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MISCELLANEOUS WATER BILLS

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

S. 2842 **S. 3189**
S. 2974 **H.R. 3323**

JULY 8, 2008

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MISCELLANEOUS WATER BILLS

TUESDAY, JULY 8, 2008

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

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

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

Senator JOHNSON. 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 four separate bills that are pending before the subcommittee.

These bills cover very different subjects in the area of water resources management.

S. 2842, introduced by Senator Reid, addresses aging infrastructure issues within the Bureau of Reclamation.

S. 2974, introduced by Senators Allard and Salazar, would authorize a municipal water supply project in Colorado known as the Arkansas Valley Conduit.

S. 3189, introduced by Senator Bingaman and Ranking Member Domenici would amend existing legislation authorizing the Upper Colorado and San Juan River ESA recovery programs.

H.R. 3323 would authorize a title transfer for facilities associated with a Reclamation Project in Southern California.

These bills all represent matters which are of extreme importance to different areas of the country. While time is beginning to run short in this Congress, the subcommittee will look closely at these bills and work with the sponsoring members to try and make progress toward enactment.

Senator Corker, the subcommittee's ranking member, could not be with us this afternoon. So let me turn to the other Senators on the subcommittee and ask for their opening comments.

Senator Tester.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman. I appreciate your holding this hearing. I want to welcome Commissioner Johnson back to the Senate.

Water is incredibly important. It's incredibly important for everybody. So to say it's more important in the West than anywhere else would probably be a bit biased, but what the heck. It's very important in the West.

I can tell you that there are literally hundreds of water projects, some that the Bureau of Rec has oversight over, some they don't. But there's just a ton of projects out there that have been built for going on almost 100 years that are wore out. You know, our forefathers did a good job of developing our infrastructure. Develop things like irrigation projects and water for towns and dams for flood safety and the list goes on and on and on.

But now it is long past time, in my opinion, that we take a very proactive stand on infrastructure, particularly water infrastructure in this country, and make an investment that I think we are in dire need of. We have several projects in the State of Montana that are going to have devastating impacts on the people of the State and quite honestly on some of our food supply if they are not dealt with sooner rather than later.

So with that, I look forward to the testimony of Commissioner Johnson, in particular and I look forward to asking a few questions.

Senator JOHNSON. Senator Barrasso.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. I just want to say that the bill introduced by Chairman Bingaman and Ranking Member Domenici, S. 3189, is very important to the people of the State of Wyoming. The Upper Colorado River Recovery Implementation Program has been very successful in providing workable solutions to provide water resources to Wyoming residents while at the same time providing protection for endangered fish.

Funding for this Fish Recovery Program has built fish streams, fish passages, hatcheries, flooded bottom lands and reservoirs to help these endangered fish in the Upper Colorado River. Providing additional authority to repair and to maintain these facilities is necessary to keep Wyoming in compliance with the Endangered Species Act and to keep water flowing to our constituents. So the passage of this bill is important to the ability of Wyoming to continue to develop our compact of portioned water resources.

I do want to make sure that all affected parties, including the rate payers, have their concerns addressed. So I urge the committee to address those concerns that may be outstanding within the bill. Thank you, Mr. Chairman.

Senator JOHNSON. Senator Salazar.

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

Senator SALAZAR. Thank you very much, Chairman Johnson. It's always an honor to see you at the helm of this committee and for your great work on behalf of the people of South Dakota and this country. I want to thank you for holding this hearing.

I wanted to, in particular welcome my colleague from Colorado, Senator Wayne Allard, to testify on behalf of a bill that he's been championing for a very long time. It's a bill whose time has come. I am very hopeful that notwithstanding Commissioner Johnson's testimony which will probably be in opposition to the bill, that this committee in a bipartisan basis in this U.S. Senate and this U.S. Congress will roll the Bureau of Reclamation and that ultimately we are going to get a conduit bill out to the small communities downstream of Pueblo, Colorado.

The Arkansas Valley Conduit was originally authorized in 1962 under the Frying Pan Arkansas Project. This proposed a 130 mile conduit from Pueblo Dam to the city of Lamar will deliver water to numerous municipal water providers to serve an estimated 50,000 individuals in 22 towns throughout rural Southeastern Colorado. A part of what I have called in the past here, Chairman Johnson, for the U.S. Senate, part of that forgotten America that really needs to have an injection of new opportunities on this clean water supply will help this part of Colorado.

The reason that the conduit has never been built is simple. The original authorization called for local communities to bear 100 percent of the construction costs, an arrangement that has never proven feasible for this rural, economically depressed area of my State. Today construction of the conduit is estimated to cost $300 million and taking until 2021 to complete.

While this is a substantial price tag, the project will without question yield significant long term benefits to the residents of Southeastern Colorado. As I have said many times before water is the life blood of the communities in our arid West. Water capacity is an essential prerequisite to our community. I've put the rest of my statement in the record.

[The prepared statement of Senator Salazar follows:]

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

Chairman Johnson and Ranking Member Corker, thank you for holding this legislative hearing today. I am looking forward to discussing the bill that Sen. Allard and I have been working on with the Southeastern Colorado Water Conservancy District to make the Arkansas Valley Conduit a reality in southern Colorado.

The Arkansas Valley Conduit (AVC) was originally authorized in 1962 under the Fryingpan-Arkansas or "Fry-Ark" Project. This proposed 130 mile conduit from Pueblo Dam to the city of Lamar will deliver water to numerous municipal water providers to serve an estimated 50,000 individuals in 42 towns throughout rural southeastern Colorado.

The reason that the conduit has never been built is simple: the original authorization called for local communities to bear 100 percent of the construction costs—an arrangement that has never proven feasible for this rural, economically depressed area of my state. Today, construction of the AVC is estimated to cost $300 million and take until 2021 to complete. While this is a substantial price tag, the project will without question yield significant long-term benefits to the residents of southeastern Colorado. As I have said many times before, water is the lifeblood of communities in the arid West. Water capacity is an essential prerequisite to economic development. The conduit will provide up to 25,000 acre-feet of high-quality water that will require minimal treatment to reach drinking standards. This new source of potable water will allow these communities to reduce existing water treatment costs and better conserve and manage their existing ground-water resources and infrastructure. This regional, large-scale approach to water delivery is a proven cost-savings practice that will benefit these communities for many decades to come.

Over the past several years community leaders from southeastern Colorado have worked closely with the Colorado congressional delegation and the Bureau of Reclamation to explore potential cost-share arrangements to make the financial bur-

dens incurred by the AVC bearable to these local communities. The bill under consideration today, S. 2974, is the product of some creative thinking and a great deal of hard work, and represents a novel approach to funding a large-scale water project. The Fry-Ark is unique among Reclamation water projects in that it is currently generating significant revenue from so-called "excess capacity" contracts for storage of non-Fry-Ark water in Fry-Ark facilities. The original Fry-Ark authorization permits the use of revenues from the project for construction of authorized project features. This bill would direct these excess-capacity revenues be used to fund the lion's share of the local contribution from a 65-35 federal-local cost share for the project.

I am proud of this legislation and the hard work by many stakeholders to bring it before our committee today. I am also proud of the leadership and adept management of the Fry-Ark project by the Southeastern Water Conservancy District, which has positioned the project for this long-awaited expansion. I am hopeful that this bill will become a model for future endeavors. The conduit will make a real difference in the lives of those who call the Arkansas River Valley their home and I look forward to discussing this bill with our panelists.

Thank you, Mr. Chairman.

Senator SALAZAR. But I want to make just one other quick comment and that is there have been a number of partners, Chairman Johnson, who've been working on this legislation for a very, very long time. It is sometimes unheard of that a local community that is as poor as the communities downstream of Pueblo would go and ask an agency of the State of Colorado, the Colorado Water Conservation Board, for a loan of some $80 million in order to be able to move forward with this project and to be able to provide a local share as a contribution to making this conduit a reality.

Senator Allard and I held meetings and hearings on this subject over the last several years. It's something which he and I are 100 percent behind. I'm very hopeful that this committee will be supportive of our efforts and ultimately that we will get this through the U.S. Senate today.

Senator JOHNSON. Welcome Senator Allard. Please proceed.

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

Senator ALLARD. Mr. Chairman, thank you for the welcome. I trust you had a good Fourth of July. I relish the opportunity of being able to work with you both as a member in the House on the AG Committee and then over here on issues that are important to the West. I consider South Dakota part of that.

So I also want to welcome the other members that are here and your support and diligence in dealing with those issues that are important to many of us as it involves water. I'm sorry to see that the Ranking Member Corker didn't make it here, but understand why. I appreciate your recognizing that in the comment.

I just want to thank you, Mr. Chairman and Ranking Member Corker for holding this important hearing and for allowing me the opportunity to appear before you today. I'm here to testify in support of S. 2974, that's the Arkansas Valley Conduit Act of 2008.

As members of this subcommittee know water is one of our most precious resources. This is especially true in the West where some areas continue to struggle through a multi-year drought. The backbone of Colorado, like South Dakota and Tennessee, is found in our small and rural communities.

Unfortunately for our rural communities things that folks in the metropolitan area take for granted can be difficult to come by. This

should not include safe, clean drinking water. That's why I have long worked to enact legislation that would help the Arkansas Valley Conduit become a reality.

I should note that the Arkansas Valley Conduit was originally authorized in Congress in 1962. My esteemed colleague from Colorado had mentioned that. So it's been in the works for a long time.

Something that's been very important to that part of the State become much, much more important recently because of the tougher laws that have been passed for clean water and while we recognize the quality of water that we have to meet public health standards for those communities. So we've been working on it for over forty years as a part of the Frying Pan Arkansas Project. The original Fry-Ark Project authorizing legislated granted the Secretary of the Interior the authority to construct the Arkansas Valley Conduit.

This legislation simply reauthorizes that authority and adds a workable cost share provision. Due to the authorizing statues lack of cost share provision and Southeastern Colorado's depressed economic status, the conduit was never built. Until recently there was no urgent need for it. The region was fortunate to enjoy an economical and safe alternative to the pipeline transportation of Project Water and that was the Arkansas River itself.

Unfortunately it is no longer the case. While the Federal Government has continued to strengthen its unfunded water quality standards these communities have fallen further and further behind in obtaining those standards. As far back as 1950 the Bureau of Reclamation determined that the quality of local drinking water supplies were unacceptable. Clear back to 1950.

In response to a number of water providers falling out of compliance with existing EPA water quality standards, the local communities formed a committee to evaluate alternative approaches to solving this problem. The Arkansas Valley Conduit was found to be the most viable solution. However, local communities are unable to fund the conduit under existing circumstances.

This legislation is essential if we are to bring local water providers into compliance with Federal water quality standards. It will finally provide a long term solution to the region's water quality concerns. The Arkansas Valley Conduit will deliver fresh, clean water to 16 cities and 25 water agencies in Bent, Crowley, Kiowa, Prowers, Pueblo and Otero counties when completed. That's an area slightly larger than the entire State of New Hampshire. The largest city served by the conduit is La Jara, Colorado with a population of approximately 12,000 people.

The local sponsors of the project have completed an independently funded feasibility study of the conduit and have developed a coalition of support from water users in Southeastern Colorado. I'm also pleased that the State of Colorado has contributed a great deal of funding for the study through the Colorado Water Conservation Board. This legislation enjoys strong, bipartisan support both locally and here in Washington.

I'm pleased that I've been able to work with Senator Salazar on this measure. His work as a member of this subcommittee is appreciated and these are one the things that we have been able to work and both feel highly committed is very important to the general

welfare to the State of Colorado. You know, we, I think, both agree that, you know, the weakest link of your economy can affect your whole State. This area needs to have clean water so it continues their economic growth and even sustain what they have now.

I thank you Mr. Chairman. I appreciate the committee's time and consideration of this important matter and hope that we will be able to move this legislation forward. Thank you for your time.

Senator JOHNSON. Thank you, Senator Allard.

We'll now turn to the first panel of witnesses for today's hearing. Representing the Administration is Bob Johnson, the Commissioner of Reclamation, who will speak to all the bills on today's agenda. Welcome to you Commissioner Johnson and thank you for making yourself available.

Before starting, I'd like to 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 part of the official hearing record.

[The prepared statement of Senator Allard follows:]

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

Thank you M—Chairman and Ranking Member Corker, for holding this important hearing and for allowing me the opportunity to appear before you today.

I am here to testify in support of S.2974 the Arkansas Valley Conduit Act of 2008. As members of this Subcommittee know water is one of our most precious resources. This is especially true in the West where some areas continue to struggle through a multiyear drought.

The backbone of Colorado, like South Dakota and Tennessee, is found in our numerous small and rural communities. Unfortunately for rural communities things that folks in metropolitan areas take for granted can be difficult to come by. This should not include safe, clean drinking water. That is why I have long worked to enact legislation that would help the Arkansas Valley Conduit become a reality.

I should note that the Arkansas Valley Conduit was originally authorized by Congress in 1962, over forty years ago, as a part of the Fryingpan-Arkansas Project. The original "Fry-Ark" Project authorizing legislation granted the Secretary of the Interior the authority to construct the Arkansas Valley Conduit. This legislation simply reauthorizes that authority and adds a workable cost-share provision.

Due to the authorizing statute's lack of a cost share provision, and Southeastern Colorado's depressed economic status, the Conduit was never built. And, until recently, there was no urgent need for it—the region was fortunate to enjoy an economical and safe alternative to pipeline-transportation of project water: the Arkansas River. Unfortunately, this is no longer the case. While the federal government has continued to strengthen its unfunded water quality standards, these communities have fallen further and further behind in attaining them. As far back as 1950, the Bureau of Reclamation determined that the quality of local drinking water supplies were "unacceptable."

In response to a number of water providers falling out of compliance with existing EPA water quality standards, the local communities formed a committee to evaluate alternative approaches to solving this problem. The Arkansas Valley conduit was found to be the most viable solution. However local communities are unable to fund the Conduit under existing circumstances.

This legislation is essential if we are to bring local water providers into compliance with federal water quality standards and it will finally provide a long term solution to the region's water quality concerns.

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

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

Mr. JOHNSON. Thank you, Chairman Johnson and members of the committee. I'm pleased to be here and present the Administration's views on these bills.

S. 2842 would direct the Secretary to devise and carry out new annual inspection processes for canals, levees, tunnels, dikes, pumping plants, dams and reservoirs. The bill seeks to assure the integrity of our infrastructure and protect the public safety, two of Reclamation's highest priorities. Reclamation owns 8,000 miles of canals, 24,000 miles of laterals, 13,000 miles of drains, 450 dams and many other pieces of infrastructure.

Two-thirds of these facilities have been transferred to local parties to operate and maintain. Reclamation uses established inspection processes under contracts entered into with our operating partners to ensure proper operation and maintenance. We also have policies and procedures in place to regularly review the condition and operation of facilities reserved for operation maintenance by the Bureau of Reclamation.

The recent failure of the Truckee Canal in Nevada has caused us to take a fresh look at our approach to maintaining our canals that run through urban areas. We are conducting expedited inspection of such facilities and developing, in conjunction with our operating partners, new standards for management of our urban canals.

Certain provisions of S. 2842 would pose significant implementation challenges for Reclamation, specifically sections three and four. My written statement speaks to the difficulties in detail. We would be glad to work with the committee to further explore how we can address our shared goal of infrastructure safety.

S. 2974 deals with a proposal that Reclamation has testified on before, most recently in March 2008 before the House committee and in September 2006 before this committee. While the Arkansas Valley Conduit Proposal in Colorado has not changed since those hearings, the financing mechanism in this current bill is new. We are encouraged that the level of cost sharing in this bill is better than the one offered in the House Bill.

However, Reclamation cannot say with certainty that the financing regime referenced in section two of this bill will provide adequate funding for a pipeline that is estimated to cost between $265 and $345 million. Today, Reclamation has entered into three such long term excess capacity contracts which generate annual revenue of only about $1 million per year. They are "if-and-when" contracts, and depend on hydrology and water supply considerations that are outside of Reclamation's control.

Having said that, we recognize the importance of the conduit proposal to Southeastern Colorado and remain committed to work with the Southeastern Colorado Water Conservancy District to further define and clarify provisions within this bill. We stand ready to lend staff expertise to deepen discussions on alternative financing for the canal with the districts, with Senator Allard, Senator Salazar and with this committee.

The Department supports S. 3189, the Upper Colorado River and San Juan River Fish Recovery Programs which were initiated in 1988 and 1992, respectively. The program goals are to recover pop-

ulations of endangered fish while providing for the continued development of water resources in compliance with the Endangered Species Act. Program actions provide Endangered Species Act compliance for more than 1,600 Federal, Native American and non-Federal water projects depleting more than three million acre feet of water per year from the San Juan and Colorado Rivers and their tributaries.

Failure to address these programs' funding needs would require re-initiation of ESA consultation on all Federal projects that rely on the programs for ESA compliance. There's strong, broad based stakeholder support for this legislation and with the changes identified in my written statement the Department supports passage.

The Department also supports H.R. 3323. This bill would authorize the conveyance of a federally owned distribution system associated with the Cachuma Project to the Goleta Water District. All of the facilities that would be transferred are or were in the district's boundaries and includes 59 miles of pipelines, laterals, pump stations and associated structures.

The district completed its repayment obligation in 2002 and has operated and maintained this distribution system since 1952. This title transfer is beneficial to the district and Reclamation. Again, the Administration supports this bill.

Mr. Chairman, this concludes my verbal remarks. I'd be pleased to answer any questions.

[The prepared statements of Mr. Johnson follow:]

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

S. 2842

Mr. Chairman and members of the subcommittee, I am Robert W. Johnson, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on S. 2842, the Aging Water Infrastructure and Maintenance Act. While we share the sponsors' goals of reliable and safe facility operations, the Department does not support S. 2842.

Reclamation testified before this Subcommittee at an oversight hearing on aging infrastructure on April 17, 2008 and, at that time, I expressed Reclamation's commitment to working with our partners to assure the integrity and reliability of our Federal water and power assets. Aging infrastructure continues to be an important topic for any number of Federal agencies, but Reclamation's April 17, 2008 testimony emphasized the fact that a facility's age, by itself, is not the sole determinant of its reliability—rather, facility condition is a central factor in predicting the long-term functionality and maintenance need of Reclamation assets. Inspections and preventive maintenance play a critical role in assuring this functionality.

Since the April hearing, Reclamation has experienced a second canal failure on the Newlands Project in Nevada, this one on the V-Line Canal, near a wasteway leading back to the Carson River. While this incident did not result in residential flooding, it highlighted the limits of facility maintenance and inspections in preventing infrastructure failures to Reclamation and its customers. While public safety is Reclamation's highest priority, even the most thorough inspections, on tens of thousands miles of canals and laterals, will never be able to detect every possible defect.

The bill provides that DOI conduct annual inspections of canals, levees, tunnels, and other infrastructure that are under DOI's jurisdiction. While the Department supports the intent of the bill, it potentially imposes new costs upon DOI. The Bureau of Reclamation already conducts inspections of its assets. Furthermore, the Bureau of Reclamation's five-year Capital Improvement plan helps prioritizes assets based on their condition. The Bureau's Capital Improvement plan includes a composite score of the asset that takes into account a number of variables. In addition, the bill presents feasibility concerns because the Department's assets do not fit into "one size fits all" standards that are prescribed in the legislation. Specifically, the

bill's requirement in Section 3(c) to develop a National Priority List concerns Reclamation. First, development of objective criteria to rank facilities in terms of risk would be a significant undertaking, as would the annual review of facilities to reprioritize the list. Second, Reclamation already promotes preventive maintenance through regular facility reviews to identify operations and maintenance (O&M) deficiencies at an early stage. While these processes are thorough, they will never detect every deficiency, and with about 8,116 miles of canals in the Reclamation inventory, it is not realistic or cost-effective to provide sufficient information on each project facility as described in the bill. Through facility reviews, Reclamation makes recommendations for noted deficiencies on project facilities; cost estimates and recommended timeframes for related repairs or replacements are discussed and documented in these recommendations, and mutually agreed upon with the operating entities at the time of the review.

Section 4 calls for development and publication of Reclamation-wide standards, guidelines and regulations on O&M. The Department believes this provision would impose new costs and duplicate processes and practices that already exist or are currently underway at Reclamation. Reclamation maintains O&M-related directives and standards in its Reclamation Manual, as well as Reclamation-wide inspection requirements and procedures that are posted on Reclamation's Web site and available to our customers. Additionally, American Society of Civil Engineers (ASCE) Manuals and Reports on Engineering Practice No. 57, Management, Operation, and Maintenance of Irrigation and Drainage Systems, jointly developed by Reclamation and ASCE, provides additional information and standards related to the O&M of related facilities and systems. We develop and circulate regular Water Operations and Maintenance Bulletins, conduct an annual Water Management Workshop with our operating partners, and Reclamation produces and regularly updates the Facilities, Instructions, Standards and Techniques (FIST) manuals, which provide the most current guidance on the operation of hydroelectric and some water facility equipment.

Section 4 also presents a challenge to implement because the breadth of Reclamation's facilities, their geographic locations, and specific environments, do not lend themselves to "one-size-fits-all" standards and guidelines as described in the legislation. This would also present difficulties in differentiating between "structural deficiencies" caused by non-compliance with regulations and those resulting from normal deterioration due to the age of the facility that is beyond one's control.

It is worthwhile noting that the Department has developed an Asset Management Plan (AMP) and called on each Bureau to prepare bureau-specific AMPs summarizing their current asset inventory and articulating a strategy and plan of action for improving the management and condition of relevant inventory. These AMPs provide DOI and the bureaus with the necessary tools to make wise investments and manage assets in a cost effective manner.

Reclamation's Dam Safety Program prioritizes and ranks facilities using a risk management approach. The President's budget request for FY 2009 is over $90 million, up about $15 million from FY 2008 for evaluations and corrective (construction) actions. This program focuses on 375 distinct dam and dike structures, where safety conditions are more critical and where staff resources can be deployed for extended periods of time. In contrast, the language of Section 4(c)(1) would oblige Reclamation to study every distinct facility, regardless of risk, which would include canals, levees, laterals, pipelines, tunnels, drains, and other asset types far beyond the current resources of Reclamation's inspection and review teams.

Additionally, it is not clear whether the authorization in S. 2842 would extend beyond Reclamation to other Interior bureaus and agencies, such as Bureau of Indian Affairs irrigation and power systems, Bureau of Land Management earthen livestock impoundments, and Fish and Wildlife Service fishery and refuge facilities.

In addition, S. 2842 also authorizes $11 million for FY 2009 through FY 2013 for these annual inspections and related activities. The Bureau focuses its resources on the programs and projects that will best help it accomplish its primary missions of delivering water and power. Creating additional obligations may limit the Bureau's effectiveness in other key areas.

In light of these concerns, the Department cannot support S. 2842. At the same time, it is useful to note that the Reclamation already has a number of comprehensive programs for assessing the status and condition of our infrastructure.

Approximately two-thirds of Reclamation's facilities are transferred works; they are owned by the United States but operated and maintained by others pursuant to contracts. Under the terms of the transfer of operation and maintenance contracts and agreements, the operating entities are often required to perform O&M of the facilities at their own expense. Reclamation emphasizes the importance to our partners of maintaining adequate emergency and replacement reserve funds, typically

required under contracts or agreements, to be able to address operation, maintenance and replacement of project facilities.

Other existing programs where Reclamation already is working to address aging infrastructure include the Review of Operation and Maintenance Program, the Safety Evaluation of Existing Dams Program, and monitoring Replacements, Additions, and Extraordinary Maintenance activities.

Additionally, in response to the canal breach in Fernley, Nevada, Reclamation has increased its attention to assessing canals located in areas experiencing urban growth. This incident emphasized the need for Reclamation to address the challenges that growth of urbanized areas in proximity to long-existing canals poses within our project lands. Vegetation and property encroachments are very real issues for the operation and maintenance of Reclamation canals and other facilities. These growth patterns have exposed residential areas to flood risks, and indirectly created a public safety burden on Reclamation and our partners like Truckee-Carson Irrigation District. In light of these new challenges, Reclamation held a Canal/Asset Management meeting in May with our stakeholders in Denver to discuss canal inspection procedures, impacts of urbanization on Reclamation canals and on ways we can help our operating partners address related infrastructure issues. Next for Reclamation is to utilize the input from the discussions at this meeting, in coordination with operating entities West-wide, to systematically inspect the remainder of the identified canals or reaches through urbanized areas.

