

**H.R. 1065, H.R. 1738, H.R. 2265,  
H.R. 2442, H.R. 2522, H.R. 2741  
AND H.R. 2950**

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**LEGISLATIVE HEARING**

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

—————  
Tuesday, July 21, 2009  
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## CONTENTS

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	Page
Hearing held on Tuesday, July 21, 2009 .....	1
Statement of Members:	
Baca, Hon. Joe, a Representative in Congress from the State of California .....	57
Chaffetz, Hon. Jason, a Representative in Congress from the State of Utah, Prepared statement of .....	20
Costa, Hon. Jim, a Representative in Congress from the State of California .....	57
Gallegly, Hon. Elton, a Representative in Congress from the State of California, Prepared statement of .....	83
McClintock, Hon. Tom, a Representative in Congress from the State of California .....	4
Miller, Hon. George, a Representative in Congress from the State of California .....	5
Napolitano, Hon. Grace F., a Representative in Congress from the State of California .....	2
Walden, Hon. Greg, a Representative in Congress from the State of Oregon .....	6
Statement of Witnesses:	
Alvarez, Desi, Deputy City Manager, Downey, California .....	30
Prepared statement on H.R. 1738 .....	31
Brookshier, Ed, City Manager, Hermiston, Oregon .....	51
Prepared statement on H.R. 2741 .....	53
Connor, Michael L., Commissioner, Bureau of Reclamation, U.S. Department of the Interior, Washington, D.C. ....	8
Prepared statement on H.R. 1065 .....	16
Prepared statement on H.R. 1738 .....	9
Prepared statement on H.R. 2265 .....	10
Prepared statement on H.R. 2442 .....	10
Prepared statement on H.R. 2522 .....	11
Prepared statement on H.R. 2741 .....	12
Prepared statement on H.R. 2950 .....	13
Darling, Gary W., General Manager, Delta Diablo Sanitation District, Antioch, California .....	43
Prepared statement on H.R. 2442 .....	45
Hansen, Edwin J., General Manager, Magna Water District, Magna, Utah .....	41
Prepared statement on H.R. 2265 .....	42
Lupe, Ronnie, Tribal Chairman, White Mountain Apache Tribe, Fort Apache Indian Reservation, Arizona .....	65
Prepared statement on H.R. 1065 .....	66
Mulligan, Susan, Manager of Engineering, Calleguas Municipal Water District, Thousand Oaks, California .....	47
Prepared statement on H.R. 2522 .....	49
Ruppe, Scott, General Manager, Uintah Water Conservancy District, Vernal, Utah .....	54
Prepared statement on H.R. 2950 .....	56
Sullivan, John F., Associate General Manager, Water Group, Salt River Valley Water Users Association and Salt River Project Agricultural Improvement and Power District, Phoenix, Arizona .....	71
Prepared statement on H.R. 1065 .....	72



**LEGISLATIVE HEARING ON H.R. 1738, TO AMEND THE RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PARTICIPATE IN THE CITY OF DOWNEY, CALIFORNIA, REGIONAL WASTEWATER TREATMENT AND RECLAMATION FACILITY PROJECTS. "DOWNEY REGIONAL WATER RECLAMATION AND GROUNDWATER AUGMENTATION PROJECT OF 2009;" H.R. 2265, TO AMEND THE RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PARTICIPATE IN THE MAGNA WATER DISTRICT WATER REUSE AND GROUNDWATER RECHARGE PROJECT, AND FOR OTHER PURPOSES. "MAGNA WATER DISTRICT WATER REUSE AND GROUNDWATER RECHARGE ACT OF 2009;" H.R. 2442, TO AMEND THE RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT TO EXPAND THE BAY AREA REGIONAL WATER RECYCLING PROGRAM, AND FOR OTHER PURPOSES. "BAY AREA REGIONAL WATER RECYCLING PROGRAM EXPANSION ACT OF 2009;" H.R. 2522, TO RAISE THE CEILING ON THE FEDERAL SHARE OF THE COST OF THE CALLEGUAS MUNICIPAL WATER DISTRICT RECYCLING PROJECT, AND FOR OTHER PURPOSES;**

**H.R. 2741, TO AMEND THE RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PARTICIPATE IN THE CITY OF HERMISTON, OREGON, WATER RECYCLING AND REUSE PROJECT, AND FOR OTHER PURPOSES; H.R. 2950, TO DIRECT THE SECRETARY OF THE INTERIOR TO ALLOW FOR PREPAYMENT OF REPAYMENT CONTRACTS BETWEEN THE UNITED STATES AND THE UINTAH WATER CONSERVANCY DISTRICT; AND H.R. 1065, TO RESOLVE WATER RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE IN THE STATE OF ARIZONA, AND FOR OTHER PURPOSES. “WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION ACT OF 2009.”**

**Tuesday, July 21, 2009  
U.S. House of Representatives  
Subcommittee on Water and Power  
Committee on Natural Resources  
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:01 a.m. in Room 1334 Longworth House Office Building, Hon. Grace Napolitano [Chairwoman of the Subcommittee] presiding.

