Fish and Wildlife Service to exclude certain areas of land from a designation of critical habitat for the fish in the two states. New Mexico supports such continued, cooperative efforts.

New Mexico also supports the continued efforts toward conservation and the reuse programs in the area, and commends the local communities on their progress. But, even with additional conservation, completion of this project is necessary to provide the eastern New Mexico communities in Curry and Roosevelt counties a reliable and renewable source of water to support economic development and current and future needs.

In conclusion, the State of New Mexico, the Office of the State Engineer, and the Interstate Stream Commission support S.2814 and the development of the Eastern New Mexico Rural Water System and request that you fully support and fund this worthy project, without which we will not be able to fully meet the present and future water needs of the citizens of eastern New Mexico.

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STATEMENT OF TAOS PUEBLO, ON S. 2805

Taos Pueblo is pleased to submit this statement in support of the Rio Grande Pueblo Irrigation Infrastructure Improvement Act, S. 2805. We commend Senator Jeff Bingaman for his leadership and vision in sponsoring this legislation.

Taos Pueblo has a centuries-old tradition and culture of agriculture and irrigation as attested by early Spanish chronicles, archeological evidence and continuing use of the traditional irrigation ditches from both the Bah-bah-til bah-ahna or Rio Lucero, Taahtah-bah-ahna or Rio Pueblo, and other creeks and springs. There are more than 5,713 acres of historically irrigated lands and more than 5,220 acres of pre-historically irrigated lands at Taos Pueblo.

There are 24 ditches totaling approximately 100 miles of length on Taos Pueblo. Traditional ditches, in use for centuries, are hand-dug earthen conveyance systems that are cleaned by hand with community labor. In more recent times, some necessary mechanized rehabilitation has been done on some of these ditches.

In later years, more "modern" irrigation ditches and systems were constructed by the federal government with good intentions, but without provision of the resources necessary for the operation, maintenance, rehabilitation and repair of these facilities. As a result, many of these modern ditches and structures fell into disrepair. Some diversion structures were replaced over the years, but without the necessary resources they, too, fell into disrepair. The deterioration of this infrastructure has been exacerbated by ash and debris-laden runoff following the 2003 Encebadito Fire.

The traditional diversions constructed of rock, brush and logs, are referred to as "non-engineered diversion structures" in the Pueblo Irrigation Facilities Rehabilitation Report prepared jointly by the Bureau of Indian Affairs and the Bureau of Reclamation in 2000. As described in the Congressional findings for S. 2805, this report identified a serious need for the rehabilitation and repair of irrigation infrastructure of the Rio Grande Pueblos. The report relies heavily on investigation of infrastructure on Taos Pueblo, as well as several other Pueblos, to document the problems requiring federal assistance:

Non-engineered diversion structures are either rock-and-brush structures or simple berms or ditches built across a river or creek as shown in Photos 1 through 12 [of sites on Taos Pueblo]. These structures are inefficient and unreliable. A typical structure is constructed of tree branches and 6-inch to 18-inch size rocks placed across the full width of the creek bed, usually at an angle to the flow. Sandbags, plywood boards, or plastic sheet are used to plug gaps between larger rocks. These diversions are highly unstable and

easily wash out after every spring runoff or thunderstorm event. Reconstruction is necessary after each washout.

Pueblo Irrigation Infrastructure Facilities Rehabilitation Report at 2.

The 12 photos\* referenced in the above discussion from the Report and the accompanying photo captions illustrate the problems at multiple sites on Taos Pueblo, including for example:

Photo No. 1—Mirabal Acequia (Taos Pueblo) “The structure washes out after every spring runoff or summer thunderstorm.”

Photo No. 2—Mirabal Acequia (Taos Pueblo) “Ditch alignment is . . . often plugged by sediment after moderate runoffs. A permanent diversion structure is recommended.”

Photo No. 3—Mexican Ditch (Taos Pueblo) “Sediment and debris deposit is evident downstream, making this a maintenance intensive site. Construction of a permanent diversion is recommended.”

Other examples in the Report include Photo No. 13—Rio Lucero Diversion (Taos Pueblo). The description notes it is a “Typical radial gate with deteriorated seals and severely abraded concrete crest” and notes “the severe leakage.” More recent photos illustrating the condition of irrigation infrastructure at Taos Pueblo appear at the end of this statement.