We believe that these new tools, combined with the cooperation of Reclamation's local partners, will assure the continued safe operation of Reclamation's facilities. While canal breaches or delivery interruptions will never be completely eliminated, we are committed to reducing the probability and consequences of these failures West-wide.

We appreciate the committee's interest in these issues and look forward to working with the Congress to continue developing solutions that provide for the biggest net benefits to the Federal taxpayer.

This concludes my written statement. I would be pleased to answer any questions.

S. 2974

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 of the Interior's views on S. 2974, legislation authorizing appropriations and the Arkansas Valley Conduit in the State of Colorado. For the reasons described below, the Department has significant concerns with S. 2974 and cannot support this legislation.

The Arkansas Valley Conduit is an authorized feature of the 1962 Fryingpan-Arkansas Project (Fry-Ark Project), but never constructed due to financing considerations. Today, increased water treatment costs due to local groundwater quality and changing requirements of the Safe Drinking Water Act, have renewed local interest in alternative means of obtaining safe and clean water supplies for the Lower Arkansas Valley.

The Conduit would transport water about 110 miles from Pueblo Dam (part of the Fry-Ark Project) to communities along the Arkansas River to a point near Lamar, Colorado. The Lower Arkansas River Basin is comprised of rural communities, with the largest town, Lamar, having a population of approximately 8,600. The population anticipated to be served by the Conduit is approximately 50,000. Total project costs were roughly estimated in 2005 to be between $265 million and $345 million, depending on the project features chosen for construction.

This legislation intends to utilize existing infrastructure as one component in addressing a water need, proposes a different mechanism for repaying the outstanding debt for the construction of current features of the Fry-Ark Project (including nearly $38 million in outstanding and uncontracted debt for the construction of Ruedi Reservoir), and proposes one way to provide water for Lower Arkansas basin communities.

Reclamation has testified previously on several versions of legislation to fund construction of the Arkansas Valley Conduit (AVC). The Department testified on H.R. 317 on March 13, 2008 before the House Water & Power Subcommittee, and in September 2006 before this Subcommittee on S. 1106. In both of those testimonies, Reclamation cited those prior bills' cost share arrangement as inconsistent with the existing AVC authorization in PL 87-590, which requires 100% repayment of project features within 50 years. While this bill improves upon past versions for cost-sharing requirements, S. 2974 also continues to be inconsistent with the original Fry-Ark authorization by providing that the Federal government bear 65 percent of the

cost of the project. In addition, several outstanding issues remain regarding the funding source for the local cost share.

The legislation before the Subcommittee today, S. 2974, is a new proposal that proposes a different financing arrangement involving contracts that would provide a still-undetermined revenue stream for repaying the Conduit. We have been happy to work with the Southeastern Colorado Water Conservancy District on identifying and further refining the complex financing concepts outlined in S. 2974.

Although the Department is appreciative of the work that has been done, the Administration still has some significant outstanding concerns with this legislation.

In particular, Reclamation does not believe the excess capacity contracts referenced in Section 2(b) of this bill will provide adequate funding for a pipeline that, in 2005, was priced between $265 million and $345 million. Section 2(b) provides that any revenue derived from contracts for the use of Fryingpan-Arkansas project excess capacity or exchange contracts using Fryingpan-Arkansas project facilities shall be credited to the actual cost of Ruedi Dam and Reservoir, the Fountain Valley Pipeline, and the South Outlet Works at Pueblo Dam and Reservoir until the date on which the payments to the Arkansas Valley Conduit begin. After that, the revenue would be used for the Conduit.

To date, Reclamation has entered into three such long-term excess capacity contracts, which generate annual revenue of only about $1 million per year. They are "if and when" contracts, which depend heavily on hydrology and water supply considerations outside of Reclamation's control. In addition, any new contracts take years to negotiate and finalize. We do not believe that these revenues will be sufficient to pay for the Conduit. Relying on these new contracts could leave the Federal government responsible for the primary funding of this project. Also, the revenues from these excess capacity contracts would normally be deposited into the general Treasury after being credited to project repayment. Therefore, using them in this manner creates a troubling precedent. We cannot say what the potential loss to the Treasury would be and would need to study this issue further if this type of financing were to proceed.

Reclamation also has concerns regarding the overall Federal and Non-federal cost share described in S. 2974. This type of credit toward future projects may not comport with the Administration's fiscal management policies and could potentially leave the Federal government responsible for being the primary source of funding for all of these types of projects in the future. Also, this type of applied cost sharing appears to deviate from standard cost-sharing practices, potentially creating a precedent that needs more careful consideration.

Finally, while incentivizing local sponsors to manage their water resources responsibly can be a positive, we are concerned that this type financing may allow project beneficiaries to not have to repay their pre-existing obligations, which, in turn, may necessitate even more Federal funding being dedicated toward this project. The loss to the Treasury under our current contracting policies would be about $1 million annually, but could increase as these contracts increased.

We recognize the importance of the Conduit proposal to southeastern Colorado, and remain committed to working with Congress and the Southeastern Colorado Water Conservancy District to further define and clarify provisions within this bill. However, for the aforementioned concerns noted above, we cannot support S. 2974.

This concludes my statement, and I would be pleased to answer any questions.

H.R. 3323

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 provide the Department's views on H.R. 3323, the Goleta Distribution System Conveyance Act of 2007, to authorize the Secretary of the Interior to convey a certain federally-owned water distribution system of the Cachuma Project in California to the Goleta Water District. The Administration supports H.R. 3323.

H.R. 3323 would transfer title of the federally owned distribution system associated with the Cachuma project that is within the boundaries of the Goleta Water District in Goleta, California. The features that would be transferred to the Goleta Water District include 59 miles of pipelines and laterals, two pump stations and regulating features, associated structures, and lands and rights of way. The proposed transfer would apply only to land and facilities and would not affect the District's existing water service contract with Santa Barbara County Water Agency or the Federal Government's receipts from water deliveries under that contract.

The Goleta Water District has operated and maintained this distribution system since 1952 and fully met its repayment obligation in 2002. This title transfer will enable the District to gain greater local control of the distribution facilities that

were constructed for their use. It will also eliminate the need for some administrative obligations that exist for the District. For example, once title is transferred, the District will no longer be required to seek approval from Reclamation for easements, crossing permits, or work on the facilities.

In addition, this title transfer protects the financial interest of the United States. Transferring title to these facilities will reduce a number of administrative burdens on Reclamation including periodic facility reviews that are currently required because it is a Reclamation owned facility and the processing of paperwork that currently consumes significant staff time. It will also ensure that long-term responsibility for the operation, maintenance, management, and regulation, as well as liability, for the transferred lands and facilities, will rest with the District.

The process and cooperative approach used to negotiate and develop this transfer should be a model for future title transfers throughout the West. Reclamation and the District have worked effectively and cooperatively throughout this process to address the elements required for title transfer. We thank the District's representatives for their work on this transfer and look forward to continuing to work with them as the process draws to a close.

Mr. Chairman, thank you for your consideration of this bill. That concludes my testimony, and I would be pleased to answer any questions.

S. 3189

Mr. Chairman and members of the Subcommittee, I am Robert W. Johnson, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on S. 3189, a bill to extend funding and authorization for ongoing endangered fish recovery programs in the Upper Colorado and San Juan River Basins. The Department supports passage of this bill, but recommends that some changes be included as described below.

Public Law106-392 authorizes the Bureau of Reclamation to provide cost sharing for construction of capital projects and annual base funding for the operations of the Upper Colorado and San Juan Recovery Implementation Programs (Programs). The current authorities provided by P.L. 106-392 expire at the end of FY 2010. The proposed legislation would amend P.L. 106-392 to incorporate several goals.

To date, the two Programs have expended a total of $77.8 million in federal funds since inception (1988), with a solid record of performance. Activities completed to date have included fish passage improvements at Price-Stubb Dam (2008), and fish ladders and screens on the Grand Valley Diversion Dam on the Colorado River. Along with protections for the four listed fish species, water reliability has also been protected, and no lawsuits have been filed on Endangered Species Act compliance for any of the covered water projects on the Colorado and San Juan Rivers since the two recovery programs were constituted. The programs' efforts have resulted in fewer threats to the survival of Colorado pikeminnow and razorback suckers, and the highest larval counts ever recorded on the Green River for suckers in 2007.

I would like to describe the Department's views on the legislation in detail. First, S. 3189 authorizes an additional $12 million in federal expenditures for capital projects under the San Juan Program for the purposes of: protecting endangered fish critical habitat and infrastructure from rock slides in a reach of the San Juan River near Farmington, New Mexico, which the Fish and Wildlife Service has determined to be necessary for recovery; and repairing and replacing capital facilities including fish passages, fish screens, aquatic habitat enhancements, hatcheries and fish rearing facilities as needed through 2023. While previous authorizations for this program were for shorter time periods, this longer time window is concurrent with the recovery goals for these species, with the objective of downlisting or de-listing in 2023. Although a longer-term authorization may be warranted, we also believe that it is prudent to reassess the program and its goals so that adaptive management practice can be applied to ensure the best outcomes for this program.

Next, this bill authorizes an additional $15 million in federal expenditures for capital projects for the Upper Colorado Program for the purposes of: constructing a fish screen at the Tusher Wash Diversion Dam on the Green River in light of significantly increased construction material costs; and for repairing and replacing constructed capital facilities fish screens, fish passages, habitat enhancements, hatcheries and fish rearing facilities as needed through 2023. In addition, we recommend that the bill be revised to raise the authorization in Section 3(c)(1) of Public Law 106-392 for non-federal contributions to capital projects, to ensure that the federal cost-share of program implementation is not escalated further.

Third, this bill attributes additional non-federal cost sharing of $56 million which relates to power replacement costs borne by power consumers due to reoperation of Flaming Gorge Dam to benefit the endangered fish (years 2010 through 2023). This

is consistent with the original definition of cost sharing provided in Public Law 106-392.

Fourth, this bill allows for continuation of base funding derived from power revenues through 2023 for all activities necessary to achieve recovery as currently authorized. While these funds are termed non-federal cost shares consistent with the original cost allocation reflected in Public Law 106-392, they are drawn from revenues otherwise subject to repayment obligations and the Administration does not as a general matter endorse the treatment of such revenues as a non-federal contribution to cost-sharing for restoration projects.

Fifth, section 2(b)(4) of this bill allows the Western Area Power Administration to borrow from the Colorado Water Conservation Board Construction Fund (Construction Fund) if sufficient base funds are not available in the Upper Colorado River Basin Fund (Basin Fund) to meet base funding needs for the Programs. The borrowing authority in S. 3189 is intended to compensate for declining revenues that occur during periods of drought. The proposal to grant WAPA borrowing authority would replace a provision in existing law which requires that WAPA and the Bureau of Reclamation request appropriations in the event that base funds are insufficient.

The Administration generally opposes providing new borrowing authority for operations and maintenance purposes. . This bill provides authority for WAPA to borrow from a non-Federal entity to cover operating, maintenance and rehabilitation costs, as well as the absence of restrictions specifying the amount of allowed outstanding obligations and sufficient limits on the timing of repayment. Further, it is Administration policy that, where we do support borrowing authority, it should be from the Treasury. It is generally not prudent financial policy to use borrowing to cover operating costs. Further, it has been longstanding Treasury policy that, if borrowing authority is justified, Federal agencies should be authorized to borrow exclusively from the Treasury. Also, any borrowing authority should be subject to a specific statutory limit, to be determined taking into consideration the expected needs of the program.

The Upper Colorado and San Juan Programs were initiated in 1988 and 1992 respectively, under the terms of cooperative agreements with departments and agencies of the United States. The Programs' goals are to recover populations of endangered fish while providing for the continued development of water resources in compliance with the Endangered Species Act. Program partners include the States of Colorado, New Mexico, Utah, and Wyoming; Reclamation; Western Area Power Administration; U.S. Fish and Wildlife Service; Bureau of Land Management; National Park Service; Bureau of Indian Affairs; Native American Tribes including the Jicarilla Apache Nation, Navajo Nation, Southern Ute Indian Tribe and Ute Mountain Ute Tribe; environmental organizations; water users; and power customers. Program actions provide Endangered Species Act compliance for more than 1,600 Federal, Native American, and non-Federal water projects depleting more than 3 million acre-feet of water per year in the Colorado and San Juan rivers and their tributaries.

The Programs are nationally recognized collaborative efforts which have served as models to address other Endangered Species Act issues throughout the country. The Programs have developed comprehensive plans for recovery of the fish species. Aggressive efforts are being implemented to construct fish passages, fish screens, and propagation facilities; restore and enhance aquatic habitat; acquire water; enlarge and coordinate the operations of existing water storage reservoirs; improve water use efficiency; stock native fish and control competing non-native fish species, all activities leading to restoration of ecosystems and recovery of the four listed Colorado River fish species. Both Programs have a demonstrated history of success.

Failure to address these Programs' funding needs would require re-initiation of Section 7 consultation on all Federal projects that rely on the Programs for Endangered Species Act (ESA) compliance. There is strong broad based stakeholder support for this legislation and a critical need exists for the additional authority provided by the proposed amendment. The Department supports passage of S. 3189 with the aforementioned changes.

This concludes my testimony. I am happy to answer any questions.

Senator JOHNSON. Commissioner Johnson, is it Reclamation's expectation that the contractors in S. 2842, who operate the transferred works will be able to pay for the estimated $800 million of repair and rehabilitation work?

Mr. JOHNSON. I think the $800 million that you're mentioning there is the estimate that we provided for transferred works and the needs for rehabilitation and betterment associated with those

transferred works. I believe that some of that rehabilitation and betterment can be repaid by the project operators. It can be funded and paid by the project operators. But I don't believe all of it probably can, some of it may very well be beyond their ability to pay.

I don't have a break down of the specifics of those numbers. That's just a general characterization. Some can and some can't.

Senator JOHNSON. Is there a plan to pay for the permanent fix that is needed for the Truckee Canal?

Mr. JOHNSON. At this time there is not. That's being worked on. We're still working on the cost estimate of what's required.

It's likely to be a very expensive fix. There's 11 miles of canal with urban areas that lie below it. It's probably in the tens of millions of dollars.

I'm sure there will be issues regarding the district's ability to pay those costs. We'll have to work hard to find mechanisms to fund and pay those costs over time.

Senator JOHNSON. Your testimony on S. 3189 recommends Public Law 106–392 which first authorized the Upper Colorado and San Juan River Recovery Programs to increase the non-Federal contribution for capital projects. Currently the required contribution is set at $17 million. What is the specific non-Federal contribution that the Administration recommends?

Mr. JOHNSON. Senator, that's a fair question that I'm not in a position to answer today. What I'd like to do is provide an answer for the record on that. We still need to do some work internally related to that. But we will answer that in a timely way.

Senator JOHNSON. PL 106–392 requires Interior to prepare a report by the end of Fiscal Year 2008 on the use of power revenues beyond 2011 for base funding for the ESA programs. It is my understanding that the completion of that report is just about final. Is the release of that report imminent and is S. 3189 consistent with its recommendations?

Mr. JOHNSON. The report is still undergoing review within the Administration. I think in general it's consistent with the legislation. But because it's still under review there could be revisions. I wouldn't, you know, I think it's possible that there may be some areas that are not consistent.

But we've got to wait until that review is complete and when that is over we will provide the report to the committee and to Congress.

Senator JOHNSON. When do you estimate that report is due?

Mr. JOHNSON. Let me respond for the record. I wouldn't want to give a date and then not be able to meet it. Let me respond for the record on that, if I can.

Senator JOHNSON. Ok. Back to S. 2842. What are the risk factors that should be analyzed so that an inspection and corrective action program can be properly prioritized?

Mr. JOHNSON. I think there's three primary risk factors and there may be more. But certainly the risk of loss of life from the failure of a facility ought to be an important consideration, if not the most important consideration. Also the risk of property damage, you know, what kind of property we have downstream that could be affected by a failure.

Then certainly also is the risk associated with the loss of water service. If you have a facility fail and you're no longer able to provide water service, the impacts that that has needs to be taken into consideration. So those would be three factors that I would identify. There may be more.

I think that's something that we're working on within Reclamation in this new concept that I talked about as a result of the failure of the Truckee Canal. We're taking a fresh look at our canals and our procedures for doing inspections and what kind of criteria we ought to be using for those inspections.

Senator JOHNSON. Senator Tester.

Senator TESTER. Thank you, Chairman Johnson. Thank you, Commissioner Johnson for being here. My questioning is going to revolve around S. 2842, the Aging Water Infrastructure and Maintenance Act. I appreciated your responses on the risk factors.

You had stated that the BOR share the goals that are contained in 2842, but you won't be supporting this specific bill. I'd be interested to hear, No. 1, and I think you do agree because I think you've testified to the fact that we're in dire need of some improvements in infrastructure, how would the Bureau want to see us proceed if we didn't use this bill?

Mr. JOHNSON. I think particularly on the bill that's under consideration, it has, it applies to all Reclamation facilities, dams, canals, laterals, drainage facilities and requires some fairly short turn around timeframes for doing inspections. Given the number of facilities that we have, we think it would be probably impossible to meet the timeframes that are included in there. So that's certainly one thing.

I think that something that focused more on urban canals would be helpful. We have a Safety of Dams Program. We have legislation that defines the Safety of Dams Program.

We have a very active Safety of Dams Program. Our 2009 budget request for that program was $90 million. I think that we're doing a very good job, an adequate job of maintaining our dams and maintaining their safety. So I'm not sure we need more legislation that deals with dams.

I think one of the other big issues that we will have that we'll have to talk about is the cost sharing and how the costs are shared. What percentage is Federal and what percentage is not Federal?

Senator TESTER. Can I ask, this bill states 65 percent Federal cost share. Is that in the ball park you guys are thinking about?

Mr. JOHNSON. I'm not in a position to give a specific number today. My guess is that that's probably too high of a Federal share.

Senator TESTER. Ok. I don't know. I'd be interested to know what the Bureau thinks. I don't know, if you could give that information or if it's a shot in the dark or if they want to do it at all would be fine. If you could, can you give me an idea of where you guys want to go with it because I think that's important to know?

Timeframes, you talked about the urban canals in the previous answer. Montana is a pretty rural State. Does that mean we're left out of the equation if you guys go by your parameters?

Mr. JOHNSON. No, it's not.

Senator TESTER. Ok.

Mr. JOHNSON. In fact, we're developing these new criteria in conjunction with all of our operating partners. In fact we had an initial meeting with them. I think we have a really good partnership on how we move forward to address safety issues on urban canals. I think there's two parts to the process that we're trying to address.

The point is we're trying to get new standards for urban canals.

Senator TESTER. Right.

Mr. JOHNSON. Maintenance standards for an urban canal needs to be different than the maintenance for a canal that runs through a rural area.

Senator TESTER. Yes. I get that. You talked about the enormity of all these assessments that would have to be done. Do you have assessments done now on at least a part of it that would help you preempt a part of what we're asking for here?

Mr. JOHNSON. Yes. There's 108 reaches of canals that run through urban areas. I couldn't tell you how many miles that is. There's quite a number of miles.

We've asked each of our offices in the field to give us, one, we've already asked them to do a windshield survey. But we've asked them to give us a schedule and a prioritization of those urban canals and a schedule for doing detailed inspections on each one to get a handle on it.

Senator TESTER. Could you give me, I mean is it possible that you can give me the top ten urban canals, dams, siphons that are at risk and where you would plug the money if you had the money? Do you have that ability right now?

Mr. JOHNSON. I don't know that we have a top ten. I can certainly go back and see if there's some information that we can provide on the ones that we think are most critical based on the preliminary survey that we've done.

Senator TESTER. When I signed on to this bill I'll tell you exactly what I told my staff. This bill isn't needed they're already doing it. They said no. It's not being done completely.

I'm not being critical. I'm just being honest. I don't know how it's possible to have our infrastructure be brought up unless there's assessments done all the time. I mean, just all the time on these projects so that we know which are in the most imminent need.

I know that depends upon the risk factors. I know that's going to have some impact. But that would be a great help and then we wouldn't have to do this. Then all we have to do is fight about cost share.

Mr. JOHNSON. Yes.

Senator TESTER. Thank you. Thank you, Mr. Chairman.

Senator JOHNSON. Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman. I share your concerns in the question about the non-Federal contributions to S. 3189. So I'm looking forward to getting that same answer that you are, Mr. Chairman.

I did have two questions, Commissioner Johnson on S. 3189, if I may. Kind of explain to all of us why it's in the interest of the American taxpayer to continue to fund the Upper Colorado Fish Recovery Program?

Mr. JOHNSON. It provides water supply for a lot of—well the bill doesn't provide it. It provides ESA coverage. It protects endangered species. It ensures that we comply with the Endangered Species Act. It ensures that we will be able to deliver water supplies to water users in four states in the Upper Colorado River Basin.

It's absolutely a critical program. We could not provide the benefits of all those projects that deliver those water supplies without the Upper Colorado River Recovery Program.

Senator BARRASSO. Then could you please just describe the current status of the Upper Colorado River Basin, the fund, what it's used for, current revenue level, balance, if the money is going to be there in terms of sufficient revenues in the future to continue to assist in addressing these needs?

Mr. JOHNSON. I'd be glad to do that. I don't have all of those numbers off the top of my head. But we'd be glad to provide a written response on that.

Senator BARRASSO. Thank you, Mr. Chairman.

Senator JOHNSON. Senator Salazar.

Senator SALAZAR. Thank you very much, Chairman Johnson.

Let me first of all acknowledge that in the audience today there are a number of people that are here to testify not only on the Lower Arkansas Conduit bill, but also on the Endangered Fish Recovery Program of 2008. They include the Director of the Colorado Water Conservation Board, Jennifer Gimbel, who I've known for a very long time and Bill Long the President of Southeast Water Conservancy District, Jim Broderick, who is the Executive Director of the Southeast Colorado Water Conservancy District, former Congressman Ray Kogovsek, out of that same area, Pueblo native and hero and Christine Arbogast, who does a lot of work on the water issues of the State of Colorado. So I welcome them formally to the hearing.

Let me also at the outset say, Mr. Chairman, most of my questions here are going to be directed at S. 2974. But I want to just comment on two other pieces of legislation that are before us. First S. 2842, the Aging Water Infrastructure and Maintenance Act. I'm proud to be a co-sponsor of that legislation with Senator Reid and Senator Bingaman, Senator Tester and I do hope that we're able to get that legislation through.

Second S. 3189, the Endangered Fish Recovery Programs Act of 2008. Without that legislation moving forward it would be very difficult to maintain our efforts on what has been a national model for how we deal with the protection of water rights, compact entitlements in our State on the one hand. At the same time, on the other hand, deal with balancing the requirements and demands of the Endangered Species Act. So I'm proud to be a sponsor and supporter of that legislation as well.

Now with respect to the Frying Pan-Arkansas River Conduit I have a couple of questions for you, Commissioner Johnson. You will remember you and I went through this drill a couple of years ago where we talked about cost share. My own view is when we have a set of rural communities that essentially have pulled themselves up from their bootstraps.

They've come up with what essentially is a 65/35 cost share. They've done a lot more than many other Bureau of Reclamation

projects which have in fact been authorized and which have been implemented by the Bureau of Reclamation. Now isn't it true that there are projects out there which in fact have as much as a 90 percent, 10 percent cost share with 90 percent being on the Federal Government?

Mr. JOHNSON. There are certainly, I mean I wouldn't want to necessarily say 90 percent. But certainly there are a number of projects——

Senator SALAZAR. Are you aware of one, two, three, several projects have been funded as Bureau of Reclamation projects where the Federal cost share has been 100 percent?

Mr. JOHNSON. Where they're all non reimbursable activities? Yes, that would be the case. I can't think of any off the top of my head, but I imagine there's probably some that are totally non reimbursable.

There's a lot of them that are 75 percent. Certainly most of the rural water projects that are already authorized, I think, provide for 75 percent Federal funding, 25 percent local. So certainly, yes.

Senator SALAZAR. You know I have the utmost respect for you, Commissioner Johnson. You and I have worked together on a number of issues including Leadville Mine Drainage Tunnel recently and other things as well as my respect for Secretary Kempthorne. But I will tell you that I find the position of the Bureau of Reclamation here offensive.