Present: Representatives Napolitano, McClintock, Miller, Costa, and Baca.

Also Present: Representatives Gallegly, Chaffetz, Walden, Smith of Nebraska, Roybal-Allard, Matheson, and Kirkpatrick.

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

Mrs. NAPOLITANO. Good morning, ladies and gentlemen. The meeting of the Subcommittee on Water and Power will come to order.

The purpose of today's meeting is to hold a legislative hearing on H.R. 1738, H.R. 2265, H.R. 2442, H.R. 2741, H.R. 2950 and H.R. 1065.

But first, before I start the meeting, I would like to welcome and congratulate my former colleague in the State Assembly and newly appointed Ranking Member, Tom McClintock, for having his first hearing today. And while I am at it, I would like to also, I would

like to introduce our new Director of Personnel for the Water and Power Subcommittee, David Wegner, and look forward to having a lot more interaction on water.

I ask unanimous consent that Congresswoman Roybal-Allard, Congressman Matheson, Congressman Chaffetz, Congressman Gallegly, Congressman Walden, and Congresswoman Kirkpatrick be allowed to sit on the dais and participate in the Subcommittee proceedings today. And without objection, so ordered.

After my opening statement I will recognize all of the members of the Subcommittee for any statements they may have. Any member who desires to be heard will be heard.

Additional material may be submitted for the record by members, by witnesses or by any interested party. The record will be kept open for 10 business days following the hearing.

The five-minute rule with our timer will be enforced. Green means go, yellow indicates one minute remains, and red means stop or I will.

Today's legislative agenda focuses on two issues that the Water and Power Subcommittee sees as priorities: Title XVI water recycling and tribal water rights settlement litigation.

Mrs. NAPOLITANO. Today we are also considering H.R. 2950, a bill that allows for early repayment of contracts to the Federal government from Uintah Water Conservancy.

Welcome Commissioner Connor to what I anticipate will be the first of many Subcommittee hearings. Hopefully all of them will be pleasant. We look forward to hearing the Bureau of Reclamation's perspective on Title XVI and Indian water rights.

Mrs. NAPOLITANO. I am concerned about the Administration's position to not support Title XVI legislation and H.R. 1065, the White Mountain Apache settlement legislation, and I hope you will be able to enlighten the Subcommittee this morning on the reasons why the Department of the Interior does not support programs to better manage our western water resources.

We want to better understand the constraints the Bureau has in supporting these programs, and what needs to be done to resolve your concerns. One of mine is budgetary, and I hope to see in the future a budget of at least \$100 million for the next several legislative years to be able to catch up with the backlog of over \$600 million.

There is an issue of unclear administrative or legislative direction. Tell us how we can help provide the focus.

Let me make this very clear. We look upon Title XVI and Indian water settlement programs as being critical to addressing the current and future water crisis of the West.

Today we will hear testimony on five separate Title XVI programs' authorizations. When combined, these five bills produce 62,000 acre-feet of recycled, reused water for our systems.

At a time when my home state of California faces extremely tough economic and hydrological conditions from the Bay Area, Bay Delta Region to the Southland, we cannot ignore the role nor the importance of Title XVI programs to helping solve our water problems.

I personally welcome Chairman Lupe of the White Mountain Apache Tribe—welcome, sir—for the testimony we will receive on

H.R. 1065. This legislation settles the claims of the Tribe and provides the White Mountain Apache Tribe with a quantified water right. Most importantly, it provides certainty to all water users in the Salt River Basin and a defined water right from which the Tribe can work to improve their economic well-being.

Thank you to all of the witnesses for traveling so many miles to meet with us here in Washington, D.C.

I want to again welcome my colleague and new Ranking Member, Tom McClintock, to the Subcommittee and ask for any opening statements he may have.

**STATEMENT OF HON. TOM McCLINTOCK, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. McCLINTOCK. Well, thank you very much, Madame Chairwoman. I very much enjoyed our service together years ago in the California Assembly, and I am looking forward to being able to work with you in this new capacity.

The former Ranking Republican on this Subcommittee, Cathy McMorris Rodgers, and the Republican staff have told me repeatedly how much they appreciate the open and bipartisan manner with which you have conducted this Subcommittee, and I want you to know how strongly I seek to continue that working relationship.