Although problems such as these have long been well-known and documented, repairs and rehabilitation under BIA Northern Pueblos Agency responsibility were not being done due to funding cutbacks. Funding in small amounts has been secured from BOR in recent years to do drought relief projects such as a well for stock water and headgate fabrication. However, these funds have been grossly insufficient. The funding situation has not improved since Taos Pueblo recently compacted for self-governance. Taos Pueblo’s experience with funding for irrigation infrastructure rehabilitation as a self-governance tribe has been similar to the experience of Santa Clara Pueblo as reported by Santa Clara Governor Joseph Michael Chavarria in his testimony to the Subcommittee. Significant federal funding is needed to redress the long history of under-funding and neglect.

This funding need must be weighed in the context of the fact that water is one of the most precious resources for Taos Pueblo and the other Rio Grande Pueblos. Taos Pueblo is blessed with a homeland at the headwaters of Bah-bah-til bah-ahna or Rio Lucero, and the Taahtah-bah-ahna or Rio Pueblo, and other creeks and springs. The centuries-old culture of ditch irrigation is, and will continue to be, critically important to the culture of Taos Pueblo that is recognized through our World Heritage Site designation. Repair and rehabilitation of the infrastructure to enable the Pueblo to continue these practices is critical. The Pueblo respectfully requests that Congress begin to redress this situation through enactment of the Rio Grande Pueblos Irrigation Infrastructure Improvements Act and appropriation of the necessary funds.

PUEBLO OF LAGUNA,  
*Laguna, NM, May 7, 2008.*

Hon. JEFF BINGAMAN,  
*Chair, U.S. Senate, Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.*

RE: S. 2805 Rio Grande Pueblos Irrigation Infrastructure Improvement Act

DEAR SENATOR BINGAMAN: On behalf of the Pueblo of Laguna, I am writing to express the Pueblo’s support for S. 2805, which you introduced in April. I am aware that Governor Michael Chavarria testified before the Subcommittee on Water and Power on April 22, 2008. We concur with the testimony provided by Governor Chavarria.

The Pueblo of Laguna shares the concerns expressed by Governor Chavarria’s testimony in that it is plagued with irrigation infrastructure problems in all its six villages, and always challenged by the lack of funding to address this issue. We have also been subject to a “zero” budget for Irrigation Maintenance in the BIA budget for our agency for years. The 2000 BIA/BOR Pueblo Irrigation Facilities Rehabilitation Report also identified numerous irrigation system repairs needed by the Pueblo of Laguna.

Thanks again for your continued support of New Mexico Pueblos and our efforts to maintain our irrigation systems. We appreciate the efforts of Subcommittee

\*Photos have been retained in subcommittee files.

Chairman Johnson and hope you will convey our support to the rest of the Committee. Please also include this letter in the hearing record for S.2805.

Sincerely,

JOHN E. ANTONIO, SR.,  
*Governor.*

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STATE OF NEW MEXICO,  
OFFICE OF THE STATE ENGINEER,  
*Santa Fe, NM, May 7, 2008.*

Hon. JEFF BINGAMAN,  
*U.S. Senate, 703 Hart Senate Office Building, Washington, DC.*

Hon. PETE V. DOMENICI,  
*U.S. Senate, 328 Hart Senate Office Building, Washington, DC.*

Re: S. 2805 The Rio Grande Pueblos Irrigation Infrastructure Improvement Act

DEAR SENATORS BINGAMAN AND DOMENICI: On behalf of the New Mexico Office of the State Engineer and the Interstate Stream Commission, I would like to express support for S. 2805, the Rio Grande Pueblos Irrigation Infrastructure Improvement Act. In general, our agency supports infrastructure improvement projects that result in more efficient irrigation operations and thus conserve water.

Specifically, we support Section 4(b) that requires projects to be prioritized in accordance with detailed factors and other criteria to ensure the best use of limited funding. We also strongly support the criteria and limitations specified in Section 5 relating to irrigation infrastructure grants and the limitation on improvements associated with lands that have not been historically irrigated.

The Office of the State Engineer and Interstate Stream Commission support continued efforts at developing better tools for the measurement and monitoring of water uses and for planning and construction that leads to more efficient water uses within the State of New Mexico.

Very truly yours,

JOHN R. D'ANTONIO, JR., P.E.,  
*State Engineer.*

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