I find it offensive because of the fact that we have worked so hard and long with the local communities affected for them to come up with a different kind of cost sharing formula than what we had in the past. I remember on a number of different occasions cohosting meetings with Senator Allard on the Pueblo, downstream of Pueblo to talk with the community about how they needed to be forthcoming and step up to the plate and assume a share of the responsibility for the payback. It was at my urging in fact that I believe the Southeast Water Conservancy District and others went to the State legislature and said let us borrow the $60 million so we can have our local cost share.

Yet it seems that throughout this time period as the Southeast was putting together its program, it ended up in this legislation which is bipartisan legislation sponsored by Senator Allard and by me that the Bureau of Reclamation at the local level was nowhere to be seen. We come forward now with what we think is a great compromise that essentially would implement the vision which is now some, if I have my numbers right, 46 years old. It's a conduit long time in coming and the result of a lot of work over the last several years.

So I find it offensive, Commissioner Johnson, that the Bureau of Reclamation would come here in front of this committee today and say, well, it's still not good enough. We need something else. Why is it that the Bureau of Reclamation was not there working hand in hand with the Southeast Water Conservancy District and all of its local partners to come up with a package that in fact would be acceptable to everyone?

Mr. JOHNSON. We certainly didn't intend to be offensive. I'm not aware of a lot of interaction that has occurred between us and Southeastern. I think that that interaction needs to occur. I think

that Reclamation is certainly willing to sit down and spend time with the district and with others taking a hard look at the financing proposal.

Certainly this is an improvement over what we've seen in other bills that were introduced previously. It's certainly a movement in the right direction. I'm not in a position to endorse, you know, what's in the bill today. But we're certainly willing to take a hard look at it.

You know I was talking with Jim Broderick before the meeting today. I'm not sure that we understand the details of what's included in there because Jim was telling me that the intent is to repay the 65 percent. So the 35 percent would be funded locally and that repayment would occur on the 65 percent. I'm not sure that we understood that when we developed our analysis.

Now I'm not saying that that's acceptable. But I'm just saying I'm not sure that we understood, completely, the proposal as envisioned in the legislation. I would just say that we are more than willing to sit down with the district and understand the details and see if there's anything that we can all be comfortable with.

Senator SALAZAR. Mr. Chairman, I know my time has expired, but I have several more questions of the witness, but I'll wait my turn if it's ok with you or I can continue as you wish.

Senator JOHNSON. You may proceed.

Senator SALAZAR. Thank you, Mr. Chairman. Let me then just respond, Commissioner Johnson. It would be my, let's say hope. That's too soft. Wish, too soft. It would be my request, too soft. It would be my direction to you and to Secretary Kempthorne that you work with the Southeast Water Conservancy District so we can get this legislation moved forward.

It would seem to me that for you as a Commissioner of Reclamation for the remainder of this year through January of next year that this should be one of the crown jewel achievements of Reclamation that after 40 years of waiting we finally are making the possibility of the conduit becoming a reality. Let me ask you this question. If we do not move forward with this legislation how does the Bureau of Reclamation have any sense of how these rural communities ultimately are going to be able to access a clean water supply? What are their alternatives?

Mr. JOHNSON. I know they've been relying on ground water. I know that ground water has got problems associated with it. I know the quality is not what we'd like to see. I don't know to what extent that is an alternative.

I'm really not in a position, Senator, to know enough about the project to be able to offer a response on that. We could respond in more detail in writing, if you'd like.

Senator SALAZAR. Let me tell you where I would like you to put your efforts and that is working with the Southeast Water Conservancy District, State of Colorado and the local partners to fully understand this legislation. This is very important legislation that I'm certain is going to have tremendous bipartisan support in the U.S. Senate.

I want to not only have this legislation pass, but I also want to make the conduit a reality. So I would appreciate it if you would just have your office and the local staff for the Bureau of Reclama-

tion working with the Southeast to fully understand the parameters of what we're trying to do here. It's very difficult, Commissioner Johnson.

You must understand for us to go to the President of Southeast, Bill Long and some of his predecessors and say you need to come up with the local cost share for them to go to Denver and testify first in front of the Colorado Water Conservation Board and then to have a bill shepherded through a State general assembly to get over $60 million committed to this project, I think is a Herculean undertaking for a local community. I think that effort has to be recognized.

Thank you very much, Mr. Chairman.

Senator JOHNSON. Commissioner Johnson, you may be excused. Please have a seat and listen to the panelists.

Mr. JOHNSON. Yes, glad to.

Senator JOHNSON. Since there are no more questions let's have our second set of witnesses take a seat.

On our second panel we have first, Dan Keppen, Executive Director of the Family Farm Alliance to testify on S. 2842.

Second, Bill Long, Chairman of the Arkansas Valley Conduit Committee in Colorado to testify on S. 2974.

Third, Jennifer Gimbel, Director of the Colorado Water Conservation Board to testify on S. 3189.

Welcome to each of you and thank you for traveling back here to provide your testimony to the subcommittee. Mr. Keppen, please start by summarizing your testimony. We'll then proceed with the other witnesses. After all of you have completed your statements, we will proceed with questions.

STATEMENT OF DAN KEPPEN, FAMILY FARM ALLIANCE, KLAMATH FALLS, OR

Mr. KEPPEN. Thank you, Chairman Johnson, members of the subcommittee. I appreciate this opportunity to testify on behalf of the Family Farm Alliance. My name is Dan Keppen.

I serve as the Executive Director for the Alliance. We advocate for family farmers, ranchers, irrigation districts and allied industries in 17 Western states. We're focused on one mission and that's to ensure the availability of reliable, affordable, irrigation water supplies to Western farmers and ranchers throughout the West. Our members relative to this bill include irrigation districts and water agencies that are responsible for the operation and maintenance of some of the Reclamation's largest and most complex facilities.

The Bureau of Reclamation built and manages the largest part of a critical water supply infrastructure that is the foundation of the economic vitality of our membership's fate. Much of this federally owned infrastructure is now 50 to 100 years old, approaching the end of its design life. It needs to be rebuilt and rehabilitated for the next century.

In the American West Federal water supply systems are essential components of communities, farms, and the environment. These facilities are part and parcel of the Nation's food production system. Their operation helps ensure our ability to provide reliable and secure food for our own citizens and the rest of the world.

Aging public infrastructure across the Nation is a growing critical problem as we have seen in media accounts in the last few months. Throughout the Bureau of Reclamation's history canals have been constructed in the West to deliver project benefits. When these canals were constructed they were located generally in very rural areas, Fernley, Nevada for example, where the major impact of canal failure was the loss of project benefits associated with agriculture.

However with increased urbanization occurring on lands below many canals, loss of life or significant property and economic damage can now result from failure. Such a failure occurred in Fernley, Nevada this past January. Thankfully no lives were lost, but hundreds of homes were damaged and millions of dollars of damage were imparted to the local community.

The Family Farm Alliance commends Senator Reid for introducing the Aging Water Infrastructure and Maintenance Act, S. 2842. This bill is timely and it helps shed light on a critical problem that our members are becoming increasingly concerned with in recent years. Senator Reid has said that the purpose of the bill is to provide Reclamation with resources and direction to inspect and maintain aging water facilities so that disasters like the Fernley flood can be avoided.

We agree with Senator Reid that there clearly is a need for Congress to address the deterioration of the aging Reclamation facilities and preventing failures like the one in Fernley should be an immediate priority. However we have reviewed S. 2842 in detail and we do have a number of concerns about how this legislation would actually be implemented on the ground. We have been working with Senator Reid's staff on some changes that we think will alleviate our concerns.

In general we believe that the bill's approach as written is a bit too broad. It mandates additional inspections and new maintenance standards for all Reclamation facilities when the focus instead should be on those facilities that pose an actual risk to urbanized areas. Although S. 2842 would authorize financial assistance to non-Federal entities responsible for the maintenance of federally owned facilities, it is not clear how that assistance would be realized.

With that said, we believe S. 2842 is intended to address an important problem and can achieve its desired effect by incorporating changes that reflect the input of water managers imminently familiar with canal safety matters. We have vetted this issue, you know, very extensively with water managers throughout the West that comprise our membership.

First, we believe that a different level of scrutiny is appropriate for canal regions that are cutting through urbanizing areas. Focusing inspections and setting standards on aging canals that pose significant threats to life and property would be far more cost effective than the Reclamation wide inspections and new regulatory structure mandated by the bill. As specific standards are developed in such cases Reclamation after consultation with water users should identify near term inspections.

The bill should recognize Reclamation's and water user's ongoing review of operations and maintenance programs. It should not cre-

ate a new Federal standard that would go beyond what might be required by existing contract and/or State law which would be the case in Idaho.

Second, this bill provides an opportunity to further push an important financing program already passed by Congress through this very committee that stymied in its implementation by the Office of Management and Budget. S. 2842 should specifically direct funding implementation of the loan guarantee program authorized by the Rural Water Supply Act of 2006. The 109th Congress sought to address the financing difficulties global agencies face by creating an innovative loan guarantee program to help them meet the financial obligations for the repair and rehabilitation of Federal water supply facilities.

That Act authorized a loan guarantee program within Reclamation that would leverage a small amount of appropriated dollars into a large amount of private lender financing available to qualified Reclamation contractor water districts with good credit. These loan guarantees, a long awaited critical financing tool for water users across the West are now being held up because of incorrect interpretations of clear Congressional direction by OMB. The Family Farm Alliance, earlier this year, prepared a very detailed white paper that we believe rebuts OMB's assertions and conclusions that explains why this program should be implemented post haste.

That paper was transmitted to Chairman Bingaman and committee staff about 2 months ago with the larger Energy committee. I would be happy to provide interested members on this subcommittee with that document if requested. It really is unfortunate that further legislation is required on this matter since we do not believe that's what Congress intended when they passed the Act 2 years ago.

The Family Farm Alliance is interested in this particular bill introduced by Senator Reid because it helps to underscore what is becoming a growing concern in the Western United States. It is imperative that we find creative ways to provide for the operation and maintenance and modernization of existing water supply infrastructure. With some clarifying changes and direction to prioritize and implement a financing program already signed into law, Senator Reid's bill could provide an important first step toward solving our aging water infrastructure problems.

We thank him for his leadership on this issue. Again we believe a current bill should be revised so that Reclamation guidelines for analyzing projects could be updated to include consideration for urbanization and other effects that were not in play when these facilities were originally designed many decades ago. However one size does not fit all and blanket inspections for all Reclamation facilities are not appropriate or cost effective.

Further many local districts may not have the financial capability to conduct required repairs to their facilities immediately. A loan guarantee program could assist them.

We believe these recommendations will further improve S. 2842. Our revisions are intended to help create a revised bill that our family farmers and ranchers and our membership can embrace. We look forward to continuing to work with the bill's sponsors on developing language toward that end.

Thank you for this opportunity to present our views today.
[The prepared statement of Mr. Keppen follows:]

PREPARED STATEMENT OF DAN KEPPEN, EXECUTIVE DIRECTOR, FAMILY FARM ALLIANCE, KLAMATH FALLS, OR

Chairman Johnson and Members of the Subcommittee: Thank you for this opportunity to submit testimony on behalf of the Family Farm Alliance (Alliance). My name is Dan Keppen, and I serve as the executive director for the Alliance, which advocates for family farmers, ranchers, irrigation districts, and allied industries in seventeen Western states. The Alliance is focused on one mission—To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. Our members include irrigation districts and water agencies that are responsible for the operation and maintenance of some of the Bureau of Reclamation's largest and most complex facilities.

I have over nineteen years experience in Western water resources engineering and policy work, including three years as manager of the Tehama County Flood Control and Water Conservation District in California. During that time, I was directly involved with management and repair work associated with three federally-declared flood disasters along the Sacramento River and its tributaries.

The following has been prepared to present our perspective on the "Aging Water Infrastructure and Maintenance Act" (S. 2842) and to offer recommendations to improve it further.

THE WEST'S AGING WATER INFRASTRUCTURE

The Bureau of Reclamation (Reclamation) built and manages the largest part of the critical water supply infrastructure that is the foundation of the economic vitality of the 17 Western States. Much of this federally-owned infrastructure is now 50-100 years old, approaching the end of its design life, and needs to be rebuilt and rehabilitated for the next century. The Congressional Research Service has calculated the original development cost of this infrastructure to be over $20 billion, and Reclamation estimates the current replacement value of its water supply and delivery infrastructure at well over $100 billion.

In the American West, Federal water supply systems are essential components of communities, farms, and the environment. These facilities are part and parcel of the nation's food-production system and their operation helps ensure our ability to provide reliable and secure food for our own citizens and the rest of the world. Reclamation estimates that $3 billion will be needed from project users in the near-term to provide for essential repairs and rehabilitation of Reclamation facilities.

Aging public infrastructure across the Nation is a growing critical problem. Throughout Reclamation's history, canals have been constructed in the West to deliver project benefits. When these canals were constructed, they were located generally in rural areas, where the major impact of canal failure was the loss of project benefits. However, with increased urbanization occurring on lands below many canals, loss of life or significant property/economic damage can now result from failure.

On April 10, 2008 Senator Harry Reid introduced the Aging Water Infrastructure and Maintenance Act (S. 2842), which provides an initial, timely approach to address these changing conditions.

BACKGROUND

Senator Reid has described S. 2842 as a response to January 5, 2008 failure of the Truckee Canal, which resulted in the flooding of 585 homes and businesses in Fernley, Nevada, causing an estimated $50 million in property damage. At nearly 100 years old, the Truckee Canal is one of Reclamation's oldest facilities, and it has experienced several failures, with the most recent of which is believed to have been caused by burrowing rodents, a common problem throughout the West. Senator Reid has said that the purpose of the bill is to provide Reclamation with resources and the direction to inspect and maintain aging water facilities so that disasters like the Fernley flood can be avoided.

S. 2842 would require Reclamation to inspect all of its facilities within two years and to review those inspections every three years thereafter. Reclamation would be required to use information gathered during the inspections to develop detailed maintenance schedules for facilities that Reclamation operates ("reserved facilities") and facilities, such as the Truckee Canal, that are operated by non-federal authorities ("transferred facilities"). S. 2842 also requires Reclamation to develop a "Na-

tional Priority List" of reserved and transferred facilities that need the "most urgent maintenance," and to review the projects on the list annually.

In addition, S. 2842 would direct Reclamation to develop, within six months of enactment, regulations to establish standards for the condition and maintenance of all project facilities. The standards are to require that the project operates in a manner that ensures the safety of populations and property located "in close proximity" to the project. Within one year of enactment, Reclamation would have to develop guidelines to ensure compliance with the new regulations.

The bill authorizes Reclamation to carry out (or have a non-federal entity carry out) any repair or modification to a project facility necessary to preserve its structural safety. If the structural deficiency to be repaired is on a transferred facility, and the problem does not result from a failure to comply with the new standards and guidelines, Reclamation may reimburse the non-federal operating entity for up to 65 percent of the cost of the repair/modification. If the structural deficiency on a transferred facility is the result of noncompliance with new standards and guidelines, Reclamation can make repairs or modifications to minimize the risk of "imminent harm" to lives and property and then seek reimbursement of costs from the non-federal operating entity.

S. 2842 authorizes $5 million in FY 2009 and $1.5 million annually in 2010 and 2013 to carry out the facility inspections, and it authorizes "such sums as are necessary" for project modifications.

ISSUES OF CONCERN AND RECOMMENDATIONS

There clearly is a need for Congress to address the deterioration of aging Reclamation facilities, and preventing failures like the one in Fernley should be an immediate priority. However, we have reviewed S. 2842 in detail and have a number of concerns about the legislation. In general, we believe that the bill's approach is too broad. It mandates additional inspections and new maintenance standards for all Reclamation facilities when the focus instead should be on those facilities that pose an actual risk to urbanized areas. The Reclamation-wide inspection program and new project condition and maintenance standards required by the bill would in many cases duplicate or undermine existing operation and maintenance (O&M) standards and inspection procedures built into contracts for transferred facilities. This would increase costs—federal and non-federal—without a corresponding increase in public safety. Finally, although S. 2842 would authorize financial assistance to non-federal entities responsible for the maintenance of federally-owned facilities, it is not clear how that assistance would be realized.

We note three primary areas of uncertainty in the bill that we think can be addressed via our associated recommendations.

1. Where detailed inspection programs already exist, it appears that the legislation would create new or redundant programs.

We are concerned about how the remedies proposed by S. 2842 would mesh with ongoing inspection, operations and maintenance (O&M) activities undertaken by local interests and Reclamation.

For transferred facilities, there is generally a contract between Reclamation and the non-federal operating authority that mandates standards for inspections and project conditions and performance. Reclamation performs regular inspections on these facilities and essentially dictates to the local authority which repairs or modifications are necessary and the appropriate level of maintenance.

For example, the major pumping and conveyance facilities of the Central Valley Project (CVP) in California are operated and maintained by non-federal authorities under transfer agreements with Reclamation. These authorities include the San Luis Delta-Mendota Water Authority (SLDMWA), Tehama-Colusa Canal Authority (TCCA) and the Friant Water Authority (FWA). The transfer agreements for the CVP facilities specifically address inspections. In the case of the Friant-Kern and Delta-Mendota Canals, Reclamation, in conjunction with the respective FWA SLDMWA and TCCA water managers perform a detailed inspection of the facilities every three years and identify for Reclamation items requiring repair or rehabilitation. Reclamation may require additional inspections annually.

Maintenance of the CVP facilities has improved since the local authorities took them over from Reclamation. Since the transfer of O&M responsibilities to these California authorities, significant progress has been made on repair and rehabilitation projects that were repeatedly deferred by Reclamation when it was responsible for operating the facilities.

Reclamation also has an ongoing program to review the operations and maintenance on all Reclamation project reserved works. Reports from those inspections in-

dicate any deficiencies, their relative priority for correction and other aspects of project function. These reviews and inspections have been conducted for many decades.

In Fernley, Reclamation had apparently conducted an inspection on the failed canal at some point preceding the failure. Their inspection showed nothing to be alarmed about, and it is not clear whether the rodent burrows were missed in the inspection or whether the burrowing occurred after the inspection took place.

Recommendation: Revise Inspection Requirements for Critical Areas

We believe that a different level of scrutiny is appropriate for canal reaches that are cutting through urbanizing areas. Focusing inspections and setting standards on aging canals that pose significant threats to life and property would be far more cost-effective than the Reclamation-wide inspections and new regulatory structure mandated by the bill. As specific standards are developed in such cases, Reclamation, after consultation with water users, should identify near-term inspections, even though there may have been a recent inspection.

The legislation could require Reclamation to revise its inspection procedures to give a higher priority to identifying structural problems in facilities where failures could directly impact urbanized areas. Improved inspections could bring the most critical aging problems to the forefront and, if done correctly, will allow prioritization from the most imminent possibility of failure to the least (natural occurrences notwithstanding).

The bill should recognize Reclamation's and water users' ongoing review of operations and maintenance programs. Maintenance schedules already exist and have been complied with for years. Depending on how S. 2842 bill would be interpreted by local Reclamation staff, there is the potential that current appropriate maintenance practices of non-Federal agencies could be turned upside down. It may be more effective for local Reclamation staff to sit down with the canal managers on a regular basis (e.g., monthly or quarterly) to review concerns that have ALREADY been identified by the canal managers and which need attention; thereby creating a regular, cooperative approach rather than more, questionable, and sometimes confrontational, "surprise" inspections.

The proposed bill should not create a new federal standard that would go beyond what might be required by existing contract and/or State law. For example, Idaho statutes already require that canals be maintained in good repair and prepared to deliver water each year.

2. It is unclear how the "federal vs. non-federal" obligation will be defined for facilities transferred to non-federal entities, particularly when some facilities did not meet modern federal standards at the time of transfer.

S. 2842 seems to assume that all transferred facilities were in compliance with engineering design standards at the time Reclamation transferred the facilities to local authorities. Unfortunately, that was not always the case.

A very real problem that Western water managers are facing in some areas relates directly to the Fernley experience. Many Reclamation canal facilities were designed at a time when urban development wasn't even a consideration. Often, these facilities were located in rural, isolated settings. In the decades that followed initial construction of these facilities, issues arose that were not serious problems in rural areas.

For example, water seeping from earth-lined canals has created wetlands adjacent to some canal reaches, attracting all manner of wildlife. Reaches of the Madera Canal in California near these "wetlands" have become home to huge populations of ground squirrels, who have burrowed into canal banks, further threatening the integrity of these structures and leading to increased seepage.[1]

As new housing developments encroach further and further into the once rural areas bisected by these original canals, the current level of repair will not be tolerated by the new residents. In fact, in Madera, concrete-lined canals -designed with no knowledge of the burgeoning growth that would occur many decades later—have failed, resulting in litigation leveled at local districts from new residents that have moved into the area.

In addition, the bill's definition of "project facility" could be read to include local distribution works built and/or operated and maintained by non-federal agencies that are fully paid out but title transfer has not yet occurred.

[1] In Western Colorado, prairie dogs pose a similar threat. Districts in that area fear that if the prairie dog is included on the ESA list as currently proposed, there will be nothing they can to control their canal banks from being riddled with burrows.

Recommendation: Clarify the Local Responsibility for Transferred Works

The bill should be modified to clearly define the federal obligation vs. non-federal obligation for facilities transferred to a non-federal entity that didn't meet "federal standards" at the time of transfer.

Water users should have a partnership role with Reclamation in this process because they have a direct interest in seeing that Reclamation facilities are operated and maintained properly. Any kind of canal failure could result in non-delivery of water and have adverse effects on irrigators (and municipalities) and their corresponding communities.

The definition of "project facility" should be clarified.

3. Reimbursement timing and reliability are unclear.

S. 2942's treatment of how and when reimbursements for facility repairs and modifications will be provided is not clear. It appears the bill treats Reclamation-operated facilities and transferred facilities differently. Congress should understand that water users currently cover Reclamation costs for inspections under both situations, and in most cases, are responsible for funding their own O&M budgets each year. In some areas, such as Friant, all of the facilities are federally owned. If the locals undertake the work proposed in S. 2842, which in many cases would be in addition to their regular O&M budget, they must first clearly understand when reimbursement money will become available, how to handle full or partial funding in the absence of collateral, the manner in which line item earmarks will be considered, etc.

Under the current service agreements between Reclamation and local authorities, funding for major repair projects can be challenging. Local authorities are also concerned about Reclamation's discretion to define which types of project costs are capital and which costs are O&M. In the water users' view, more and more of these determinations are shifting costs to O&M, and therefore, the water users are challenged with significant repairs payable in a single year rather than amortized over a longer capital repayment period.

Water users will face a challenge to make timely repairs if they are to rely on funding from this proposed program. By the time funding for a project would be reflected in Reclamation's budget, and that project is actually implemented, a decade may have elapsed, based on current practices.

Recommendation: Clarify Reimbursement Terms for Local Agencies

The bill should be revised so that adequate funding, realistic timing and a reliable means of reimbursement are provided by the federal government to non-federal operating entities. The non-federal operating entities do not hold title to Reclamation facilities and thus have limited collateral for financing purposes.

Recommendation: Specifically Direct Funding and Implementation of Loan Guarantees Program

Direct loans provide one useful mechanism for local agencies to make infrastructure repairs. In the past, Reclamation offered its water users loans, which allowed users to finance over many years their contractual share of repair and rehabilitation costs. Currently, Reclamation does not have an active program that provides either loans or a budget line for the water user share of these rapidly increasing costs, even under hardship conditions.

S. 2842 should specifically direct funding and implementation of the loan guarantee program authorized by The Rural Water Supply Act of 2006 (PL 109-451). The 109th Congress sought to address the financing difficulties local agencies face by creating an innovative loan guarantee program to help them meet their financial obligations for the repair and rehabilitation of Federal water supply facilities. The Act authorized a loan guarantee program within Reclamation that would leverage a small amount of appropriated dollars into a large amount of private lender financing available to qualified Reclamation-contractor water districts with good credit. In other words, the Congress gave the authority to Reclamation to co-sign a loan to help their water contractors meet their contract-required, mandatory share of extraordinary maintenance, facility rebuilding and replacement costs of federally-owned facilities.

Given this scenario, it is incredible that Reclamation loan guarantees, a long-awaited critical financing tool for water users across the West, are now being held up because of incorrect interpretations of clear Congressional direction by the Office of Management and Budget (OMB). This is not what Congress intended.