I would like to begin by offering a few thoughts on the general work of the Subcommittee and then on the bills before us today.

A generation ago the principal objective of our water and power policy was to create an abundance of both. It was an era when vast reservoirs and hydroelectric facilities produced a cornucopia of clean and plentiful and cheap electricity and water on a scale so vast that many communities didn't even bother to meter.

But the last generation seems to have abandoned this objective and to replace it with a very different philosophy that now dominates our public policy, that the principal purpose of government is not to produce abundant water and power but rather to ration and manage shortages the government has caused by abandoning its earlier objectives.

The result is increasingly expensive water and power that is now affecting our prosperity as a nation. We are no longer looking at cost-benefit analysis of which projects make economic sense and which do not. Instead, practicality has been replaced by an entirely new ideological filter. Those projects that ration or manage shortages are considered worthy, regardless of their feasibility or cost; and projects that produce abundance are to be discouraged, regardless of their economic benefits or simple common sense.

We have seven bills before us today, including five that deal with water recycling programs. With respect to the recycling bills, I think we need to address some very basic questions to assure consistency and accountability.

First, what is the Federal nexus? Projects that exclusively benefit local communities ought to be exclusively financed by local communities. Federal funds should be used to benefit the entire nation. So the question arises, why should St. Petersburg be asked to pay for a water project for St. Paul?

Second, have we established the project's feasibility? Before Congress authorized most water supply projects in the past, the

planning had to be completed so we knew what we were getting. Has this process been undertaken on the projects before us?

Third, is the project cost-effective? It is said that every gallon of recycled water avoids the need for a gallon of harvested water. But that begs the obvious question, if an acre-foot of recycled water costs \$1,000 and an acre-foot of harvested water costs \$200, why replace the cheaper water with the more expensive water at enormous expense to taxpayers and consumers?

This is a question that seems to be neglected in these discussions. But at a time when the Federal deficit is at its highest level in history by a factor of four, it is a question that ought to dominate every discussion on this subject.

One of the bills before us today involves the settlement of Indian water rights claims. Congress has passed 20 settlement bills over the last 20 years, but there are hundreds of others that it may be called upon to decide in the future.

I support the basic principle of the Winters decision that an inherent obligation to the Federal government in establishing a reservation is to guarantee sufficient water for that reservation. However, I am concerned about tribal claims to excess water for the sole purpose of reselling it at profit. For example, 99,000 acre-feet of water are proposed to be given to 15,000 residents. That is 2.1 million gallons per person, more than 25 times the average annual residential usage.

The total cost of this legislation is \$292 million or nearly \$20,000 per resident. One part of this bill requires the American taxpayer to finance economic development projects that may not be supported by the Administration nor be related to the water rights settlement. And I hope that these issues can be addressed during that portion of the hearing.

Finally, we have a bill that allows the Uintah Water District to prepay its obligations to the Federal Treasury. This is in the interest of the District that can be relieved of interest costs and regulatory burdens. But it is also in the interest of the Nation at a time when it is running a catastrophic deficit.

My only question is why an Act of Congress is necessary to make it possible for the District to do so. I hope that the law can be broadened to allow any district in similar circumstances to prepay Federal loans or other obligations without having to beg Congress for special approval to do so.

Those are my initial questions and observations, Madame Chairman. And I want to thank the witnesses for traveling all the way to address them and to assist us in this decisionmaking process.

Mrs. NAPOLITANO. Thank you, sir. And I am Chairwoman, sir.

Mr. Miller?

**STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MILLER. Thank you, Madame Chairwoman. I want to thank you so much for holding this hearing and for your unflagging support of alternative water supplies like water recycling.

And I want to welcome Commissioner Mike Connor here to the Subcommittee and thank him for bringing us his wealth of experience. And he has a reputation and experience in working on many

of these problems, in fact even solving a few of them. So welcome to the Committee and welcome to the Department of the Interior.

I also want to welcome Gary Darling and thank him for his tireless work on the Title XVI programs in the San Francisco Bay Area. Through the Bay Area Recycled Water Coalition, Gary has brought the region's water and wastewater agencies together to identify effective and worthy projects. It is a successful model, and it is one that we should reward. The Title XVI program helps provide a sustainable water supply for California and for the West and helps us to lessen the impact on the Bay Delta ecosystems and on other parts of the California water system.

The six water recycling projects in H.R. 2442 would add over 8,000 acre-feet of water, of new sustainable water supply in California. That works out to 7.2 million gallons per day and up to meet the needs of 24,000 households, over 24,000 households.