SUMMARY AND CONCLUSION

Reclamation guidelines for analyzing projects should be updated to include considerations for urbanization and other effects that were not in play when these facilities were originally designed, many decades ago. However, one-size still does not fit all, and blanket inspections for all Reclamation facilities are not appropriate or cost-effective. Further, many local districts may not have the financial capability to conduct required repairs to their facilities immediately. A loan guarantee program can assist them. We believe these recommendations will further improve S. 2842.

We hope that you will see our comments in the constructive light in which they are offered. Senator Reid's bill, if enacted, will impact the family farmers and ranchers who make up our membership, and our suggested revisions are intended to help create a revised bill that they can embrace. We look forward to working with bill sponsors on developing bill language towards that end.

Thank you for this opportunity to present our views today.

Senator JOHNSON. Thank you, Mr. Keppen.

Mr. Long.

STATEMENT OF BILL LONG, PRESIDENT, SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, LAS ANIMAS, CO

Mr. LONG. Good afternoon Chairman Johnson and committee members. I am Bill Long, President of the Southeastern Colorado Water Conservancy District. I would like to thank the committee for the opportunity to present testimony in support of S. 2974. Also, I would like to thank Senators Allard and Salazar for their unending efforts to complete the Frying Pan Arkansas Project with the construction of the proposed Arkansas Valley Conduit.

Frying Pan Arkansas legislation originally enacted in 1962 created a multi purpose project that includes a water collection system on the West slope of Colorado that collects and delivers clean water to the municipal and agriculture users in the Arkansas River Basin of Southeast Colorado. Among the storage and delivery facilities authorized in the Arkansas River Basin was the Arkansas Valley Conduit. Frying Pan Arkansas Project Act requires that municipal water supply works either be constructed by communities themselves or if infeasible by the Secretary with repayment of actual costs and interest within 50 years.

During development of the original project Reclamation found the conduit to be economically feasible but the beneficiaries lack the bonding capability to construct the works themselves. The beneficiaries of the conduit found that it is also was financially unfeasible to repay Reclamation within 50 years if Reclamation were to construct the conduit. Indeed they still cannot afford this project. federally mandated water quality regulations are increasing and are most difficult to comply with utilizing our current water supply source. Protecting public health is of utmost importance to our water providers. Without the Arkansas Valley Conduit individual local water providers will be forced to provide expensive temporary fixes. They will turn to Federal grant programs to pay for them.

In the meantime they will face fines and penalties which only exacerbate their financial constraints. The Conduit Project and legislation are needed today to assist the communities of the Lower Arkansas River Basin to resolve its water quality and supply issues through a cost effective regional approach. Recently we have been discussing with the Bureau of Reclamation, our Congressional delegation and other governmental partners an approach that would

apply current and future miscellaneous revenues generated by Fry-Ark to repay the debt on the Fry-Ark components in a different manner than is currently provided for in the repayment contract between Southeastern and the United States.

Unique among Federal Reclamation projects, the Frying Pan Arkansas Project is beginning to generate significant miscellaneous revenues from the storage of non project water in Fry-Ark facilities to excess capacity or if and when contracts. We propose using this miscellaneous project revenue generated by the project itself to count toward the 100 percent payment of actual construction costs. The estimated cost of the Arkansas Valley Conduit is 300 million and will take until 2021 to design, permit, acquire right of ways and construct.

The participants have secured a guaranteed loan for $60.6 million from the State of Colorado to help in the repayment of their obligation. The proposed repayment schedule is based on a 65 percent Federal share and 35 percent local share. The local share would be paid back with interest. The Federal share would be repaid with Fry-Ark generated miscellaneous revenue.

The Arkansas Valley Conduit participants would make payments from the proceeds of the State loan and revenues generated by local water fees toward construction costs. Miscellaneous contract revenues would be used to make payments on remaining construction costs. Repayment would be complete in 2072, within the 50 year requirement of the Fry-Ark authorizing legislation.

The goal of S. 2974 is to make this project a reality. We ask you to help provide the means necessary to address the water quality concerns of the Lower Arkansas Valley. Southeastern and other project proponents are prepared for the hard work ahead and ask for your help.

Mr. Chair, Southeast, the project sponsor and the Bureau of Reclamation partner, our partner, is somewhat disappointed with the Bureau of Reclamation testimony today. We have had continuing dialog with the Bureau concerning this concept over the past year. Their testimony today is the first time they have expressed concerns about our proposal. It is not timely and does not meet the standards set in their motto, "Managing for Excellence."

In closing I once again thank the committee for the opportunity to testify today and would be happy to answer the committee's questions. Also I have two documents I would like to submit for the record, a list of our participants and a letter from the State of Colorado endorsing the project and providing the $60 million loan.* Thank you.

[The prepared statement of Mr. Long follows:]

PREPARED STATEMENT OF BILL LONG, PRESIDENT, SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, LAS ANIMAS, CO

[Mr. Chair] My name is Bill Long, president of the Southeastern Colorado Water Conservancy District ("Southeastern"), and I am testifying today in support of S. 2974: a bill to authorize the construction of the Arkansas Valley Conduit in the State of Colorado, and for other purposes (Arkansas Valley Conduit Act). I thank the Subcommittee for the opportunity to testify today. I also thank Senators Allard and Salazar for their leadership in introducing this legislation and the Subcommittee for holding this hearing today.

* See Appendix II.

As background for my testimony, Southeastern is a statutory water conservancy district (see C.R.S. § 37-45-101, et seq.), which was formed on April 29, 1958, by the District Court for Pueblo County, Colorado. Southeastern's district boundaries extend along the Arkansas River from Buena Vista to Lamar, and along Fountain Creek from Colorado Springs to Pueblo, Colorado. Southeastern administers, holds all water rights for, and repays reimbursable costs for the Fry-Ark Project, a $550 million multi-purpose reclamation project authorized by Congress and built by the U.S. Bureau of Reclamation ("Reclamation"). The Project diverts water underneath the Continental Divide, from the Fryingpan and Roaring Fork River drainages, into the Arkansas River drainage, where Project water is stored in Pueblo Reservoir and other reservoirs. Southeastern provides Project water and return flows to supplement the decreed water rights of water users within Southeastern's boundaries. Southeastern repays a large part of the Project's construction costs (estimated at $127 million over a minimum 40-year period), as well as annual operation and maintenance costs, in accordance with its repayment contract with the United States. Payments are made from property tax revenues available to Southeastern, supplemented by revenue from Project water sales.

On August 16, 1962, John F. Kennedy flew to Pueblo, Colorado to officially and proudly proclaim the authorization of the Project, and the start of construction. Both the 1962 Act, and the1978 Amendment contemplated the construction of the Arkansas Valley Conduit, which has yet to be developed, primarily because the constituents do not have the funding to develop it.

As early as 1953, the Secretary of the Interior acknowledged that additional quantity and better quality of domestic and municipal water was critically needed for the Arkansas Valley, and in particular for those towns and cities east of Pueblo. House Document 187, 83d Congress, 1st Session, and the Fryingpan-Arkansas Final Environmental Statement dated April 16, 1975, both of which have been incorporated by reference into the Authorizing Act, recognized that the Arkansas Valley Conduit would be an effective way to address this need. The local water available from the Arkansas River alluvium has historically been high in Total Dissolved Solids (TDS), sulfates, and calcium, and has objectionable concentrations of iron and manganese.

Representatives of local and county governments, water districts and other interested citizens of the Lower Arkansas River Basin formed a committee in 2000 to consider a feasibility study of the Arkansas Valley Conduit. These interested parties formed the WaterWorks! Committee and, along with Southeastern, began to review the feasibility of developing the Arkansas Valley Conduit. Some of the relevant conclusions reached are as follows:

- The cost of the Arkansas Valley Conduit compares favorably with any "no action alternative," which would still require the communities involved to make substantial financial investments to address current water quality and safe drinking standards.
- The financial capabilities of the participating agencies are estimated to be inadequate to fund the construction of the proposed Arkansas Valley Conduit, under a 100 percent funding requirement, but Arkansas Valley Conduit participants could afford to pay 20 percent cost-share.
- There is an adequate water supply to make the Arkansas Valley Conduit feasible.

As mentioned above, the Arkansas Valley Conduit was included in the original Fry-Ark reports integrated into the Fry-Ark Authorization Act. The Arkansas Valley Conduit was not built because communities in the Lower Arkansas River Basin could not fully fund the Arkansas Valley Conduit project. A study of the Arkansas Valley Conduit was prepared for Southeastern, the Four Corners Regional Commission and the Bureau of Reclamation in 1972. The report's recommendations for construction of a water treatment plant, pumping station and conduit to serve 16 communities and 25 water associations east of Pueblo were not implemented at that time due to the lack of federal funding. Evaluations on the quantity of water needed to satisfy long-range objectives for water users in the Southeastern district area were prepared in 1998. Additionally, an update of the estimated construction costs presented in the 1972 report was prepared in 1998.

The question of how to fund the construction of the Arkansas Valley Conduit has dominated Southeastern's and its partners' efforts over the past five years. Recently, we have been discussing with the Bureau of Reclamation, our Congressional delegation and other governmental partners an approach that would apply current and future miscellaneous revenues generated by Fry-Ark to repay the debt on certain Fry-Ark components in a different manner than is currently provided for in the repayment contract between Southeastern and the United States, including construction of the Arkansas Valley Conduit.

Unique among Federal Reclamation projects, the Fryingpan-Arkansas Project (Fry-Ark) is beginning to generate significant miscellaneous revenues from storage of non-project water in Fry-Ark facilities through "excess capacity" or "if-and-when" contracts. We propose using this miscellaneous project revenue, generated by the Fry-Ark itself, to count towards the 100 percent payment of actual costs requirement.

The estimated cost of the Arkansas Valley Conduit is $300 million and will take until 2021 to design, permit, acquire rights-of-way, and construct. The participants have secured a guaranteed loan for $60.6 million from the State of Colorado to help in their repayment obligation.

The proposed repayment schedule is based on 65% Federal share and 35% local share. The local reimbursable portion would be $105 million and would be paid back with interest. The Federal non-reimbursable portion of the Arkansas Valley Conduit would be $195 million, and would be paid without interest.

It is estimated that construction of the Arkansas Valley Conduit would be complete in 2020 and would begin delivering water in 2021, at which time payment on the reimbursable portion of the Fry-Ark costs would begin with 3.046% interest.

The Arkansas Valley Conduit participants would make a $40 million payment toward the $105 million reimbursable construction costs. Contract Revenue would be used to make payments on the remaining reimbursable balance of the Arkansas Valley Conduit.

Once the reimbursable portion repayment is complete, Contract Revenue would be used to pay for the non-reimbursable $195 million (without interest.) This non-reimbursable portion repayment would be complete in 2072, within the 50 year requirement of the Fry-Ark authorizing legislation.

To implement this approach, the Fry-Ark authorizing act will need to be amended to limit Arkansas Valley Conduit beneficiaries' repayment obligation to not more than 35 percent. The combined Fry-Ark Contract Revenue and Arkansas Valley Conduit beneficiary payments will pay 100 percent of the Arkansas Valley Conduit construction costs, with interest being applied only on the 35 percent reimbursable Arkansas Valley Conduit beneficiary obligation.

The citizens and communities of the Lower Arkansas River Basin have waited 30 to 50 years for this project that will improve their water quality and supply. The need for the Arkansas Valley Conduit has been well established for more than 50 years. The Lower Arkansas River Basin communities continue to seek federal assistance in moving this much-needed project forward. We ask this subcommittee's prompt action in support of S. 2974. We look forward to working with our Congressional delegation and this Subcommittee to bring this much-needed project to fulfillment.

Senator JOHNSON. Thank you, Mr. Long.

Ms. Gimbel.

STATEMENT OF JENNIFER GIMBEL, DIRECTOR, COLORADO WATER CONSERVATION BOARD, DENVER, CO

Ms. GIMBEL. Chairman Johnson, thank you very much for the invite. Good afternoon, Senator Salazar. My name is Jennifer Gimbel and I serve as the Director of the Colorado Water Conservation Board within the Colorado Department of Natural Resources.

I am here on behalf of the non-Federal parties to the recovery program of San Juan and Upper Colorado River in support of S. 3189. I have provided detailed written testimony that you have received. S. 3189 provides needed amendments to Public Law 106–392, the authorizing legislation for the Upper Colorado and San Juan Endangered Fish Recovery Programs.

I don't think I can do any better at the job explaining the need for those programs than Senator Barrasso did and Senator Salazar have already done except to add maybe a couple of figures to that. That is that the program has provided compliance, ESA compliance, for more than 1,600 water projects. We're talking about over three million acre feet of depletion.

This includes ESA compliance for the Bureau of Reclamation Projects in the Upper Basin which by the way are very important in the scheme of the Colorado River Compact. The programs have enjoyed bipartisan support that have been hailed by Administration from both parties. By 2010 these programs will have constructed approximately $100 million in facilities: fish passages, fish screens, flooded bottom lands, habitat, hatcheries and a reservoir that augments flows for endangered fish.

These large complex facilities on and/or near the Upper Colorado River and San Juan River Basins will require rehabilitation, repair or replacement. Authorization for the Secretary to conduct capital construction expires September 30, 2010. Existing funding authority will have been expended.

S. 3189 will authorize an additional $12 million for capital projects for the San Juan Program, including $7 million for protecting critical habitat of endangered fish species from rock slides in the area west of Farmington, New Mexico, and $5 million for repair, rehabilitation and replacement of constructed capital facilities as needed until the year 2023. It will also authorize an additional $15 million in Federal expenditures for capital projects for the Upper Colorado River Program to construct a fish screen in critical habitat on the Green River in Wyoming and again, also for repairs, rehabilitation and replacement of constructed capital facilities through 2023.

S. 3189 also recognizes the additional non-Federal cost share of $56 million through 2030. The authorization for Federal appropriations would only increase $27 million over 13 years. The remaining $56 million is provided by additional non-Federal contributions as allowed in Public Law 106–392.

The non-Federal cost share of capital cost increases from 52 percent to 58 percent. Chairman Johnson you had mentioned the cost share of 17 million. Actually the non-Federal cost share has been about $65 million and will go up to $121 million with this bill.

The bill also authorizes annual base funds for power revenues which have contributed significantly to the success and implementation of the Recovery Programs. That is set to expire in 2011. At that point annual base funding will be reduced by 39 percent.

Annual base funding supports actions other than operation and maintenance of capital projects and monitoring. It includes non-native fish management, research, public information and involvement and program management. If this funding is eliminated from both programs this could delay and significantly impede the Recovery Program achievements in restoring the populations. As a result, I believe as either Senator Salazar or Senator Barrasso mentioned, more than 1,600 water projects, as well as future projects, would be in jeopardy.

Also, S. 3189 provides authority for the Western Area Power Administration to obtain loans from the Colorado Water Conservation Board should power revenues be insufficient in any specific year. This authority is already provided for capital projects. This bill would then allow that authority to happen for the rehabilitation and the rehab and replacement and repairs.

I appreciate the opportunity to provide this testimony to the Water and Power Subcommittee. I would note that many, many

water user groups have supported this. We have letters from the Wyoming Water Association, Colorado Water Congress, Nature Conservancy, Western Resource Advocates, Navajo Nation, San Juan Water Commission, the list goes on.

With that, I would be happy to answer any questions, Mr. Chairman. Thank you for this opportunity.

[The prepared statement of Ms. Gimbel follows:]

PREPARED STATEMENT OF JENNIFER GIMBEL, DIRECTOR, COLORADO WATER CONSERVATION BOARD, DENVER, CO

My name is Jennifer Gimbel. I serve as Director, Colorado Water Conservation Board, within the Colorado Department of Natural Resources. I am here to testify in support of S. 3189.

The Colorado Water Conservation Board (CWCB) has been involved in the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program (programs) since the inception of these programs in 1988 and 1992, respectively. The Colorado Water Conservation Board and the Colorado Division of Wildlife actively participate in the programs on behalf of the State of Colorado. The State Engineer's Office participates in administration of water for delivery to endangered fish habitat within the state of Colorado. We not only participate in the governance and the technical committees of the programs, but the CWCB has also provided loans to the programs to cover capital projects in accordance with Public Law 106-392.

I believe you will be receiving or have received letters of support for S. 3189 from several participants in the programs, including the States of Colorado, New Mexico, Utah, and Wyoming, American Indian tribes, water users, power customers and environmental organizations.

UPPER COLORADO AND SAN JUAN RIVER BASIN RECOVERY PROGRAMS

The programs have the goals of recovering four federally listed endangered fish species in the Upper Colorado River basin while water development and management activities proceed in compliance with state laws, interstate compacts, and the federal Endangered Species Act. Activities of the programs provide Endangered Species Act compliance for more than 1,600 water projects depleting approximately three million acre-feet per year in the Upper Colorado River basin, including every Bureau of Reclamation project in the Upper Basin upstream of Lake Powell. No lawsuits have been filed as a result of ESA compliance. The programs have substantial grassroots support among participants, including the four Upper Basin states (Colorado, New Mexico, Utah, Wyoming), American Indian tribes (Navajo Nation, Jicarilla Apache Nation, Southern Ute Tribe, Ute Mountain Tribe), water users, power customers and environmental organizations. Four federal agencies (U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, National Park Service, and Western Area Power Administration) participate in the programs. Since the inception of these programs, they have enjoyed strong support in Congress, as indicated the substantial bi-partisan support in both the Senate and the House of Representatives for annual appropriations.

The programs have been hailed by administrations of both parties for their successes. In 2000, Secretary of the Interior, Bruce Babbit referred to the Upper Basin recovery programs as "an ongoing success story" (Colorado River Water Users Association, 2000). Secretary of the Interior Gale Norton referred to the programs as a national model of how the Endangered Species Act should be implemented (Colorado Water Congress, 2006). In 2008, Secretary Dirk Kempthorne awarded the Upper Basin and San Juan programs the Department of the Interior's Cooperative Conservation Award for the successful history of stakeholder collaboration resolving "seemingly intractable water use conflicts..." (see attached Exhibits A and B).*

P.L. 106-392: P.L.106-392 was signed into law on October 30, 2000. The law authorizes the Bureau of Reclamation to provide cost sharing of capital construction and annual operations for the endangered fish recovery programs for the Upper Colorado and San Juan River basins. The law recognizes significant and specific cost sharing contributions to the programs by the States of Colorado, Wyoming, Utah, and New Mexico, power customers, and water users for these purposes.

P.L. 106-392 has been amended twice. P.L.107-375 extended the period for capital construction to 2008 for both programs. P.L.109-183 extended the period for con-

* Exhibits A–C have been retained in subcommittee files.

struction of capital projects for both programs through FY 2010, authorized an additional $15 million in capital expenditures for the Upper Colorado River Recovery Program, and recognized an additional $11 million in non-federal cost share contributions.

S. 3189 provides for additional needed authorization for capital construction of projects, recognizes additional non-Federal cost sharing, and continues annual funding of the programs at current levels, as discussed in detail below.

S. 3189 AMENDMENTS REGARDING ADDITIONAL AUTHORIZATION OF CONSTRUCTION OF CAPITAL PROJECTS AND ADDITIONAL NON-FEDERAL COST SHARING

NEED FOR 2008 AMENDMENTS RE: CAPITAL PROJECTS: By 2010, these two programs will have constructed approximately $100 million in facilities (fish passages, fish screens, flooded bottomlands habitat, hatcheries, and a reservoir that augments flows for endangered fish) (Exhibit C). These large, complex facilities are on, or adjacent to, major rivers in the Upper Colorado and San Juan River basins and will require rehabilitation, repair or replacement. Many of the facilities are susceptible to damage by floods and debris associated with the major rivers on which they are located, i.e. Green, Colorado, Gunnison and San Juan.

Additional authority is needed to complete the Tusher Wash fish screen on the Green River. Additional time is needed to complete capital projects in the San Juan basin.

Authorization for the Secretary of the Interior to conduct capital construction expires on September 30, 2010. Existing funding authority for the Upper Colorado Program will have been expended.

The proposed amendments will authorize funding to protect critical habitat. Unstable rock formations adjacent to designated critical habitat for the endangered razorback sucker and Colorado pikeminnow in the San Juan River caused a major landslide near Farmington, New Mexico. A second slide occurred in August, 2007 in the same area. U.S. Fish and Wildlife Service determined that the unstable cliffs are a threat to critical habitat in the San Juan River. The estimated cost of stabilizing the rock formation is $7 million. Presently, authority for this type of activity does not exist in P.L. 106-392. It would be prudent to have such authority to ensure recovery of the species and continued ESA compliance for the water projects that rely on the programs.

Specifically, S. 3189 would achieve the following:

- Authorize an additional $12 million in federal expenditures for capital projects for the San Juan Program for the purposes of a) protecting critical habitat of endangered fish species from rock slides in the area west of Farmington ($7 million), and b) repair, rehabilitation and replacement of constructed capital facilities (fish passages, fish screens, habitat, hatcheries) as needed through 2023 ($5 million).
- Authorize an additional $15 million in federal expenditures for capital projects for the Upper Colorado Program for the purposes of a) constructing a fish screen on Tusher Wash in critical habitat on the Green River, Utah in light of significantly increased construction material costs, and b) for repairs, rehabilitation and replacement of constructed capital facilities (fish screens, fish passages, habitat, hatcheries) as needed through 2023.
- Recognize additional non-federal cost sharing of $56 million through 2023.

Appropriations will only be requested as needed and any requests would be subject to Congressional scrutiny.

IMPACT ON COST SHARING: S. 3189 would increase the total capital projects authorizations from $126 million to $209 million. However, authorization for federal appropriations only would increase from $61 million to $88 million through 2023, an increase of $27 million over the 13 fiscal year period. The remaining $56 million is provided by additional non-federal contributions of the same kind as recognized by and included in the authorizations for the programs set forth by Congress in P.L. 106-392. This additional non-federal contribution is from power replacement costs due to reoperation of Flaming Gorge Dam to benefit the endangered fish. It is conservatively estimated at $56 million over the current estimate of $22.1 million (Flaming Gorge EIS, U.S. Bureau of Reclamation, 2007). With the recognition and inclusion of these additional, out-of-pocket power replacement costs, the non-federal share of capital costs increases from 52% to 58%. Non-federal cost sharing also includes $8.9 million from water users previously recognized by Congress.

A comparison of cost sharing under the proposed 2008 amendments with the present law is provided below.

Table 1 – Currently Authorized Capital Projects Authorization and Proposed Funding Authorization to Accomplish Needed 2008 Amendments

Item	Currently Authorized (millions $)		Proposed (millions $)	
Capital Expenditure Completion Deadline	2010		2023	
Total Capital Projects Authorization		$126		$209
Federal share	(48%)	$61	(42%)	$88
Non-federal share	(52%)	$65	(58%)	$121
Funding Sources				
Federal appropriations		$61		$88
Non-federal Cost Share				
o Power revenues		$17		$17
o Upper Basin States		$17		$17
o Recognized non-federal water and power contributions		$31		$87
		$126		$209
Funding Distribution				
▪ San Juan Program capital projects		$18		$30
▪ Upper Colorado Program capital projects		$77		$92
▪ Recognized non-federal water and power contributions		$31		$87
		$126		$209

S. 3189 AMENDMENTS REGARDING AUTHORIZATION OF CONTINUED ANNUAL BASE FUNDING FROM POWER REVENUES

ANNUAL BASE FUNDING: Annual base funds from power revenues contribute significantly to the successful implementation of recovery actions by both recovery programs, including instream flow identification, evaluation, and protection; habitat restoration and maintenance; management of nonnative fish impacts; endangered fish propagation and stocking; research, monitoring, and data management; public information and involvement; and program management. Subsequent to passage of P.L. 106-392, $27,139,900 in power revenue base funds have been expended or obligated by the Upper Colorado Recovery Program, and $12,969,300 by the San Juan Recovery Program (2001—2007). The U.S. Fish and Wildlife Service, the four participating states, American Indian Tribes, and water users also provide additional annual funding and in-kind contributions for these activities.

NEED FOR 2008 AMENDMENTS: P.L. 106-392 requires the Secretary of the Interior to submit a report to the appropriate Committees of the United States Senate and House of Representatives by the end of fiscal year 2008 on the utilization of power revenues for annual base funding of the recovery programs, and to make a recommendation regarding the need for continued annual base funding from power revenues beyond fiscal year 2011 that may be required to achieve the goals of these recovery programs. The report has been under revision in the Department of the Interior since January, 2008. It is expected to be delivered to Congress soon. Regardless of when the delivery of this report occurs, we urge Congress to enact the amendments to continue annual funding of the recovery programs at current levels.

Unless reauthorized by Congress, the utilization of power revenues for annual base funding of recovery program actions, other than for operation and maintenance of capital projects and monitoring, will cease after fiscal year 2011.

The approximate fiscal impact of reductions in annual base funding (estimates in fiscal year 2008 dollars) after fiscal year 2011 without reauthorization is summarized as follows:

Recovery Program	Currently Available Annual Base Funding	Reductions in Annual Base Funding After 2011 Without Reauthorization	Remaining Annual Base Funding After 2011 Without Reauthorization
Upper Colorado	$4,678,000	-$1,824,000	$2,854,000
San Juan	$2,339,000	-$942,500	$1,396,500
Total:	**$7,017,000**	**-$2,766,500**	**$4,250,500**
Percent:	**100%**	**-39%**	**61%**

Without reauthorization, annual base funding from power revenues for nonnative fish management, research, public information and involvement, and program management would be eliminated from both recovery programs. This would delay and

significantly impede the recovery programs' achievements in restoring populations of the endangered fishes. As a result, ESA compliance provided by recovery program actions for more than 1,600 water projects, as well as future projects, would not likely continue. ESA compliance depends not only on implementing recovery actions, but is ultimately and directly linked to long-term improvement in the status of fish populations and achievement of recovery.

The non-federal participants in the programs recommend that Congress also pass amendments to insure continued base funding at current levels. S. 3189 accomplishes this. The report by the Secretary is under review in the Department of the Interior. It is expected to be delivered to Congress soon, and is expected to include recommendations consistent with the recommendations of the non-federal participants listed below, which are embodied in S. 3189.

RECOMMENDATIONS REGARDING BASE FUNDING: The non-federal participants in the programs offered the following recommendations to the Secretary regarding continued authorization of base funding to be incorporated into P.L. 106-392:

1. P.L.106-392 should be amended to allow continued use of power revenues through 2023 for annual base funding of all activities as originally authorized and which are necessary to achieve recovery. The expected date of recovery of the razorback sucker and bonytail is 2023. In 2020, the Secretary should be required to submit a report to Congress on the need for continued funding beyond 2023 and the recommended sources of funding.

2. To assure that annual base funds are available in the event that the balance in the Upper Colorado River Basin Fund cannot meet annual base funding needs for the recovery programs, Congress should:

a) Add authority to enable Western Area Power Administration to borrow from the Colorado Water Conservation Board Construction Fund the annual base funds that would otherwise be derived from the Upper Colorado River Basin Fund (Basin Fund) and to repay those borrowed funds from the Basin Fund, as is currently authorized for capital construction projects funded with the Basin Fund; and,

b) Add specific authority for congressional appropriations for annual base funding if annual funding of the recovery programs cannot be provided from the Basin Fund or the Colorado Water Conservation Board loans in a given year or years, and direct Reclamation, in consultation with Western Area Power Administration, to inform Congress if such a situation is reasonably foreseeable as far in advance as possible.

3. The language in the existing legislation that states that base funding and depletion charges previously agreed upon should be retained: "Nothing in this Act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the Recovery Implementation Programs." This provides that annual and in-kind cost sharing by the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the four participating States, American Indian Tribes, and water users identified in the original agreements will continue.

4. The authorizing legislation should be amended to state that provision of base funding through 2023 should be contingent upon the recovery programs modifying the respective Cooperative Agreements extending the terms of the recovery programs through 2023, and that any needed modifications take place at least one year prior to expiration of the current agreements.

S. 3189 implements these recommendations.

Letters supporting these recommendations have been submitted to the Secretary of the Interior by the following non-federal recovery programs' participants for the Secretary of the Interior:

State of Colorado; State of Utah; State of New Mexico; State of Wyoming; Jicarilla Apache Nation; Navajo Nation; Southern Ute Indian Tribe; Ute Mountain Ute Tribe; Colorado Water Congress; Utah Water Users Association; Wyoming Water Association; San Juan Basin Water Users;Colorado River Energy; Distributors Association (CREDA).

I appreciate the opportunity to provide this testimony to the Water and Power Subcommittee.

Senator JOHNSON. Thank you. Mr. Keppen, your testimony recommends that S. 2842 take into account the ongoing inspection and maintenance programs paired up by BOR and water users. Could

these programs provide the basis for a national priorities list of infrastructure maintenance to water users? Prioritize maintenance actions based on the risk posed to populated areas?

Mr. KEPPEN. I would say, Mr. Chairman, the answer to your first question is yes. I think we've advocated kind of a cooperative approach to doing that between the water users and the Bureau of Reclamation. Maybe one of those forums is actually what Commissioner Johnson mentioned earlier, this canal workshop series that has been set up, but something similar to that where the water users, the local entities and the Bureau are sitting down together to come up with that list.

The second question, I guess, was regarding whether water users prioritize maintenance actions based on the risk posed to population areas. It's going to depend, I think, where you're at. I ran a flood control district in Sacramento Valley for 3 years about 10 or 15 years ago. I would say, definitely yes, in that case. I think that it is the case probably for most districts.

Maintenance actions are contingent on a lot of things. Population is probably one of the most important, also the location of important infrastructure, pumping plants, things like that. But I would say, you know, without going out and canvassing my membership based on my experience and based on what I've seen out there, I would say, yes. Maintenance actions are probably, very definitely, are based in large part on the areas they protect.

Senator JOHNSON. Mr. Long, BOR questions whether the revenue available from the excess capacity contracts will be sufficient to repay the cost of the conduit. How does your analysis differ from BOR's?

Mr. LONG. Chairman Johnson, our analysis differs in that we have used contracts that have not been executed but we fully expect to be executed. In the West we are continuing our drought this year. As a very good example we have had adequate snowfall in the mountains but this spring has brought little or no rain.

So storage is absolutely critical for us folks in the West. The larger communities, Colorado Springs, those entities at this time are pursuing these contracts that we fully expect to be executed.

Senator JOHNSON. If BOR is correct and the excess capacity contract for revenues are not sufficient to meet the repayment obligation would the water users make up the difference?

Mr. LONG. Mr. Chairman, the water users, our participants would make every effort to make up the difference. Again, we think the Bureau is incorrect. Storage space in the West is more valuable than gold or oil.

It will be utilized. There will be contracts that generate revenue. Whether they be short term, if and when annual contracts were long term. We fully expect the revenue to be there.

Senator JOHNSON. Ms. Gimbel, the Administration's testimony suggests that S. 3189 be amended to increase the non-Federal contribution for capital projects. It also opposes the provisions authorizing WAPA from seeking loans from the Colorado Conservation River Board. How would the Administration's proposed changes to the bill affect the support that the participants in the Recovery Programs?

Ms. GIMBEL. Mr. Chairman, first of all I'm rather amazed that a 58 percent cost share that this bill will rise up to for non-Federal is not sufficient for the Administration to consider continued support of this program. With respect to the WAPA, Western Power Administration, we have already done loans with them on capital projects. My Board has given them two loans.

This is just allowing the same to happen, if necessary, to keep the program continuous for rehabilitation and repair projects, replacement projects.

Senator JOHNSON. Senator Salazar.

Senator SALAZAR. Thank you very much, Chairman Johnson. Director Gimbel, let me ask you a question just concerning the Recovery Programs of the Upper Colorado and San Juan. How many states benefit from the implementation of those recovery programs?

Ms. GIMBEL. Four states and probably more because the water goes downstream to the lower basin to other states. But not only is it just the states, as I've said, it's three million acre feet worth of depletions as well as the water users, the Federal Government. Everybody benefits.

Senator SALAZAR. Would it be fair to say the states of Wyoming, Colorado, Utah and New Mexico would have their water right systems essentially torn asunder if it weren't for the fact that we have the Endangered Fish Recovery Programs that had been agreed upon by those states and the Federal Government?

Ms. GIMBEL. That is a very fair statement, sir.

Senator SALAZAR. Thank you very much. Since I recognized other Colorado people in the audience, a friend that has been working long and hard on the Recovery Programs for Colorado, Tom Pitts, I also see out in the audience. Welcome to the hearing today as well.

Mr. Long, take a minute and just through your eyes, describe those communities downstream of Pueblo that would benefit from the Lower Arkansas River Conduit. What are they like?

Mr. LONG. Each and every community is a small agriculture community, well below the average household income of the State of Colorado, probably half. It is an area though that has struggled, but fought hard to survive and I think successfully. We continue to be a very productive agriculture area, even though we're now in probably our seventh year of drought.

But it's an area with a great deal of heart, a great deal of patriotism and we believe it is important to continue the agriculture heritage and production of food for American citizens.

Senator SALAZAR. If this Arkansas River Conduit becomes a reality will it help in the economic diversification of those communities downstream of Pueblo as they look at regaining their foothold economically?

Mr. LONG. I believe so, absolutely. It is difficult to attract new industry with our current water supply. Some communities, we have 12, at least 12 communities right now who are under enforcement orders for the State of Colorado to improve water quality. The balance are also struggling with being in compliance.

Two communities such as mine, we have built reverse osmosis plants utilizing Federal funds. Those communities and that has ended up being a band aid. Those communities are now going back

to State and Federal programs requesting assistance in meeting the discharge demand. Reverse osmosis plants create a discharge which is considered to be a hazardous material.

So, all of these factors make it very difficult to promote economic development. We have lost our tomato canning factory, our pickle factory. We have replaced those with other industries. But yes, we need good, clean water to be successful.

Senator SALAZAR. Mr. Long, can you also explain to the committee the effort that it took for you and for others to go before the State, Colorado Water Conservation Board and their loan program and then the State General Assembly to secure the loan you have obtained?

Mr. LONG. Yes, and fortunately we had a great deal of help from some of the Board members from the Colorado Water Conservation Board. But it was a project that took nearly 2 years. We spent several hundred thousand dollars in refining our project coming up with what we believe is the best proposal, the most cost effective, the most long term solution.

We took this proposal to the Colorado Water Conservation Board. They approved it unanimously upon first presentation and then passed it to the State legislature for approval who also approved it a little over a year ago.

Senator SALAZAR. I want to thank you, Mr. Long and Ms. Gimbel and all the witnesses that are here from Colorado. Mr. Chairman, Senator Johnson, thank you for your inspiration and your leadership of this committee.

Senator JOHNSON. I have no additional questions. Thank you all to the witnesses for your participation today.

For the information of Senators and their staff, questions for the record are due by the close of business tomorrow. With that, this hearing is adjourned.

[Whereupon, at 3:50 p.m. the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF JENNIFER GIMBEL TO QUESTIONS FROM SENATOR JOHNSON

The Administration's testimony suggests that S. 3189 be amended to increase the non-Federal contribution for capital projects. It also opposes the provisions authorizing WAPA from seeking loans from the Colorado River Water Conservation Board.

Question 1. How would the Administration's proposed changes to the bill affect the support of the participants in the recovery programs?

Answer. I would like to address your question in the two parts as posed.

A. The Administration's testimony suggests that S. 3189 be amended to increase the non-Federal contribution for capital projects.

P.L. 106-392 recognizes contributions to capital projects by the four Upper Basin states (Colorado, New Mexico, Utah, and Wyoming) of $17 million dollars and a $17 million dollar contribution by power customers.

Commissioner Johnson states in his testimony: "Third, this bill attributes additional non-federal cost sharing of $56 million dollars which relates to power replacement costs borne by power consumers due to the operation of Flaming George Dam to benefit the endangered fish (years 2010 through 2023). This is consistent with the original definition of cost sharing provided in Public Law 106-392."

These power replacement costs, a result of reoperating Flaming Gorge Dam to benefit the endangered fish, are real, "out-of-pocket" expenses borne by local, rural electrical utilities, communities and Native American tribes who hold contracts for federal electrical power.

In addition to the increased non-federal cost sharing of $56 million, the proposed amendments (S. 3189) request Congress to authorize an additional $27 million dollars in federal cost sharing, which is approximately one-half the additional non-federal cost sharing recognized in the bill. The additional $56 million dollars of non-federal cost share raises the non-federal cost share for capital projects from 52 percent under current law to 58 percent under the proposed amendments, even with the additional $27 million dollars in federal cost share.

Given that the non-federal cost share with the proposal amendments in S. 3189 will be 58 percent of capital projects construction costs, it is not considered reasonable to ask for additional cost sharing from states and power customers.

Requests for additional cost sharing to raise the non-federal share above 58 percent would likely meet strong opposition from states legislatures and power customers, and erode support for these nationally recognized models of implementation of the Endangered Species Act.

B. The Administration also opposes provisions authorizing WAPA from seeking loans from the Colorado River Water Conservation Board.

Annual funding from the Upper Colorado River Basin Fund (hereinafter referred to as the Basin Fund) was authorized in P.L. 106-392 at $4 million dollars/year for the Upper Colorado Recovery Program and $2 million dollars/year for the San Juan Recovery Program, adjusted annually for inflation. These funds are used to operate and maintain constructed capital projects (fish screens, fish passages, bottom lands habitat, hatcheries), monitor native and non-native fish populations, conduct extensive non-native species management and control activities, and meet program management, and administration services needs and support other activities necessary to recover endangered fish species.

S. 3189 is designed to ensure the availability of those funds. As Commissioner Johnson points out:

The proposal to grant WAPA borrowing authority would replace a provision of existing law which requires that WAPA and the Bureau of Reclamation request appropriations in the event that base funds are insufficient.

During a critical stage of the recent prolonged drought in the western United States, despite Western Area Power Administration's attempts to raise electrical power rates, reduce contractual obligations and take other actions in response to the drought, Western forecasted that the Basin Fund balance would be insufficient to fund the environmental programs, including the two recovery programs base funding needs. Western and Reclamation undertook temporary actions in order to continue to fund these programs, however, no request for appropriations was made to Congress.

The amendment ensures continuation of annual funding for the recovery programs. This funding is for essential activities to recover the fish species—and is necessary to maintain ESA compliance for some 1,600 water projects, including every Reclamation project on the mainstem and tributaries within the Upper Colorado River Basin upstream of Glen Canyon Dam.

The loan provision provides that base funding, in the event of a drought, be provided from the Basin Fund as originally intended by Congress, if a loan agreement can be worked among Reclamation, WAPA, and the Colorado Water Conservation Board.

I would point out that the balance of monies in the Basin Fund are a function of varying hydrological conditions in the Colorado River Basin and the price of supplemental electrical power on a very volatile market. The current drought began in water-year 2000 and has been severe and long-lasting. A Basin Fund with an adequate balance to "tie-over" O&M replacement and emergency expenses in one drought year may become depleted in successive drought years or because of high prices for supplemental electrical power. Without the loan provision, Recovery Program participants would be requesting appropriated funds in Reclamation's budget on very short notice. This would be disruptive to the normal Reclamation budgeting and appropriations process and could disrupt other Reclamation activities included in long term budget planning. Such requests would place our Congressional delegations in a difficult position.

The Administration also states "further, it has been long standing Treasury policy that, if borrowing authority is justified, federal agencies should be authorized to borrow exclusively from the treasury." While this may be general policy, Congress, in P.L. 106-392, provided borrowing authority for recovery program capital funds from the Colorado Water Conservation Board, if needed, in the event the Basin Fund could not provide those funds. Western Area Power Administration has used this loan provision and borrowed from Colorado Water Conservation Board in two successive years during the current drought. The additional provision for borrowing of annual funds from the Colorado Water Conservation Board is consistent with established Congressional policy for the recovery programs.

The non-federal participants in the programs support the additional borrowing authority for annual base funds as a means of ensuring that base funds are available for essential recovery program functions when severe drought conditions in the Upper Colorado River Basin impact the Basin Fund. This provision is consistent with Congressional intent of having the Basin Fund provide annual funding to the recovery programs, and provides the means for repayment from the Basin Fund of any such loan. Borrowing is not intended to be routine or occur over a period of years. It is likely that any shortfalls will be temporary. We anticipate this borrowing provision would be used infrequently by Western Area Power Administration and Reclamation.

Question 2. Your testimony indicates that the S. 3189 would authorize additional federal appropriations for the repair, rehabilitation, and replacement of constructed facilities that are key to the ESA recovery programs.

Will this be an ongoing Federal responsibility after 2023, the projected recovery timeframe for the endangered species at issue, or will the States and other program participants take over some responsibility for maintaining these facilities?

Answer. Currently, P.L. 106-392 states that "utilization of power revenues for annual base funding shall cease after fiscal year 2011, unless reauthorized by Congress; except that power revenues may be continued to be utilized to fund the operation and maintenance of capital projects and monitoring."

S. 3189 provides for annual base funding to cease after 2023, unless reauthorized by Congress except that power revenues may continue to be utilized only to fund the operation and maintenance of capital projects and monitoring. S. 3189 also requires the Secretary submit a report by the end of fiscal year 2020 regarding contin-

ued use of base funding to Congress after 2023 that may be required to fulfill the goals of the recovery implementation programs.

Congress will have the opportunity prior to 2023 to assess the needs of the recovery programs at that time and determine the need for continuing annual funding for operation and maintenance of these facilities. We anticipate that the Congress will confer with the states and other program participants regarding these needs and make an appropriate decision regarding ongoing federal responsibilities.

Question 3. One of the tables attached to your testimony indicates that overall base funding would be reduced by 39% ($2.8 million) after 2011, if the use of power revenues were not reauthorized as set forth in S. 3189.

What are the other sources of base funding that make up the remaining 61% ($4.25 million)?

Answer. All the base funding referred to in the testimony and table ($7.017 million dollars in FY08) is from power revenues. Without the amendments proposed in S. 3189, this source of funding would be reduced by 39 percent ($2.766 million) to $4.256 million. Therefore, the remaining 61 percent referred to in the testimony is also from power revenues.

I would like to point out that base funding is also provided by the states. Furthermore, the states are mandated under P.L. 106-392 to continue that funding under Section 3(d) (2) of P.L. 106-392 which states as follows: "Nothing in this act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the recovery implementation programs." The intent of this clause, which remains unmodified by S. 3189, is to ensure that original agreements to provide base funding by the states and water users are maintained. For example, in 2008, the states of Colorado, Utah, and Wyoming contributed $425,000 dollars in annual funding to the program through in-kind contributions, in addition to the costs of participation in the programs through various committees and subcommittees. Water users also have contributed approximately $2 million through depletion fees on new water projects since the inception of the programs.

Question 4. S. 3189 would continue to use revenues in the Upper Colorado Basin Fund to help pay for the ESA Recovery Programs.

What is your understanding on whether there will be sufficient revenues available from the Fund to continue to assist in addressing environmental needs in the Upper Colorado River Basin (i.e. the ESA recovery programs and the Glen Canyon Adaptive Management Program)?

Answer. Western Area Power Administration cannot predict with certainty that monies in the Basin Fund will be available to meet the needs of these environmental programs under all hydrological and market conditions. Moreover, monies collected in the Basin Fund are required to repay to the Treasury principle, interest on CRSP facilities and OM&R and emergency expenses. This is precisely the purpose of extending the loan authority to include base funding for the two recovery programs. Over the long term, there may be periodic shortages caused by drought and adverse market conditions that would result in use of the provisions of S. 3189 to obtain a loan from the Colorado Water Conservation Board or, if such a loan could not be negotiated, program participants requesting funds to be appropriated by Congress to cover annual program costs. We anticipate that in the long term the Basin Fund will be able to provide the funds, and in the event of a loan, the Basin Fund will be able to repay the loan prior to the prescribed repayment date of 2057 in S. 3189.

Responses of Bill Long to Questions From Senator Johnson

Your testimony indicates that if the Conduit were not built, the participating communities would still need to make substantial investments to meet water quality standards.

Question 1. What options do the communities have with respect to long-term water supplies, and how would they pay for the investments needed to make that water available? Is the Conduit the most cost-efficient way to address long-term water needs?

Answer. The need for the Arkansas Valley Conduit is driven by projected population growth, the economically-disadvantaged nature of the lower Arkansas River valley, and increasingly costly water treatment requirements being experienced by certain water providers in the basin. The increasing cost of water treatment is a result of the poor quality of locally available groundwater and increasingly stringent requirements of the Safe Drinking Water Act. The local groundwater available from the Arkansas River alluvium has historically been high in total dissolved solids (TDS), sulfates, and calcium, and has objectionable concentrations of iron and man-

ganese. The Colorado Department of Public Health and Environment (CDPHE), in their February 2002 report on the status of water quality in Colorado, states:

> The Lower Arkansas River in Colorado is the most saline stream of its size in the U.S. The average salinity levels increase from 300 parts per million (ppm) TDS east of Pueblo to over 4,000 ppm near the Kansas state line. The shallow alluvial groundwater along the River has similar salinity.

The results of CDPHE-sponsored sampling of the Lower Arkansas River alluvial aquifer showed that a significant number of domestic water supply wells contained nitrate levels above 10 mg/l (EPA's drinking water standard). Additionally, various water suppliers have recently reported measurable concentrations of radionuclides in their water. This extremely poor groundwater quality, combined with increasingly stringent quality regulations of the Safe Drinking Water Act, has caused several local water suppliers to invest in expensive water treatment facilities to assure a reliable water supply for their customers. Due to poor groundwater quality, some local water providers are already out of compliance with the increasingly stringent water quality regulations of the Safe Drinking Water Act. Others are increasingly at risk of being designated out of compliance. Facing federal sanctions, several water suppliers have investigated expensive water treatment facilities to achieve compliance with the federal regulations and to assure a reliable water supply for their customers. The risk posed to the economically depressed region's ratepayers by requirements for as many as 10 new treatment facilities with uncertain costs are considered unacceptable.

Generally, all drinking water systems in the Lower Arkansas River Basin, from St. Charles Mesa in eastern Pueblo County to Lamar in Prowers County, are concerned with the poor water quality in this region. Many of the more than 40 water providers in the Lower Arkansas River Basin could benefit from the Arkansas Valley Conduit water providers do not satisfy, or only marginally satisfy, current drinking water standards. All communities must meet the state and federal primary drinking water standards through treatment or source replacement. Less documented, however, is the potential burden placed upon communities by high raw water concentrations of various unregulated water quality constituents such as iron, manganese and hardness. These constituents can cause accelerated infrastructure decay and loss of tax base and economic impacts associated with factories and businesses locating elsewhere.

In 2003, consultants for WaterWorks! organization , a group of Arkansas Valley water providers, evaluated what they called the "No-Action" alternative. The No-Action alternative considered the actions likely to be necessary for the larger municipalities and water suppliers in the Conduit project area, should the Conduit not be built. A copy of these pages from the 2003 report is attached.* Among the major alternatives to the Conduit to address the significant water quality issues is Reverse Osmosis and groundwater injection. The Financial Feasibility Study published in October 2004 shows a no-action alternative cost of $252.7 million. The study notes that this estimate is on the low side because of "Unknowns regarding future water quality regulations", "Continued degradation of water quality requiring additional treatment", and "Stringent regulation pending regarding disposal of waste streams from the water treatment processes". The factors are expected to drive up the cost of the no-action alternative that would require each water provider to upgrade their current treatment facilities.

The Conduit is the most cost-efficient way to address long-term water needs. Rather than continuously spending funds for upgraded water treatment facilities and increased operation and maintenance costs, it has been proposed that a pipeline from Pueblo Reservoir could be used to provide higher quality water to users in the Lower Basin. The water available from Pueblo Reservoir readily satisfies the requirements of the Safe Drinking Water Act and is not expected to change significantly in the future. The benefits of the proposed pipeline are that the well-defined costs of constructing and operating a pipeline could replace the continuously increasing and unconstrained costs of water treatment. Additionally, the improved quality of potable water will result in a better quality of life for water users in the basin.

The conduit will reduce the drinking water treatment costs in two ways. First, a single Valley filtration plant will, through economics of scale reduce overall treatment costs. For example, to run a single filtration plant of 24 million gallons per day (mgd) is 60 percent less expensive than operating 20 smaller plants. The annual savings could be approximately $2 million. Secondly, for those communities operating Reverse Osmosis (RO) plants, now or in the future, the costs of treatment can

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*Report has been retained in subcommittee files.

be reduced through the blending of conduit and local water. It may be possible to deliver Conduit water RO plants and pressures which either eliminate or significantly reduce the need for pumping, and the electricity required for it.

Many communities are limited in the amount of ground water they can use for drinking water because of its quality. Mixing the newly available conduit water with already developed ground water systems will maximize use of existing ground water supplies. Depending on the varying water quality of the ground water, the conduit water could allow municipalities or other water providers to fully utilize their existing sources and minimize testing or treatment costs. Additionally, existing supplies could be utilized as drought protection in the event a prolonged drought period is experienced.