Over time the Bay Area Water Recycling program is projected to add more than 90,000 acre-feet of water to our region's clean water supply. This bill and the water it will provide is absolutely critical to a state like ours. That is why I am extremely disappointed to see that the Bureau of Reclamation is not supporting the additional authorizations for the Title XVI programs.

I hope to hear an explanation from the Commissioner as to the Administration's position on the program, and I look forward to seeing and working with the Administration for its support of water reuse and recycling in the 2011 budget.

But thank you again for these hearings so that we can narrow these subjects. I yield back the balance of my time.

Mrs. NAPOLITANO. Thank you, Mr. Miller.

Mr. Walden.

**STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. WALDEN. Thank you very much, Chairwoman Napolitano and Ranking Member McClintock. It is good to be back here on the dais. I only wish I had a vote up here again.

Thank you for holding a hearing on H.R. 2741, legislation I wrote to authorize the Bureau of Reclamation to participate in the building of a new water recycling and reuse facility for the City of Hermiston in northeast Oregon.

And like my friend and colleague from California, Mr. Miller, I too share concerns about the Bureau's opposition to this legislation because in this case, as in many in the West where we are starved for water, being able to reuse it can bring great benefits for agriculture, for fish and to meet new environmental regulations.

Before I get into the specifics of the bill before us now, I want to say thank you for allowing me the opportunity to participate in the hearing, Madame Chairwoman.

Second, I would like to welcome Hermiston City Manager Ed Brookshier to the hearing. Ed and his team have done a wonderful job of demonstrating to me the need for this project and why it is a worthwhile Federal project. He has made the long trip out here from the West Coast to testify for the bill today. Madame Chairwoman and Congressman McClintock, as I do, I know you understand the distances in making that trip.

The construction of the Hermiston Recycled Water Plant Improvement project, as it is commonly known, will enable the city to reliably meet numerous key goals, including complying with the National Pollutant Discharge Elimination System permit levels for the next 20-plus years.

Now the existing facilities were constructed in 1979 and as you can imagine after 30 years are in need of modernization that will help meet new pollution reduction requirements, add capacity and help put water instream for salmon. This project will increase wastewater treatment capacity to match the population and economic growth for a community that refuses to be in a recession, a statement made by the Hermiston Chamber of Commerce Executive Director, Debbie Pedro, to me and others during a community meeting in Hermiston a while back.

The project has been designed to produce the highest quality class A recycled water that will add additional protections for the Umatilla River's threatened salmon species. This was one of the key reasons that the Confederated Tribes of the Umatilla Indian Reservation are supporting the legislation and the project. I thank them for their support.

And, Madame Chairwoman, I have a letter of support from the Umatilla Tribes that I would like to have put into the record, along with a statement from the West Extension Irrigation District in support of the legislation, without objection I would like to have added in as supporting documents.

Mrs. NAPOLITANO. Without objection, so ordered.

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

Mr. WALDEN. The final component of the project will be the drought-resistant water delivery of recycled water to the West Extension Irrigation District. These deliveries will help the irrigation district serve their diverse agricultural community. This water will supplement current allocations, but as we all know, a little extra water in a dry climate can make or break it for farmers.

The proposed project must comply with numerous environmental laws and regulations, and the city has completed the required supporting documentation. This included preparation of an environmental assessment for potential impacts from the proposed project, such as a cultural resources survey, wetland delineation and an Endangered Species Act biological assessment.

The Federal cost share in this bill, 25 percent Federal, 75 percent local, will be of enormous assistance in this partnership for the community to meet these requirements, most of which are driven by the Federal government as the project moves on from drawing boards to construction.

However, the Federal cost share only exists if this bill becomes law. So I ask that this Subcommittee make a do-pass recommendation to the full Committee to take action as soon as possible so the House can consider and pass this legislation.

You can see this legislation is of great importance to the City of Hermiston and surrounding areas.

I thank you, Madame Chairwoman, for holding this hearing today, and I would be happy to answer any questions. Thank you, Madame Chairwoman.

Mrs. NAPOLITANO. Thank you, Mr. Walden, for your statement—and to all of you gentlemen.

We will now hear from our witnesses. We do have two panels. We have combined Mr. Connor into the first panel. Witnesses will be introduced before they testify. And after we hear from each panel, we will have questions.

Your prepared statements will be entered into the record, and all witnesses are asked to kindly summarize the high points of your testimony and limit your remarks to five minutes. Again, the timer before you will be used to enforce this rule. It also applies to our questions. Members will have five minutes for questions. If there are additional questions, we may have a second round, time permitting.