Question 2a. BOR questions whether the revenue available from the excess capacity contracts will be sufficient to repay the costs of the Conduit.

How does your analysis differ from BOR's? What current repayment obligations exist for the Fry-Ark Project?

Answer. Our revenue availability analysis makes a conservative forecast of future contracts and income, using present contracts and BOR policies to anticipate terms and rates of these contracts. We have studied the availability of excess capacity in Project facilities as part of a District led effort called the Preferred Storage Options Plan. Because of our work with the Project beneficiaries, and current contract requests already before BOR, we have a good idea of the scope of contracts that will be executed in the future and have staged the revenue based on a conservative anticipation of when those contracts are likely to be in place. We have only accounted for a portion of the likely future revenue in our calculation.

BOR on the other hand, only counts those contracts already executed and does not anticipate execution of any future contracts in their analysis.

With regard to current repayment obligations, Southeastern signed a 50 year repayment contract with Reclamation in 1982 for the portions of the project that it is responsible for repaying. The original cost for the Project was $585,103,000, with Southeastern's liability being $132,237,478. Southeastern's initial repayment was split with Irrigation uses owing $74,348,993, and M&I owing $57,888,485. The M&I portion incurs an annual interest obligation at the rate of 3.046 percent. Southeastern is currently paying down the M&I portion of the balance, then the remaining Irrigation portion will be repaid.

Southeastern's contract with Reclamation requires it pay the Operations & Maintenance (O&M) costs for the upcoming year first, and then any remaining collections will be applied against the current debt balance. The O&M expected payment for 2008 is $2,565,500.

As of December 31, 2007, Southeastern owed $76,123,882 on the original debt. Southeastern's ad-valorem tax collections to be applied to payment for this year are expected to total $4,304,083. In addition, all water sales and winter water storage collections will be applied against the balance owed. After paying the O&M, it is expected that Southeastern will be able to pay approximately $4 million towards to balance owed.

Southeastern's current M&I balance owed is $6,182,811and expects to have the M&I balance paid off in 2011. The Irrigation component's remaining balance is $69,941,071 and is projected to be paid off well before the deadline of 2032.

In addition, Southeastern has a current debt obligation of $842,000 to Reclamation for the Safety of Dams repairs performed in 1999-2001. There is no interest obligation on this debt because the remaining balance represents Irrigation's portion of the debt. The District is currently making annual payments of $60,000 towards this obligation. The funds for the repayment are generated by a surcharge on water sales and storage contracts, which are sufficient to cover the annual obligation.

Question 2b. If BOR is correct and the excess capacity contract revenues are not sufficient to meet the repayment obligation, would the water users make up the difference? Would you be agreeable to language being inserted into the bill that would make clear that the project participants are fully responsible for 35% of the construction costs in the event that the excess capacity contract revenues are insufficient?

Answer. We would be agreeable to inclusion of language similar to that in the Water Supply Act of 1958 (43 U.S.C. § 390b) to the effect that State or local interests be required to give reasonable assurances that repayment of the project costs will be made within the life of the project.

RESPONSES OF DAN KEPPEN TO QUESTIONS FROM SENATOR JOHNSON

Your testimony recommends that S. 2842 take into account the ongoing inspection and maintenance programs carried out by BOR and the water users.

Question 1a. Could these programs provide the basis for a National Priorities List of infrastructure needing urgent maintenance?

Answer. Yes, within the scope envisioned by S. 2842, which focuses on those facilities maintained and operated by the Bureau of Reclamation and its water customers. Outside of this scope, there are also many other water delivery and flood control facilities owned, operated and/or maintained by other federal agencies (e.g. U.S. Army Corps of Engineers), state government (e.g. California Department of Water Resources) and local entities (e.g. county flood control districts).

Development of a National Priorities List for the facilities considered by S. 2842 would best be accomplished in a collaborative manner between the Bureau of Reclamation and its water customer partners.

Question 1b. Do the water users prioritize maintenance actions based on the risk posed to populated areas?

Answer. Depending on the characteristics of the area being served, different water users will have different priorities. With that said, it can safely be concluded that local maintenance actions are prioritized according to the risk posed to populated areas, key adjacent infrastructure, budget constraints, and contractual requirements between local entities and the federal government.

Question 2. You mentioned that the Administration has held up implementing the loan guarantee program authorized in the 2006 Rural Water Supply Act, and that S.2842 should be amended to address this situation.

Can you tell us what specific problem exists with the Administration's implementation of the program, and how you think that Congress can remedy the situation?

Answer. Implementation of the 2006 Rural Water Supply Act (P.L. 109-451) is now being held up because of incorrect interpretations of clear Congressional direction by the Office of Management and Budget (OMB). An April 3, 2008 memo prepared by OMB (attached)* concluded that the Bureau can carry out the loan program only if it is willing to siphon large amounts of funding away from other programs and needs within its budget. We believe that OMB's conclusions are wrong and that they are driven by a desire to prevent implementation of the program. We have prepared a White Paper (also attached) that rebuts OMB's flawed arguments and representations.

A key flaw is OMB's argument that the Government must carry 100% of the total loan amount as contingent liability in the Federal budget. The term "subsidy" (per the Federal Credit Reform Act of 1990) is defined as the annual budget authority needed to cover the portion of credit assistance estimated to be un-recovered because of defaults, expressed as a percentage of the amount of each loan approved for guarantee. OMB suggests in their memo that this "subsidy" should be 100% of the total loan amount that is guaranteed by the government. This logic defies the entire financing system used daily by both private and public sectors alike, as further detailed in the attached White Paper. Using more appropriate logic, the government would only be contingently liable for a fraction of the total guaranteed loan amount—in most cases calculated to be 1%-3% of the total loan amount guaranteed. In fact, the Congressional Budget Office assumed a loan guarantee subsidy rate of 1%-2% when it provided Congress with a cost estimate for the Rural Water Supply Act legislation (S. 895).

Congress can help remedy this situation through new legislative language. Specifically, S. 2842 could be amended to include a new title that would establish a loan guarantee finance demonstration program. Such a program could identify specific demonstration projects, provide timelines to develop memoranda of agreement between the Interior Department and local project proponents, and provide authority for the Secretary of the Interior to make available to lenders federal loan guarantees for projects identified. This new title would also specify that the "subsidy" shall be the greater of 2% or the subsidy determined by the Secretary of Agriculture for covering the federal cost of guaranteeing loans to lenders financing water projects under existing and very successful U.S. Department of Agriculture Rural Development authorities.

As stated in our testimony, we would be pleased to work with Senator Reid to develop this language and revise S. 2842 to make it a bill our members will embrace.

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* Document has been retained in subcommittee files.

ATTACHMENT.—WHITE PAPER

RESPONSE TO OFFICE OF MANAGEMENT AND BUDGET MEMORANDUM "LOAN GUARANTEES TO IMPROVE FEDERALLY OWNED ASSETS"

FAMILY FARM ALLIANCE

May 2, 2008.

On April 3, 2008, Richard A. Mertens, Deputy Associate Director of the Energy, Science, and Water Branch, Office of Management and Budget (OMB), sent a memorandum to Timothy R. Petty, Deputy Assistant Secretary, Water and Science, Department of the Interior. This memo addresses the accounting treatment of certain loan guarantees that have been contemplated by the Bureau of Reclamation (Bureau) to assist water districts contracting for water from federally owned facilities in meeting their fiscal responsibilities to pay their share of the operation, maintenance, and rehabilitation of these facilities. This paper highlights the errors and misinterpretations in the OMB memo in mischaracterizing the loan guarantee program available to the Bureau and clarifies the Congressional intent of the P.L. 109-451 in authorizing such activities.

THE LOAN GUARANTEE FUNCTION ESTABLISHED UNDER TITLE II OF THE RURAL WATER SUPPLY ACT OF 2006 (P.L. 109-451) WAS SPECIFICALLY INTENDED TO FILL A CRITICAL GAP IN FEDERAL CAPABILITY

In general, the costs of operating, maintaining and repairing Bureau of Reclamation water storage and conveyance projects are paid by the beneficiaries of those facilities. Beneficiaries can be individuals, but mostly they are irrigation and water districts organized by landowners. The local districts receive water from Bureau facilities under contracts that require them to pay that portion of the facilities' operations and maintenance (O&M) costs attributable to its water supply function.

In some cases, the Bureau has transferred to local water agencies the responsibility for operating and maintaining federally owned facilities, and the local agencies bill their landowners directly for costs. In other cases, the Bureau performs the O&M of a project and collects the costs from districts or individuals. When the Bureau operates a project, it generally pays the federal share of O&M costs with appropriated funds and receives the estimated non-federal share from the local districts in advance for the year. At the end of the year, the actual non-federal share of O&M costs is compared to the estimated advances from the local districts and either a credit or an invoice is provided for the difference.

Beyond the costs of day-to-day operations and normal maintenance, beneficiaries also are responsible for the costs of "extraordinary maintenance"—major repairs and replacement of equipment. Frequently, extraordinary maintenance and rehabilitation project costs range from the millions to the tens of millions of dollars.

The Bureau of Reclamation estimates that the replacement value of it dams, canals and power facilities west wide is $ 100 billion. Protecting the value of this huge federal asset, assuring its safety and operational integrity, is dependent on the ability of mostly small local agencies to fund operation, maintenance and repair costs that continue to increase sharply as the Reclamation system ages. According to the Bureau, the system currently requires $3 billion in repairs and extraordinary maintenance, the cost of which is the responsibility of both the Federal government and the landowners and local water districts dependent on these systems.

Because Federal Reclamation Law and policy requires that project beneficiaries pay the costs of major rehabilitation and repair projects in advance of expenditure, local agencies must turn to the private market to secure financing, which can be difficult because they don't own the asset they are borrowing money to repair.

In the past, the Bureau's Rehabilitation and Betterment (R&B) Program helped local districts meet these financial obligations by providing a means for spreading repayment of extraordinary maintenance and repair costs over several years. However, the R&B Program and other similar Bureau direct loan programs were abandoned by previous administrations because they were regarded as inefficient.

In 2006, Congress recognized the need to help non-federal water agencies raise non-federal dollars to pay for their share of the rehabilitation and repair of aging federal water facilities. Title II of the Rural Water Supply Act of 2006 authorized the Bureau of Reclamation to provide federal loan guarantees to Reclamation project beneficiaries to make it easier (and cheaper) for them to secure financing in the private market.

Specifically, the Act provides the Secretary of the Interior the authority to guarantee a private-sector or lender financed loan (maximum 40-year term) for up to 90 percent of the cost of an eligible project. The new Bureau program was modeled on

a long-standing and highly successful loan guarantee program in the U.S. Department of Agriculture's Rural Utilities Service.

The intent of the Act was to avoid direct federal funding of the Bureau's infrastructure repair and rehabilitation needs by making it easier for project beneficiaries to fund them with private lender financing. With a small commitment of appropriations, the program could make large amounts of non-federal financing available to fund the non-federal portion of extraordinary maintenance and repairs.

The Rural Water Supply Act and its loan guarantee program were developed and enacted with the strong support of the Bureau of Reclamation. The Act instructed the Bureau to develop eligibility criteria to implement the program. However, sixteen months after passage of the Act, the program is still not in place, mainly because its implementation is being resisted by the Office of Management and Budget.

OMB's April 3 memo does not explicitly instruct the Bureau not carry out the loan guarantee program. Instead, the letter informs the Bureau that OMB will apply a "budgetary treatment" to the program that, for all practical purposes, makes its implementation impossible. Specifically, OMB tells the Bureau that it can issue loan guarantees for major improvements and repairs, but the guarantees must be backed by an upfront appropriation equal to 100 percent, or more, of their face value. In other words, the Bureau can carry out the program, but only if it's willing to devote large portions of it's already strained budget to do so.

OMB's assertion that the Federal cost of the Bureau loan guarantees should be 100 percent of the guaranteed amount contrasts sharply with the Congressional Budget Office estimate (attached) that program's cost—subsidy rate—would be only 1 to 2 percent of the amount guaranteed.

In its memo of April 3, OMB supports its argument for the 100 percent subsidy rate by misrepresenting the Bureau program as "third-party financing" and by grossly exaggerating the financial risks to the federal government while dismissing the "economic stake" that farmers and their water agencies have in the Reclamation projects upon which their livelihoods depend.

OMB MISINTERPRETS THE CBO ISSUE BRIEF ON THIRD PARTY FINANCING

In is April 3 memo to Reclamation, OMB asserts that the loan guarantees established in the Rural Water Supply Act are "third party financing" as defined by the Congressional Budget Office (CBO). The OMB memo relies upon a CBO issue brief, Third-Party Financing of Federal Projects (2005), which defines third-party financing as someone other than the U.S. Treasury using private capital markets to raise money on behalf of (emphasis added) a federal program to be repaid on the basis of some kind of long-term federal commitment. The loan guarantee program authorized by P.L. 109-451 provides for federal loan guarantees to Reclamation's water contractors to help finance their non-federal share of the costs of major repairs, replacements, and project rehabilitation—not the government's share. The federal government, while technically the holder of title to most of these water projects has either operating or repayment contracts with the local entities that have the responsibility under such contracts to pay for their share of such maintenance and construction efforts. The OMB position letter does not account for this contractual relationship, leading to its erroneous accounting treatment and 100% budget scoring conclusions.

The CBO issue brief further states that "in the case of third-party financing, the government typically couples a transfer of federal property with directives on how the property may be developed." This is not the case with P.L. 109-451 loan guarantees. There are no transfers of federally owned property nor are there government contributions or conveyances in exchange for future compensation in the Bureau's case.

The CBO issue brief also states that the source of capital for third-party financed projects is the income generated by their operation, which is usually from federal spending. The CBO issue brief goes on to state that "for most of the third-party projects carried out so far, credit assessments make it clear that the government is the only or dominant user identified in the agreements—and hence, the only or dominate source of capital." None of these conditions apply to the Reclamation projects or activities contemplated under P.L. 109-451.

THE GOVERNMENT DOES NOT HAVE TO CARRY 100% OF TOTAL LOAN AMOUNT AS CONTINGENT LIABILITY IN THE FEDERAL BUDGET

While the government contingent liability for these loans exists, the question becomes what is the actual contingent liability the government should carry in the budget. OMB suggests in their memo that it should be 100% of the total loan amount that is guaranteed by the government. This logic defies the entire financing

system used daily by both private and public sectors alike. The government's contingent liability should be calculated as the percentage of possible guaranteed loans that would be likely to default, taking into account the following factors:

1. The amount of collateral pledged;
2. The repayment contracts for the cost of operation and maintenance of federally-owned water supply infrastructure;
3. The leverage the Federal government holds in recovering any possible default interest and principal, and;
4. The credit-worthiness of the non-federal entity obtaining the loan.

Using this more appropriate logic, the government would only be contingently liable for a fraction of the total guaranteed loan amount—in most cases calculated to be 1%-3% of the total loan amount guaranteed. In fact, the CBO scored S. 895 (now P.L. 109-451) loan guarantees at 1% to 2% for future appropriation purposes.

OMB GROSSLY MISCHARACTERIZES THE "COMPARABLE ECONOMIC STAKE" OF LOCAL WATER DISTRICTS ATTEMPTING TO SECURE LOAN GUARANTEES

The OMB memo states that the government bears the full risk of a loan guarantee because it owns the asset and benefits from the improvements made to the asset. It goes on to state that the water district (non-federal borrowing entity) relies solely on receipts generated by that asset to repay the loan, and that the water district lacks any ownership interest and does not have a "comparable economic stake" in the overall success of the project, as do water districts that own the assets. The water districts referred to in the OMB memo are either an instrumentality of the states they are located in, or are canal companies recognized as tax-exempt public-purpose organizations that share the same status as the districts. These are "public" state agencies with an enormous responsibility to operate, maintain, and replace the infrastructure that delivers water to millions acres of irrigated farms and ranches, thousands of cities, and generates countless kilowatts of electrical power used by their communities. While ownership of an asset is one means of measuring economic stake in such projects, merely holding title does not represent the vast economic and socially integrated public purposes these assets represent.

The Federal government is not the primary beneficiary of these projects. True, federal taxpayers have benefited for years from the settling of the Western U.S., for the most part accomplished through the initial construction of these projects. However, the true project beneficiaries are the non-federal public entities (and the landowner public who they serve) who have contracted with the government to repay the cost of construction, and to pay for their portion of the operation, maintenance, and replacement of these facilities. The private investment (farm and ranch development, cities and suburbs, electricity distribution facilities, etc.) that has been made over the last century that is dependent on the successful annual operation of these water projects is tremendous. One study several years ago estimated the total domestic economic product developed annually from federal irrigation projects is over $60 billion per year (1998 dollars). Without the water and power delivered from these facilities every year to these countless beneficiaries, this vast economic engine would crumble, land values would deteriorate and many communities would cease to exist as the desert would again overtake these now-fertile areas of the arid West.

What if these facilities cease to operate due to the inability of these public non-federal agencies to obtain timely financing to cover their share of such improvements? Then, the water rights issued by the state that allow the facilities to operate would also cease, and the federal "asset" would essentially be rendered worthless—probably casting the facility into the "liability" column of the federal balance sheet. The federal "economic stake" is dwarfed by the true economic stake of the many project beneficiaries who repay or have repaid the construction and operation costs of these facilities. This fact, however, does not diminish in any way the many public benefits derived from these facilities: the Federal government does have the responsibility to pay the public's share of these major rehabilitation costs. The flood control, fish and wildlife, and recreational benefits derived from these federal water projects have been recognized by Congress for years. On the other hand, the OMB memo diminishes the economic stake of the non-federal project beneficiaries. This is a huge error in logic when weighing the risk to the government from the guaranteed loans proposed by the Rural Water Supply Act

FEDERAL LOAN GUARANTEES ARE DESIGNED TO FUNCTION IN PRECISELY THE OPPOSITE DIRECTION THAT THE OFFICE OF MANAGEMENT AND BUDGET SUGGESTS

The OMB memo suggests that federal loan guarantees in this instance are equivalent to borrowing of private capital by a federal agency to finance such improve-

ments. It suggests that use of public funds derived from the U.S. Treasury is less expensive for the taxpayer because the rates on Treasury bonds are lower than rates from the private sector. This position is likely supported by OMB's erroneous assumption that assigns 100% risk to the federal agency guaranteeing a loan.

Federal Loan Guarantees are designed to function in precisely the opposite direction. Federal Loan Guarantees bring private capital and private sector risk to the equation—-which actually decreases or limits federal exposure. The risks to the federal government are arguably and substantially less than 100%, due to the following factors:

1. The non-federal borrower's dependence on the facility;
2. The "creditworthiness" analysis required by P.L. 109-451;
3. The economic stake of the non-federal borrower and their customers in a reliable facility (as previously outlined);
4. The contractual arrangement with the U.S. for water supply at stake; and
5. Subsequent leverage to collect any possible defaults that may arise.

The OMB analysis also ignored the fact that other authorities allowing Reclamation to provide "direct loans" require that they be "interest-free" to the borrower.

THE FEDERAL TAXPAYER WOULD BENEFIT IMMENSELY UNDER A LOAN GUARANTEE PROGRAM

Finally, federally authorized tax-free municipal bonds are typically used to finance public infrastructure improvements. However, given the current mortgage crisis, they are currently priced well above Treasury rates. Credit instruments guaranteed by the full faith and credit of the federal government, however, would price very close to Treasury rates. In analyzing what the most cost-effective public financing alternative to the "taxpayer", as OMB describes, the federal taxpayer would benefit immensely under a loan guarantee program, since federal tax dollars would be leveraged to obtain private financing. Further, the interest would actually be paid for by the non-federal borrower. With direct loans, given Reclamation's current authorities, the taxpayer would pay the interest (the R&B Program loans were "interest-free" to qualified borrowers).

Furthermore, the federal "subsidy" for guaranteed loans—if accounted for properly—would be significantly lower than the subsidy provided through tax-free municipal bond financing.

RESPONSES OF ROBERT W. JOHNSON TO QUESTIONS FROM SENATOR JOHNSON

S. 2842

Question 1a. With respect to S. 2842, BOR appears to be taking the position that its current inspection program and standards for maintaining infrastructure are sufficient to protect the public. However, in your testimony at the April 17th aging infrastructure hearing, you stated that based on an in-depth inspection of the Truckee Canal after it failed last December, BOR was limiting the use of the Truckee Canal to only 45% of maximum flow until a permanent fix was made to Canal. BOR appears to be implementing a new construction standard for the Canal based on the post-failure inspection.

Doesn't Reclamation's response to the Truckee Canal failure reflect the need for more in-depth inspections of major water delivery facilities so that appropriate corrective actions can be implemented?

Answer. As a result of the Truckee Canal failure, Reclamation believes increased attention to the review and inspection of canal reaches located in urbanized areas is needed and has the following activities underway:

- Integration of special reviews and examinations under our Review of Operation & Maintenance (RO&M) Program of these urbanized canal reaches
- Development and use of new review/maintenance criteria to apply to the review of these canal reaches
- Development and offering of canal operator training to improve surveillance and inspection capability related to these canal reaches as part of their duties

The extent and timing of the implementation of these activities will be subject to budget priorities and the involvement of applicable operating entities.

Question 1b. What are the risk factors that should be analyzed so that an inspection and corrective action program can be properly prioritized?

Answer. Some of the primary risk factors that Reclamation believes should be analyzed and incorporated into any such prioritization include:

- Extent of estimated downstream population which
- Extent of estimated property damage that could result
- Consequences and cost of loss or interruption of service
- Age and related state-of-the-art design and construction practices
- Operation and maintenance history and practices, including prior facility incidents
- Population density

Question 1c. Do you believe that your current inspection program, coupled with input from the water user community (as suggested in the Family Farm Alliance testimony), could be used to create the National Priorities List called for in S. 2842?

Answer. Yes. Although the cited National Priorities List would be an extremely challenging activity to undertake given the wide range of facilities and risk factors involved, Reclamation believes that our current Associated Facility Review of Operation and Maintenance Program, in collaboration with operating entities, would be essential to creating such a list. Since the reported version no longer features this requirement, Reclamation no long has these concerns.

Question 2a. Assuming that BOR has an inspection program that properly identifies the repairs that are needed on its canals, the key for protecting the public is the successful implementation of the necessary rehabilitation work. Your April 17th testimony estimated that the necessary rehabilitation of transferred works could total at least $800 million.

Is it Reclamation's expectation that the contractors who operate transferred works will be able to pay for the estimated $800 million of repair and rehabilitation work? If not, is it appropriate to create a new program, or modify existing programs, to provide some financial assistance to ensure the continued safe use of transferred works?

Answer. Existing law requires that repair and rehabilitation costs be considered to be operation, maintenance, and replacement. In accordance with Reclamation law and contracts with the operating entities, the portion of these costs allocated to the reimbursable project purposes are the responsibility of the project contractor(s). To date, no attempt has been made by Reclamation to determine the applicable project contractors' ability to pay for the estimated $800 million of repair and rehabilitation work.

Question 2b. Can you provide a rough cost estimate for the permanent fix needed on the Truckee Canal? Is there a plan to pay for such a permanent fix?

Answer. No formal cost estimates have yet been completed for options associated with permanent repairs to the full length of the Truckee Canal. Preliminary studies show that a permanent repair to the portion of the canal alignment near the 2008 failure site could cost $25 million or more. But before any definitive numbers can be used for funding purposes, alternative evaluations need to be completed and cost estimates refined. While the canal is operational again, there are no evaluations completed at this time that determine payment options or mechanisms for permanently repairing the Truckee Canal. In accordance with Reclamation law, the operating entity would be required to pay its allocated share of the cost in advance.

Question 3. During the hearing, you mentioned that there exists 108 reaches of Reclamation canals that go through urban areas.

Can you provide some more specific information concerning the location and respective length of these reaches?

Answer. To clarify, over the past eight years, Reclamation has begun inventorying its canals and canal reaches located in urbanized areas. The preliminary estimate is that there are over 1,000 such canal reaches. Following the Truckee Canal failure earlier this year, Reclamation quickly reviewed this existing inventory in an attempt to determine which of these canal reaches were of the most concern, based on potential impacts in the event of their failure, as well as their current condition. Our preliminary review indicates that 108 canal reaches may need increased attention as part of Reclamation's ongoing facility review process. That increased attention is already being given through the conducting of special reviews on some of these canal reaches. Due to recent changes in the extent of urbanization adjacent to many of these canals, Reclamation is currently reviewing and updating the inventory, with input from the responsible operating entities.

S. 2974

Question 4a. With respect to S. 2974, it would be helpful to better understand the current use of the revenues available from excess capacity contracts.

Does existing law provide that these revenues be credited against the repayment due for existing Fry-Ark Project features?

Answer. Yes, the Fryingpan-Arkansas Act of 1962 Section 2 (b) and (c) provide for these revenues to be credited against repayment.

Question 4b. If so, isn't repayment for those features less than 100% by the original Project beneficiaries?

Answer. Section 1(c) of the Fry-Ark Act contemplates single purpose works for Municipal and Industrial features to be 100% reimbursable and to be paid within fifty years. This requirement is stipulated in separate contracts. Other features of the project are multipurpose features and the revenues from excess capacity contracts are applied as a tail-end credit to the project.

Question 4c. What are the existing Fry-Ark Project features?

Answer. The existing Fry-Ark features include Ruedi Dam and Reservoir, the north and south side collection systems that include 17 diversion structures and numerous related conduits, Boustead Tunnel, Sugarloaf Dam and Turquoise Reservoir, the Mt. Elbert Conduit, the Mt. Elbert Dam and Forebay, the Mt. Elbert pumped storage penstocks, the Mt. Elbert Powerplant, Twin Lakes Dam and Reservoir, Pueblo Dam and Reservoir, South Outlet Works and Manifold, and the Fountain Valley Conduit.

Question 4d. What is their current outstanding repayment balance and at what time are those existing features due to be fully repaid?

Answer. The reimbursable portion of the Fry-Ark Project to be paid by Southeastern Colorado Water Conservancy District is approximately $80 million, and is due to be repaid by 2032.

Ruedi Dam and Reservoir has approximately, $38 million in debt that is due by 2019.

The Fountain Valley Conduit has a separate payout schedule, which is the responsibility of the District. The current outstanding balance to date is $66 million. The District receives revenues to repay this obligation from the Fountain Valley Authority, and is scheduled to payout by 2025.

Pueblo Reservoir's South Outlet Works construction costs are also part of the District's original repayment obligation. The current outstanding balance to date is $2.3 million and has a payout date of 2032. Currently certain municipal and industrial entities have contracted for a portion of the costs of the South Outlet Works.

Question 4e. Is Reclamation currently negotiating additional excess capacity contracts that may increase revenues above the current level of $1 million per year identified in your testimony?

Answer. Different variables occur every year which changes the number of contracts requested. The current level of $1 million a year identified in our testimony is an average amount of annual revenue based on the past several years. Because of the myriad variables in water scheduling and planning, past year revenues are not necessarily an accurate predictor of future year revenues.

We currently have two requests for long-term, 'if-and-when' excess capacity contracts, that have not been negotiated, which, if executed, could increase revenues above the current $1 million level. One current excess capacity contract we have entered is being challenged legally.

Question 4f. Do you disagree with the analysis by the Southeastern Colorado Water Conservancy District indicating that excess capacity contracts will yield in excess of $3.0 million/yr by 2020?

Answer. The District's projection of $3 million in annual revenues from excess capacity contracts includes several assumptions that may not be realized. Reclamation is discussing this with the District now. Reclamation has only recently entered into two long-term excess capacity contracts, and in no case in the history of the Fry-Ark Project have temporary excess capacity contracts yielded this amount of revenue. There are several uncertainties in trying to project revenues from future 'if-and-when' excess capacity contracts. As stated in our testimony, while incentivizing local sponsors to manage their water resources responsibly can be a positive, we are concerned that this type financing may allow project beneficiaries to not have to repay their pre-existing obligations, which, in turn, may necessitate even more Federal funding being dedicated toward this project. The loss to the Treasury under our current contracting policies would be about $1 million annually, but could increase as these contracts increased.

Question 5. Your testimony states that S. 2974 is inconsistent with the original Fry-Ark authorization by proposing a 65% federal cost-share for the Arkansas Valley Conduit.

Doesn't the Arkansas Valley Conduit fit the definition of a rural water project under the 2006 Rural Water Supply Act, and if so, isn't the 65% federal cost-share consistent with the cost-share proposed by the Bush Administration for rural water projects?

Answer. The proposal in S. 2974 is inconsistent with both the existing Fryingpan-Arkansas authorization, as well as the Rural Water Program in Public Law 109-451. The existing Fryingpan-Arkansas authorization calls for 100 percent repayment with interest of project facilities by project beneficiaries. S. 2974 would also provide 100 percent repayment of the AVC, but only contemplates that interest will be paid on 35% of the costs. The remaining 65% of the costs would be repaid without interest. The cost of the Conduit would be funded by a split of upfront costs and the remaining costs would require federal government appropriations that would be repaid by miscellaneous revenues from the Project. Also, the original Fry-Ark authorization does not contemplate the construction of project features using revenues from previously existing project contracts as described in S. 2974.

The Arkansas Valley Conduit project could be a candidate for consideration under the Rural Water Program, once the Program is in effect. However, there are some differences in the requirements of the Act and what the District is proposing.

- The Rural Water Act (Public Law 109-451) authorizes and requires appraisal and feasibility studies which are then prioritized and ranked against one another. The final feasibility report includes a recommendation to the Secretary on whether the rural water supply project should be authorized for construction, and identifies the appropriate non-Federal share of construction costs.
- In contrast, the District's proposal is asking to modify the existing authorization.

S. 3189

Question 6. Your testimony on S. 3189 recommends that Public Law 106-392, which first authorized the Upper Colorado and San Juan River recovery programs, be amended to increase the non-Federal contribution for capital projects. Currently, the required contribution is set at $17 million.

What is the specific non-Federal contribution the Administration recommends?

Answer. As a general policy the Administration recommends that the non-Federal cost share for programs of this nature be at least 50 percent of the total costs associated with capital projects.

Question 7. P.L. 106-392 requires Interior to prepare a report by the end of FY 2008 on the use of power revenues beyond 2011 for base funding for the ESA programs. It's my understanding that completion of that report is just about final.

Is release of that report imminent, and is S. 3189 consistent with its recommendations?

Answer. The report is currently undergoing review within the Administration.

Question 8. Your testimony states that the continuation of base funding from power revenues is problematic because the funds "are drawn from revenues otherwise subject to repayment obligations".

What do you mean by this statement? How are these revenues otherwise subject to repayment obligations?

Answer. Under the provisions of Public Laws 106-392 and 109-183, and as proposed in S. 3189, Colorado River Storage Project (CRSP) hydropower revenues utilized for base funding are ". . . treated as non-reimbursable and as having been repaid and returned to the Treasury as costs assigned to power for repayment under section 5 of the Colorado River Storage Project Act." However, based upon the terms of S. 3189, the repayment that would ordinarily be paid to the Treasury would be credited from an accounting perspective, but would not actually be repaid. The cost share established for power customers is not a contribution of funds for projects and no non-Federal monies from power customers are returned to the United States Treasury. The Administration does not, as a general matter, endorse the non-reimbursable treatment of such power revenues as a non-federal contribution to cost-sharing for recovery programs.

Question 9. S. 3189 would continue the use of revenues from the Upper Colorado River Basin Fund.

What is the current status of the Fund-e.g. what is it used for, current revenue levels and balance, and will future revenues be sufficient to continue addressing environmental needs (i.e. the ESA recovery programs and the Glen Canyon Adaptive Management Program)?

Answer. The Colorado Basin Fund currently has a balance of approximately $83 million (July, 2008). It is projected to have a fiscal year end 2008 balance of around $80 million.

The Upper Colorado River Basin funds are used for the operation and maintenance costs of all facilities of the Colorado River storage project as provided in the CRSP Act. This includes operational costs, along with maintenance and replacement of facility assets (OM&R). A large portion of the OM&R costs relates to purchased

power costs, which is required to meet contractual obligations to deliver power. Purchased power is especially crucial and expensive in times of drought. The Basin Fund also provides funding for the costs of irrigation features of CRSP. A portion of power revenues collected in the Basin Fund is dedicated to repayment of the federal investment cost plus interest.

The Basin Fund is also used for: (1) cost sharing for the Colorado River Basin Salinity Control Program (authorized by the Colorado River Salinity Control Act P.L. 93-320 June 24, 1974 and P.L. 104-127, April 4, 1996); (2) the Glen Canyon Dam Adaptive Management Program (authorized by the Grand Canyon Protection Act, Title XVIII of P.L. 102-575, October 30, 1992) which is approximately $9.5 million per year; and (3) cost sharing for the endangered Fish Recovery Implementation Program for the Upper Colorado and San Juan River Basin (authorized by P.L. 106-392, October 30, 2000) which is approximately $7 million annually. In addition, the Basin Fund is used for Colorado River water quality studies authorized by P.L. 87-590, Fryingpan-Arkansas Project Act, August 16, 1962 and consumptive use studies authorized by P.L. 90-537, The Colorado River Basin Project Act, September 30, 1968. Funding for the programs mentioned above are authorized as non-reimbursable costs and will be treated as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (70 Stat. 170).

The annual projected revenues for FY2008 for the Basin Fund are $208.6 million and expenses (Projected for 2008) for the Basin Fund are $189.7 million.

If revenue, expenses and repayment amounts remain reasonably consistent into the foreseeable future, future cash flows should be sufficient to continue addressing non-reimbursable environmental costs at or near current levels. However, if environmental costs were to unexpectedly rise over planned cash flow amounts, there may not be enough available cash to fund increased environmental costs and provide adequate cash flow at the same time to meet basic Basin Fund obligations.

RESPONSE OF ROBERT W. JOHNSON TO QUESTION FROM SENATOR SALAZAR

In March 2008, Reclamation's witness testified before a House subcommittee on a previous version of the Arkansas Valley Conduit bill, H.R. 317, that the legislation was inconsistent with the 35 percent local cost share set forth in the Administration's proposed rural water legislation, implying that 35 percent local cost share is an appropriate local cost share percentage.

Question 1. Why is this legislation, containing a 35 percent cost share and authorizing the use of project-generated revenues to help pay for the capital construction costs of that pipeline unacceptable, when the Administration's proposed rural water legislation contains a 35 percent local cost share?

Answer. The Rural Water Act requires a capability to pay study, the results of which are used to determine the appropriate non-Federal cost share for projects. Under the Act, the amount of the local cost share could be more than 35%. At this time we do not have enough information to make a determination as to the appropriate local cost share for the AVC if it were authorized under the Rural Water program, but it could conceivably be greater than the 35% called for in S. 2974.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, ON S. 2842

The Central Arizona Project was authorized by Congress under the 1968 Colorado River Basin Projects Act. The Central Arizona Project or "CAP" was constructed by the U.S. Bureau of Reclamation and is operated and maintained by the Central Arizona Water Conservation District. Responsibility for the care, operation and maintenance of CAP's water supply system was transferred to the Central Arizona Water Conservation District or "CAWCD" in 1993. Therefore, under Section 2 of the proposed Act, CAP is a "transferred project facility."

In general, CAWCD agrees with the comments pertaining to S. 2842 submitted by Mr. Robert W. Johnson, Commissioner, U.S. Bureau of Reclamation and Mr. Dan Keppen, Executive Director, Family Farm Alliance. In addition to and in support of these comments, CAWCD also submits the following regarding the provisions of S. 2842.

- The concern that many Federal Reclamation projects, both "reserved" and "transferred" are aging and in need of rehabilitation is very legitimate. With the dramatic increase in urbanization in the west, many of these projects no longer reside in isolated rural areas. Combine that fact with aging equipment and infrastructure and a growing inability by many smaller irrigation districts to keep pace with rising maintenance costs, the situation has become increasingly critical. Failures of canal systems and other associated equipment now pose serious risks to many downstream communities.
- The concern that the U.S. Bureau of Reclamation lacks the necessary resources to provide assistance to these irrigation districts is also legitimate. While Reclamation has the necessary authority to rehabilitate older projects and bring equipment and other infrastructure to current standards, it lacks the funds to do so. Reclamation's technical ability in these areas may have also diminished.
- In lieu of the proposed Act, it would be far more effective and appropriate for the Congress to fund existing Reclamation programs such as the Rehabilitation and Betterment Act and the Small Reclamation Project Act. These existing programs were authorized by the Congress and are no longer funded or used. These programs, in combination with Reclamation's Review of Operation and Maintenance Program, could provide the same result as the proposed Act, if properly funded. CAWCD believes that the Congress should provide both direction and funding to Reclamation to make much needed investments in its operating projects to bring them to current standards.
- The proposed Act authorizes funding but funds would need further appropriation. Reclamation has been unable to secure any new funding for quite some time. Therefore, it would appear the proposed Act creates another Reclamation program that it will be unable to comply with or utilize to benefit its operating partners. As stated above, CAWCD believes the Congress should seriously consider funding existing Reclamation programs and provide appropriate direction to Reclamation as to their use.

As to the specific provisions of the proposed Act, CAWCD submits the following additional comments.

- As written, the proposed Act is both redundant and unnecessary. Regarding Reclamation inspections of Federal projects provided for in Section 3, Reclamation's contracts with its operating partners and its existing Review of Operation and Maintenance Program already provide for regular periodic inspections of Reclamation project facilities, both "reserved" and "transferred."
- Existing Reclamation contracts and other agreements also contain provisions regarding reimbursement of Federal costs related to such inspections. The provi-

sions of Reclamation's contracts vary widely. Some require reimbursement to Reclamation and some don't. CAWCD's contracts with Reclamation require CAWCD to pay Reclamation's costs for oversight and inspection; the proposed Act would appear to waive some of these costs.

- The proposed Act would appear to apply the same criteria to all projects. In the case of CAP, CAWCD is fully capable, both financially and technically, of properly and effectively operating and maintaining project infrastructure and does not need or necessarily want additional Reclamation intervention. However, there are many older Reclamation projects operated and maintained by smaller organizations that lack the necessary resources. Many of these projects could benefit greatly from Reclamation assistance.
- The proposed Act imposes requirements and mandates on Reclamation that it probably cannot meet. For instance, it is unlikely that Reclamation would be able to develop standards and guidelines within 180 days.
- The proposed Act may provide Federal funds for 65 percent of modification costs; however, it will only do so for facilities that are in compliance with regulations proposed in Section 4. It is not known what these regulations will require and it may mean that many facilities, including CAP, may be non-compliant.

CAWCD appreciates the committee's interest in these issues. We also appreciate the opportunity to provide comments regarding S.2842. Our comments are intended to be constructive and we hope the committee will find them useful.

DENVER WATER,
Denver, CO, July 8, 2008.

Hon. TIM JOHNSON, CHAIRMAN,
Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs continue to benefit many water users. The status of endangered fish continues to improve under these programs. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request that the Subcommittee support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

Sincerely,

HJ BARRY,
Manager.

GRAND VALLEY WATER USERS ASSOCIATION,
GRAND VALLEY PROJECT, COLORADO,
Grand Junction, CO, July 7, 2008.

Hon. TIM JOHNSON,
Chairman,
Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

Sincerely,

RICHARD L. PROCTOR,
Manager.

THE SOUTHWESTERN WATER CONSERVATION DISTRICT
Durango, CO, July 1, 2008.

Hon. TIM JOHNSON,
Chairman,
Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, The Southwestern Water Conservation District (SWCD) was established by the Colorado legislature to conserve and protect the waters of the San Juan and Dolores Rivers and their tributaries. The San Juan River Basin Recovery Implementation Program (SJRBRIP) is an invaluable and successful program in our District.

With the SJRBRIP and the Upper Colorado River Endangered Fish Recovery Program, the status of endangered fish is improving. The two programs have the dual goals of achieving recovery of endangered fish species and ensuring ESA compliance for water project depletions. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. The programs have long enjoyed bi-partisan support in Congress.

S.3189 assures authority for capital funding to both programs to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by RSP power revenues.

I am writing to ask that you and the Sub-Committee support the amendments (S.3189) to Public Law 106-392. Passage of this bill will ensure that adequate funds

are available to complete the important missions of both the Upper Colorado and San Juan Basin programs.

Respectfully submitted,

JOHN PORTER,
President.

BRUCE T. WHITEHEAD,
Executive Director.

STATEMENT OF HARRIS SHERMAN, EXECUTIVE DIRECTOR, DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO, DENVER, CO, ON S. 2974

In 2007 the Colorado General Assembly authorized the Colorado Water Conservation Board to loan nearly $61 million to the Southeastern Water Conservancy District to allow the District to share the cost of constructing the Arkansas Valley Conduit. To comply with the terms of its loan, the District must secure the passage of the federal authorizing legislation because the project was originally a component of the Frying-Pan Arkansas Project. If federal authorizing legislation is not passed, the state loan authorization will expire.

The passage of S. 2974 provides the most immediate opportunity to allow the District to comply with the terms of its loan and allow it to build a project to provide reliable water to rural communities south of Pueblo, Colorado to Lamar. These communities have faced significant challenges to meet water quality standards and some are under compliance orders from our Colorado Department of Public Health and Environment. On their own, each provider does not have the economic means to address these issues.

A regional approach like the Arkansas Valley Conduit offers the most efficient and effective way to provide clean water to this corner of Colorado and it is why the CWCB is proving a significant source of the funds to build the project.

SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

ARKANSAS VALLEY CONDUIT

PARTICIPANTS

June 1, 2008

	Entity		
1	96 Pipeline Co.	22	**Manzanola, Town of**
2	Avondale Water & Sanitation District	23	**May Valley Water Assoc.**
3	Beehive Water Assoc.	24	McClave Water Assoc.
4	Bents Fort Water Co.	25	Newdale-Grand Valley Water Co.
5	Boone, Town of	26	North Holbrook Water
6	Cheraw, Town of	27	Olney Springs, Town of
7	Crowley County Water Assoc.	28	Ordway, Town of
8	Crowley, Town of	29	**Patterson Valley Water Co.**
9	Eads, Town of	30	Riverside Water Co.
10	**East End Water Assoc.**	31	Rocky Ford, City of
11	**Eureka Water Co.**	32	South Side Water Assoc.
12	**Fayette Water Assn.**	33	**South Swink Water Co.**
13	Fowler, Town of	34	St. Charles Mesa Water District
14	**Hancock Inc.**	35	Sugar City, Town of
15	Hasty, Town of	36	Swink, Town of
16	Hilltop Water Co.	37	**Valley Water Co.**
17	Holbrook Center Soft Water	38	**Vroman**
18	**Homestead Improvement Assoc.**	39	West Grand Valley Water Inc.
19	La Junta, City of	40	West Holbrook Pipeline Co.
20	Lamar, City of	41	**Wiley, Town of**
21	Las Animas, City of		

Indicates water provider under enforcement orders from the Colorado Department of Public Health Enforcement

STATE OF COLORADO,
DEPARTMENT OF NATURAL RESOURCES,
Denver, CO, July 2, 2008.

Hon. TIM JOHNSON,
Chairman,

Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for 5.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, I am writing to support S.3189, a bill to amend Public Law 106-392, entitled "the Endangered Fish Recovery Program Improvement Act of 2008." Passage of this legislation is imperative to assure that the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program (collectively "programs") continue to be able to meet the goals for which these programs were established.

S.3189 assures that: 1) the programs will have the authority necessary for capital funding, as needed, to provide for rehabilitations and repairs of the facilities constructed by the programs; 2) the protection of critical habitat in the San Juan River basin extends current funding levels for annual operation and maintenance provided by CRSP power revenues; 3) the Colorado Water Conservation Board ("CWCB") can provide loans to the programs, if necessary, to overcome temporary shortfalls in funding; 4) and these programs can continue to have authorization until 2023.

The CWCB is an agency within the Department of Natural Resources and it was established in 1937 to preserve and develop Colorado's water resources for existing and future generations. The provisions related to loans from the CWCB will allow the programs to be more nimble while achieving the goals of the programs.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are model programs and their success has been applied in other basins including the recently federally authorized Platte River Recovery Implementation Program. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with the programs.

No lawsuits have been filed in ESA compliance under these programs and these programs have long enjoyed bi-partisan support in Congress.

On behalf of the State of Colorado, I request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

Sincerely,

HARRIS SHERMAN.

CITY OF AURORA,
WATER DEPARTMENT ADMINISTRATION,
Aurora, CO, June 27, 2008.

Hon. TIM JOHNSON,
Chairman.

Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These suc-

cessful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

Sincerely,

DANA EHLEN,
Interim Director.

CITY OF AURORA,
WATER DEPARTMENT,
WATER RESOURCES,
Aurora, CO, July 3, 2008.

U.S. Senate, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.

Re: 5.2974 Arkansas Valley Conduit

TO THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES: The City of Aurora supports S. 2974 and the development of the Arkansas Valley conduit (AVC) to ensure that the citizens of the lower Arkansas River Valley within Colorado have a secure, safe and affordable drinking water supply. The AVC has long been contemplated, with funding being the primary obstacle.

On March 13, 2008, the Southeastern Colorado Water Conservancy District offered testimony at the House of Representative Subcommittee on Power and Water hearing regarding H.R. 317. The testimony outlined an alternative funding mechanism for the AVC construction which would ensure that the entire estimated project costs of $300 million would be paid over a 50 year period using revenues from Fryingpan-Arkansas Project excess capacity contracts. We believe this same funding mechanism is contemplated under S.2974. This mechanism is an innovative and sensible repayment plan, but the funding depends for its success upon revenues realized from the execution of long-term "if and when" excess capacity storage and exchange contracts, such as the one recently executed between the Bureau of Reclamation and the City of Aurora. Such contracts maximize the use of existing infrastructure while minimizing environmental impacts.

The Bureau of Reclamation's authority to contract with Aurora has been questioned several times and is currently being litigated by the Lower Arkansas Valley Water Conservancy District. Aurora's payment for use of excess capacity storage and exchange is estimated to be $40 million over the next 40 years and 580 million over the next 65 years. Aurora's contracts thus account for over a quarter of the estimated total revenues from excess capacity contracts. Hence, it is appropriate to ensure that any existing controversies over the validity of such contracts also be resolved. This will promote a mutually beneficial arrangement which brings clean water to a deserving population.

Thank you for your consideration of these comments.

Sincerely,

MARK PIFHER,
Deputy Director.

CENTRAL UTAH WATER CONSERVANCY DISTRICT,
Orem, UT, June 30, 2008.

Hon. TIM JOHNSON,
Chairman,

Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

Sincerely,

DON A. CHRISTIANSEN,
General Manager.

STATEMENT OF DOUGLAS KEMPER, EXECUTIVE DIRECTOR, COLORADO WATER CONGRESS, DENVER, CO, ON S. 3189

I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

STATEMENT OF KEVIN WALSH, GENERAL MANAGER, GOLETA WATER DISTRICT, GOLETA, CA, ON H.R. 3323

On behalf of the Board of Directors and customers of the Goleta Water District, I am pleased to submit this testimony in support of H.R. 3323, legislation to authorize the Secretary of the Interior to convey a water distribution system to the Goleta Water District. This legislation passed the House of Representatives on May 21, 2008.

We strongly support this legislation and thank the committee for considering it today.

GOLETA WATER DISTRICT

The Goleta Water District is located in Santa Barbara County, California. The District serves irrigation water to about 8,000 acres of farmland, and municipal water to about 80,000 people. Most of that water, about two-thirds, comes from the federal Cachuma Project.

In 1956, the US Bureau of Reclamation completed the congressionally authorized Cachuma Project, a dam and reservoir storage project in Santa Barbara County. The project serves the City of Santa Barbara and four water Districts, including the Goleta Water District, with irrigation and municipal water. The costs for this project are being repaid to the federal government.

While the dam and reservoir were under construction, the Bureau also gave loans for construction of water distribution systems. Goleta Water District revived one of those loans to construct a water pipeline distribution system and obtain rights-of-way for the pipelines. This forty year loan was completely repaid to the federal government, in full, in 2002. Since the completion of construction of the distributions system, and in accordance with the terms of the loan, the Goleta Water District has assumed complete responsibility for the water distribution system and the easements, including paying all operation and maintenance costs, in addition to repaying the loan in full.

Since the loan is paid off, the District would now like to obtain title of the facilities for which it paid. It is not unlike paying off a mortgage, only in this case federal law provides that an act of Congress is necessary to convey ownership and make the title transfer.

H.R. 3323, THE GOLETA WATER DISTRIBUTION SYSTEM CONVEYANCE ACT OF 2007

H.R. 3323 would authorize the Secretary of Interior to convey title of the federally owned water distribution system, along with its 1,113 associated easements, to the Goleta Water District.

TITLE TRANSFER PROCESS

It has been a continuing desire of the District to obtain title to the Distribution System plus its associated easements outlined in the legislation, which have been owned by the United States for many years. Since 2004 when the District sent a Letter of Intent to Transfer Title, the Bureau and the District have worked cooperatively and successfully to address all of the elements necessary to bring this legislation forward, including repayment of the Bureau of Reclamation loan, public meetings, and the completion of an Environmental Assessment Report resulting in a Finding of No Significant Impact.

Most recently we have worked with Congresswoman Capps to introduce the legislation to achieve title transfer.

BENEFITS OF THIS TITLE TRANSFER

The title transfer will give the District more local control of the Distribution System which was constructed for our use. There will be one less administrative layer caused by United States ownership when changes or improvements to the facilities are needed. Private citizens whose property is encumbered with the easements will no longer have to deal with the federal government, but only their local water District when making use changes to their properties. The Bureau of Reclamation will no longer need to complete periodic reviews of these transferred facilities. As a result, they will hopefully be able to direct personnel and resources to more important activities. Also, the Bureau of Reclamation will divest itself of liability for the distribution system.

CONCLUSION

In conclusion, I would like to thank some of the people who have made this transfer possible. I would like to thank Bureau of Reclamation staff Sheryl Carter of the South Central California Area Office in Fresno and James Hess here in Washington who have helped us in preparing for the title transfer.

We'd like to acknowledge our debt of gratitude to Congresswoman Lois Capps for her support and assistance with this legislation.

In summary, H.R. 3323 is a good bill, a good title transfer and shows a cooperative process of benefit to both Reclamation and the District. I urge the Committee to move this legislation forward.

THE STATE OF WYOMING,
OFFICE OF THE GOVERNOR,
Cheyenne, WY, July 10, 2008.

Hon. TIM JOHNSON,
Chairman,
Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Building, Washington, DC.

Subject: Submittal of Testimony Supporting the Enactment of S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER: I am writing to express my strong support. on behalf of the State of Wyoming, for enactment into law of S. 3189, the Endangered Fish Recovery Programs Improvement Act of 2008. Passage of this bill will ensure authority for capital funding for the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities previously constructed by the two programs.

This bill proposes to add $15 Million to the authorization for capital expenditures for the Upper Colorado River Basin Program, adds $12 Million to the authorization for the San Juan River Basin Recovery Implementation Program's capital expenditures, extends the period of capital construction to 2028 and amends the current authorization to allow continued annual funding at current levels from power revenues. The proposed 2008 amendments address current and foreseeable capital construction needs for the two programs not presently authorized. Current authority for construction has been largely expended and ceases after FY 2010.

The additional authority provided by enactment of this measure will allow Reclamation to repair and rehabilitate, as needed, approximately $100 million in capital facilities (fish passages, fish screens, flooded bottomlands habitat and hatcheries, and a reservoir) constructed by the recovery programs. In addition, these facilities, located on or adjacent to major rivers in the Upper Colorado River basin, are subject to damage from flooding and debris. Additional authority is also needed to complete the Tusher Wash fish screen on the Green River and additional time is needed to complete construction projects in the San Juan basin. In addition to these needs, unstable rock formations adjacent to designated critical habitat for the endangered fish caused two major landslides near Farmington, New Mexico. The U.S. Fish and Wildlife Service determined that the unstable cliffs are a threat to critical habitat in the San Juan River. Authority is needed to eliminate this threat.

The goal of these two successful programs is to recover the four Colorado River endangered fish species in a manner that is consistent with state and tribal laws, interstate compacts, the Endangered Species Act, other federal laws, and Indian trust responsibilities.

We are most appreciative of the Senate Committee on Energy and Natural Resource's past support of legislation and necessary amendments authorizing the capital construction activities of the two recovery programs. This legislative measure will further the abilities of the two recovery programs to accomplish their important objectives.

I have included with this letter testimony that I am submitting in support of this important legislation. Thank you for your consideration of my testimony and for its inclusion in the hearing record.

Best regards,

DAVE FREUDENTHAL,
Governor.

STATEMENT OF THE HONORABLE DAVE FREUDENTHAL, GOVERNOR, STATE OF WYOMING, ON S. 3189

Mr. Chairman and Members of the Water and Power Subcommittee of the United States Senate Committee on Energy and Natural Resources, I am pleased to submit this statement urging your Committee to favorably consider, and report without amendments, S. 3189. This bill is essential to the successful continuation of the Upper Colorado River and San Juan River Basin Recovery Implementation Programs, as authorized by Public Law 106-392 (and subsequently amended by Public Law 107-395 and 109-183). Enactment of this legislation is critical to the recovery of the Colorado River Basin endangered fish species and hence is important to the interests of the State of Wyoming. Since their initiation in 1988 and 1992, respectively, the highly successful Upper Colorado and San Juan recovery programs have provided a cooperative, workable and effective mechanism for continued compliance with the Federal Endangered Species Act for more than 1,600 federal and non-federal water projects in the Upper Colorado River basin and the San Juan River basin, including projects that provide water to meet tribal needs and that fulfill the federal government's trust responsibility to tribes in compliance with the Endangered Species Act. Accordingly, continuation of the implementation of these recovery programs, including the requested authority to rehabilitate, repair or replace the programs' capital construction projects now in place and which are directly benefiting the endangered fish species is imperative to our States' ability to continue to develop our compact-apportioned water resources.

The two programs have constructed approximately $100 million in facilities (fish passages, fish screens, flooded bottomlands habitat, hatcheries, and a reservoir that augments flows for endangered fish). The operation of these facilities is a critical component of the recovery programs are providing the reasonable and prudent alternative These facilities are on, or adjacent to, major rivers in the Upper Colorado and San Juan River basins. Many of the facilities are susceptible to damage by floods and debris associated with the major rivers on which they are located (Green, Colorado, Gunnison, and San Juan).With the passage of time these complex facilities will require some degree of rehabilitation or repair. Further, additional authority is needed to complete the Tusher Wash fish screen on the Green River, and additional time is needed to complete capital projects in the San Juan basin.

Authorization for the Secretary of the Interior to conduct these recovery programs' capital construction expires on September 30, 2010. Accordingly, there is no authority for Reclamation to repair or rehabilitate these facilities after that date or to complete the Tusher Wash fish screen and San Juan basin projects. Existing funding authority will have been expended. The proposed amendments would provide an additional $20 million in authorization repairs and rehabilitation of these facilities through 2023. Importantly, appropriations for repair and rehabilitation will only be requested as needed.

One such unanticipated need for capital expenditures occurred in 2007. Unstable rock formations adjacent to designated critical habitat for the endangered razorback sucker and Colorado pikeminnow in the San Juan River caused a major landslide near Farmington, New Mexico. A second slide occurred in August, 2007 in the same area. The U.S. Fish and Wildlife Service determined that the unstable cliffs are a threat to critical habitat in the San Juan River. The estimated cost of stabilizing the rock formation is $7 million. Presently. authority for this type of activity was not provided within P.L. 106-391 as amended. The proposed amendments would add authorized funding to protect critical habitat.

Specifically, enactment into law of the proposed 2008 amendments will accomplish the following:

- Authorize an additional $12 million in federal expenditures for capital projects under the San Juan Program for the purposes of a) protecting critical habitat of endangered fish species and related infrastructure trout rock slides in the area west of Farmington ($7 million), and b) repair and replacement of constructed capital facilities (fish passages, fish screens, habitat, hatcheries) as needed through 2023 ($5 million).
- Authorize an additional $15 million in federal expenditures for capital projects for the Upper Colorado Program for the purposes of a) constructing a fish screen on Tusher Wash in critical habitat on the Green River, Utah in light of significantly increased construction material costs, and b) for repairs and replacement of constructed capital facilities (fish screens, fish passages, habitat, hatcheries) as needed through 2023.
- Recognize additional non-federal cost sharing of $56 million.
- Amend the current authorization to allow continued funding for annual operation and maintenance funding at current levels provided by CRSP power revenues. This authority will expire at the end of fiscal year 2011 under the existing law.

The recovery programs are serving as national models for how willing partners can use effective, collaborative partnerships to meet important needs. Application of the ESA in Wyoming's portion of the Upper Colorado River Basin has not impeded our ability to develop our water resources since the Upper Colorado Recovery Progam's initiation in 1988. This is, in my view, a critical and key measure of the Program's success in meeting its commitment to allowing needed water development to proceed in compliance with the ESA. Further, these programs are making substantial progress towards recovery of the four endangered fish species.

These two recovery programs' dual objectives of recovery while accommodating additional water resources development in the Basin represent the best approach yet devised to resolving the conflict between the federal Endangered Species Act (ESA) and water development needs. No lawsuits have been filed concerning the ESA compliance provided by these programs. State and federal agencies, Indian tribes and private organizations are cooperating through these two recovery programs to achieve recovery of endangered fish while meeting continuing demands for water in the arid West.

Thank you for the opportunity to submit this testimony. I request, in addition to your consideration of its contents, that this testimony he included in the formal hearing record concerning this important legislation needed for the Upper Colorado

River Endangered Fish Recovery Program and San Juan River Basin Endangered Fish Recovery Implementation Program.

STATE OF NEW MEXICO,
OFFICE OF THE GOVERNOR,
Santa Fe, NM, July 8, 2008.

Hon. TIM JOHNSON,
Chairman,

Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Subject: Support for S.3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER: I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving and this progress critically needs to be sustained. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

I request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189. On behalf of the citizens of New Mexico, I sincerely thank the Subcommittee for your assistance to ensure adequate funding authorization and extension of the authorized period for capital construction for these critically important recovery programs.

Sincerely,

BILL RICHARDSON,
Governor.

STATEMENT OF BRAD LUCKEY, MANAGER, GENERAL SERVICES-GOVERNMENT RELATIONS, IMPERIAL IRRIGATION DISTRICT, IMPERIAL, CA, ON S. 2842

I am writing on behalf of the Imperial Irrigation District (IID) in Southern California. The purpose of my letter is to address S. 2842, the Aging Water Infrastructure and Maintenance Act."

As you may be aware, IID is one of the largest irrigation districts in the United States. In terms of volume of water delivered, IID is the largest irrigation district in the United States, serving about 500,000 acres of land in the southeastern portion of California. IID's growers grow a large variety of crops year-round, and in the winter months IID is one of the main suppliers of vegetables for the entire nation.

I am writing to you about S. 2842 because IID operates and maintains, under a contract with the Secretary of the Interior, a very large canal system known as the All American Canal (AAC). The AAC carries water from the Colorado River near Yuma, Arizona over to the Imperial Valley—a distance of about 50-60 miles. A portion of the AAC goes through urbanized areas in the vicinity of the City of Calexico, California. IID therefore has an interest in S. 2842 and the wording of this important legislation.

I first want to thank you for your work, along with Senator Reid and others, to give attention to aging infrastructure related to the function of the U.S. Bureau of Reclamation. The AAC was built in the 1930's and therefore IID is keenly aware of the need to appropriately maintain this kind of system, both for its longterm usefulness and to ensure the safety of people that may live in the vicinity of the canal.

In order to keep this letter brief, I want to say that IID supports the content of the Testimony offered to your Subcommittee by the Family Farm Alliance on July

8, 2008. IID believes that the helpful comments and suggestions offered by the Family Farm Alliance are in line with HD's views regarding this legislation. It is also our understanding that this week the Family Farm Alliance will be submitting revised legislation for review by the Subcommittee. IID has had an opportunity to provide comments to the Family Farm Alliance on the proposed revised legislation, and therefore I want to express support for the revised version that will be submitted to your Subcommittee.

While IID appreciates the overall intent behind S. 2842, I do want to emphasize two important points. First, that this legislation should be narrowed to focus only on areas where Bureau of Reclamation facilities are in urbanized areas. This should be the narrow area of concern for this legislation, as opposed to the wide scope of Reclamation facilities that are spread throughout the West. And second, we think it is important to emphasize that respect should be given to the fact that in many circumstances, like that faced by IID, the operation and maintenance of facilities such as the AAC have been in the hands of irrigation districts like IID for many years.

IID operates and maintains the AAC and the Imperial Diversion Dam and Desilting Works located on the Colorado River between Arizona and California. Accordingly, decisions on a day-to-day and annual basis as to operation, maintenance and repair are made by IID and are paid for by IID. We therefore suggest that while Reclamation certainly has a role in this process, as the link between the district and the owner of the facilities—the United States government—it is nevertheless very important to recognize that IID is really "in the drivers seat" when it comes to routine decisions regarding the maintenance of the AAC. As we see it, the legislation should be crafted to reflect this important role the district plays in this process.

In closing, let me offer our cooperation in working with your Subcommittee to craft an infrastructure maintenance bill that is workable for the government and for entities like IID.

STATEMENT OF LEVI PESATA, PRESIDENT, JICARILLA APACHE NATION, DULCE, NM, ON S. 3189

On behalf of the Jicarilla Apache Nation, I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and federal, state and Tribal water laws. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bipartisan support in Congress.

The Nation requests the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189. Thank you for your support.

The Nature Conservancy,

WESTERN RESOURCE ADVOCATES,
July 7, 2008.

Hon. TIM JOHNSON,
Chairman

Hon. BOB CORKER,
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Office Building, Washington, DC.

Subject: Support for S. 3189

DEAR CHAIRMAN JOHNSON AND SENATOR CORKER, As conservation representatives to the Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, we are writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure funding to complete the important missions of these two widely-hailed recovery programs. We support passage of the bill as long as it is modified in a small but important respect, noted below.

Most important to the conservation community, S. 3189 extends current funding levels for non-reimbursable annual operation and maintenance costs using power revenues from the Colorado River Storage Project. Annual base funding for recovery activities, like population monitoring, non-native fish control, and adaptive management of recovery strategies, is absolutely essential to the success of these Programs, especially as we transition from a capital construction phase to an active management phase in the recovery process.

In addition, S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs.

Our full support of the bill is contingent one minor technical correction to Section 2(a)2 of the legislation, to remove the phrase "through stabilization of adjacent stream banks and adjacent impacted infrastructure" from the definition of 'facilities.' We believe the narrower definition of facilities to protect critical habitat is adequate to allow the stabilization of the rock slide on the San Juan River,[1] without opening the Program to a wide-range of questionable or unrelated claims for repair of private infrastructure.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working and have long enjoyed bi-partisan support in Congress.

We urge the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs by favorably reporting S.3189. Thank you for your efforts on behalf of these important and successful programs.

Sincerely,

BART MILLER AND DAN LUECKE,
Western Resource Advocates and Upper Colorado Recovery Implementation Program.

TOM ISEMAN AND ROBERT WIGINGTON,
The Nature Conservancy and Upper Colorado Recovery Implementation Program.

ADRIAN OGLESBY,
The Nature Conservancy and San Juan Recovery Implementation Program.

STATEMENT OF JOE SHIRLEY, JR., PRESIDENT, THE NAVAJO NATION, WINDOW ROCK, AZ, ON S. 3189

I am writing to express the Navajo Nation's support for 5.3189, a bill to amend Public Law 106392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance

[1] According to the USFWS, this repair will prevent future rock slides and will eliminate the regular need for heavy equipment in critical habitat, thus directly benefitting the species recovery effort in the San Juan. In addition, the San Juan Recovery Implementation Program agreed with the USFWS assessment and supports the effort to stabilize the rock slide.

under these programs. The Navajo Nation has been an active participant in the San Juan program, and these programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

STATEMENT OF ERIC W. WILKINSON, GENERAL MANAGER, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, BERTHOUD, CO, ON S. 3189

On behalf of the Board of Directors and staff of the Northern Colorado Water Conservancy District, (Northern Water) I am writing to support S. 3189, a bill to amend Public Law 106-392. Passage of this bill will ensure that adequate funds are available to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S. 3189 assures authority for capital funding to both recovery programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs; assures protection of critical habitat in the San Juan River; and extends current funding levels for annual operation and maintenance provided by Colorado River Storage Project power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin—the highest standard under the Endangered Species Act (ESA)—and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These programs are successfully accomplishing these goals. The status of endangered fish is improving, while these two programs are providing ESA compliance for more than 1,600 water projects within the respective river basins. It is important to note that these programs have long enjoyed bi-partisan support in Congress.

Northern Water respectfully requests the Subcommittee support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S. 3189.

STATEMENT OF JIM FERLAND, SENIOR VICE PRESIDENT, UTILITY OPERATIONS, PNM RESOURCES, ALBUQUERQUE, NM, ON S. 3189

I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

STATEMENT OF THE HONORABLE LOIS CAPPS, U.S. REPRESENTATIVE FROM CALIFORNIA, ON H.R. 3323

Mr. Chairman and members of the Subcommittee, thank you for holding this hearing today. And thank you for the opportunity to speak in favor of H.R. 3323, the Goleta Water Distribution System Conveyance Act of 2007, legislation I introduced last year. On May 21, 2008, the House passed my legislation by voice vote.

H.R. 3323 would authorize the title transfer of a federally owned water distribution system in my congressional district from the Bureau of Reclamation to the Goleta Water District. The purpose of the legislation is to simplify the operation and

maintenance of the District's water distribution system and eliminate unnecessary paperwork and consultation between the District and the Bureau.

The Goleta Water District has operated and maintained the facilities proposed for transfer since the 1950's. They have worked through all requirements of the Bureau's title transfer process, including: public meetings, fulfillment of their repayment obligations, completion of an environmental assessment, and compliance with all other applicable laws.

The only step remaining to complete the process is an act of Congress enabling the Secretary of the Interior to transfer title.

It is important to note that the proposed transfer would apply only to lands and facilities associated with the District and would not affect the District's existing water service contract with the Santa Barbara County Water Agency nor the Federal government receipts from water deliveries under the contract. In addition, the proposed transfer does not envision any new physical modification or expansion of the service infrastructure.

I'm pleased the Administration is supporting my legislation, which will allow the Bureau to focus its limited resources where they are needed most. In my view, this is an example of local problem-solving at its best. I commend the staff of the water district and the Bureau for their efforts to reach this agreement. They have been working on this for several years now.

Today's hearing is another important step in this process. And I hope the Subcommittee will approve this legislation very soon, which means a lot to my constituents.

Again, I want to thank the Chairwoman of the Subcommittee, as well as the members of the Subcommittee for your interest in the bill.

Thank you.

STATEMENT OF MARK DUNCAN, CHAIRMAN, SAN JUAN WATER COMMISSION, FARMINGTON, NM, ON S. 3189

I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

STATEMENT OF CLEMENT J. FROST, CHAIRMAN, SOUTHERN UTE INDIAN TRIBE, IGNACIO, CO, ON S. 3189

On behalf of the Southern Ute Indian Tribe ("Tribe"), I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program ("Upper Basin and San Juan Recovery Programs").

S.3189 assures authority for capital funding to both the Upper Basin and San Juan Recovery Programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The Upper Basin and San Juan Recovery Programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin and the San Juan River Basin, the highest standard under the Endangered Species Act

("ESA"), and providing ESA compliance for water project depletions in the Upper Basin and the San Juan Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with the Upper Basin and San Juan Recovery Programs. No lawsuits have been filed on ESA compliance under these two programs. The Upper Basin and San Juan Recovery Programs have long enjoyed bipartisan support in Congress.

The Tribe requests the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery Programs in S.3189.

STATEMENT OF CARLY B. BURTON, EXECUTIVE DIRECTOR, UTAH WATER USERS ASSOCIATION, ON S. 3189

On behalf of the Utah Water Users Association, I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

The two programs have the dual goals of achieving recovery of endangered fish species in the Upper Colorado River Basin, the highest standard under the Endangered Species Act, and providing ESA compliance for water project depletions in the Upper Basin consistent with interstate compacts and state water law. These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs. No lawsuits have been filed in ESA compliance under these programs. The programs have long enjoyed bi-partisan support in Congress.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

STATEMENT OF ERNEST HOUSE, SR., CHAIRMAN, THE UTE MOUNTAIN UTE TRIBE, TOWAOC, CO, ON S. 3189

I am writing to support S.3189, a bill to amend Public Law 106-392. Passage of this bill will ensure the adequacy of funds to complete the important missions of both the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program.

S.3189 assures authority for capital funding to both programs, as needed, to provide for major rehabilitation and repair of more than $100 million in facilities constructed by the two programs, assures protection of critical habitat in the San Juan River, and extends current funding levels for annual operation and maintenance provided by CRSP power revenues.

These successful programs are working. The status of endangered fish is improving. In the two basins, more than 1,600 water projects are provided with ESA compliance in accordance with these two programs.

We request the Subcommittee to support the amendments to the authorizing legislation for the Upper Basin and San Juan Recovery programs in S.3189.

STATEMENT OF RON CUNNINGHAM, PRESIDENT, WYOMING WATER ASSOCIATION, ON S. 3189

The Wyoming Water Association supports the passage of S.3189, a bill that will, when enacted, amend the current authorizations in federal law for the Upper Colorado and San Juan River Endangered Fish Recovery Implementation Programs. Founded in 1933, the objectives of the state-wide Wyoming Water Association are to promote the development, conservation, and utilization of the water resources of Wyoming For the benefit of Wyoming people. The Wyoming Water Association annually adopts resolutions supporting the ongoing conduct of the Upper Colorado Recovery Program. The Wyoming Water Association has been a participating entity within the Upper Colorado Recovery Program since the Upper Colorado Recovery

Program was initiated in January 1988. We are directly represented on the Upper Colorado Recovery Program's Biology, Management and Implementation Committees by Mr. Tom Pius, of Water Consult, Inc. of Loveland, Colorado.

We join our Program partners, including the States of Colorado, New Mexico, Utah, and Wyoming: and hydroelectric power and environmental community interests in requesting that your Subcommittee favorably mark and approve S. 3189 expeditiously after the upcoming July 8th hearing on this legislation.

The Upper Colorado and San Juan recovery programs are recovering endangered fish species in a manner that is compatible with state wildlife and water law. The programs provide. ESA compliance for more than 1,600 water projects, including federal Reclamation projects and tribal projects in the Upper Colorado River and San Juan River basins. The Programs' have constructed approximately 5100 million in facilities (fish passages, fish screens, flooded bottomlands habitat, hatcheries. and a reservoir that augments flows) that are directly benefitting the endangered fish and their habitat. These large, complex facilities are susceptible to damage by floods and debris associated with the major rivers on which they are located and will require in the future, either due to damage or wearing out, investment to be made in rehabilitation, repair or replacement of the moving systems and facilities' components. Additional authority is needed to complete the Tusher Wash fish screen on the Green River. Additional time is needed to complete capital projects in the San Juan Basin.

Currently, authorization for the Secretary of the Interior to conduct capital construction expires on September 30, 2010 and the existing appropriations authority for the Upper Colorado Program will have been expended. In addition, S. 3189 authorizes funding to protect critical habitat. Unstable rock formations adjacent to designated critical habitat in the San Juan River have caused several landslide near Farmington, New Mexico, which the U.S. Fish and Wildlife Service characterize as constituting adverse modification to critical habitat in the San Juan River. The estimated $7 million cost of stabilizing these cliff-side rock formations is not authorized in the existing Public Law 106-392. S. 3189 will provide additional authorities to ensure recovery of the species and continued ESA compliance for the water projects that rely on the two recovery programs. Appropriations will only be requested as needed and any requests will be subject to Congressional scrutiny. Specifically, S. 3189 would achieve the following:

- Authorize an additional $12 million in federal expenditures for capital projects for the San Juan Program for the purposes of a) protecting critical habitat of endangered fish species from rock slides in the area west of Farmington ($7 million), and b) repair, rehabilitation and replacement of constructed capital facilities as needed through 2023 ($5 million).
- Authorize an additional $15 million in federal expenditures for capital projects for the Upper Colorado Program for the purposes of a) constructing a fish screen on Tusher Wash in critical habitat on the Green River in Utah, and b) for repairs, rehabilitation and replacement of constructed capital facilities as needed through 2023.
- Recognize additional non-federal cost sharing of $56 million through 2023.
- Allow continued use of power revenues through 2023 for annual operation and maintenance expenses associated with the two recovery programs.

The members of the Wyoming Water Association again request and will greatly appreciate your continued support of these two vital programs through approval of S.3189.

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