For our first panel, we have Commissioner Mike Connor from the Bureau of Reclamation. He will testify on all bills. And you have 10 minutes, sir, because that way you don't have stop, Mr. Connor. Commissioner Connor.

**STATEMENT OF MIKE CONNOR, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C., ON H.R. 1738, H.R. 2265, H.R. 2442, H.R. 2522, AND H.R. 2741**

Mr. CONNOR. Thank you. Madame Chairwoman and members of the Subcommittee, this is my first appearance before the Subcommittee, and I welcome the opportunity to testify before you today and look forward to working with you and your staff over the next several years.

I am pleased to provide the Department of the Interior's views today on seven bills before the Subcommittee. In the interest of time, I will provide a quick summary of my written statements, which have been submitted for the record.

To begin, I will devote this portion of the statement to summarizing the Department's position on the five Title XVI bills that are before the Subcommittee today. I will also provide testimony then following on the other two bills that are before you.

The five Title XVI bills before the Committee today all authorize Federal cost-sharing in new water or expanded local water recycling projects. Reclamation staff, working with local project sponsors, have determined that the projects before the Subcommittee today are at various stages in the process of evaluating their feasibility. This is a key aspect of the Title XVI program, and the details for each project are set forth in my written statement.

One update I have is that at the end of last week, the Magna, Utah project, that is in H.R. 2265 was certified as feasible by Reclamation staff. So that is an update to the written statement.

As a threshold matter, I would like to express the Department's general support for the Title XVI Reclamation and Reuse program. The 2010 budget proposal includes funding for Secretary Salazar's water conservation initiative, and Title XVI is an important element of that program.

Also, on July 1, the Department announced the award of approximately \$135 million in American Recovery and Reinvestment Act funding for authorized Title XVI projects. We recognize that water

reuse is an essential tool in stretching the limited water supplies in the West.

Notwithstanding the support, Reclamation is managing the Title XVI program in evaluating new authorizations in the context of a backlog of over \$600 million in currently authorized projects. This figure takes into account the just-announced \$135 million in funding out of the Recovery Act. So, given the budget challenges presented by this backlog, the Department is unable to support the authorization of new Title XVI projects at this point in time.

Reclamation will, however, continue to work with project proponents to evaluate the feasibility of their projects. To that end, Reclamation recently revised and improved its directives and standards that govern its review of Title XVI projects. By applying these new standards, we believe Reclamation can play a constructive role with local sponsors as well as Congress in evaluating the merits of proposed water recycling projects.

Reclamation believes that information regarding a project's feasibility should be fundamental to Congress's evaluation of new Title XVI authorizations.

With that, that summarizes my statement with respect to the Title XVI projects. I will go forward now to the other specifics of the two bills before the Subcommittee.

[The prepared statements of Mr. Connor on H.R. 1738, H.R. 2265, H.R. 2442, H.R. 2522 and H.R. 2741 follow:]

**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 1738**

Madam Chairwoman and Members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation. I am pleased provide the Department of the Interior's views on H.R. 1738, the Downey Regional Water Reclamation and Groundwater Augmentation Act. For reasons described below, the Department cannot support H.R. 1738.

H.R. 1738 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Downey Regional Water Reclamation and Groundwater Augmentation Project in Los Angeles County, California.

Reclamation this summer has begun meetings with the City of Downey to exchange information regarding this project and help them develop a feasibility study in accordance with existing Directives and Standards. A feasibility study has not been submitted by the City of Downey, and compliance with the National Environmental Policy Act for this project has not been initiated. As such, Reclamation cannot provide a determination as to its merits.

As a threshold matter, I'd like to express the Department's general support for the Title XVI Reclamation and Reuse program. The 2010 budget proposal includes funding for Secretary Salazar's Water Conservation Initiative and Title XVI is an important element of that program. Also, on July 1, the Department announced the award of approximately \$135 million in grants for specific authorized Title XVI projects. We recognize that water reuse is an essential tool in stretching the limited water supplies in the West.

However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects at this time. As a practical matter, Reclamation is concerned that a proliferation of authorized projects would be detrimental to effective overall program management because there would be a dilution of available funding and a diminished ability of the Bureau to carry out and complete individual projects.

Reclamation will, however, continue to work with project proponents to evaluate the feasibility of their projects. To that end, Reclamation recently revised and improved its directives and standards that govern the review of Title XVI projects. By doing so, we believe that Reclamation can play a constructive role with local spon-

sors, as well as Congress, in evaluating the merits of proposed water recycling projects. Information regarding a project's feasibility should be fundamental to Congress' evaluation of new authorizations.

H.R. 1738 authorizes the appropriation of up to \$20 million, or a maximum of 25 percent of total project costs. While the Department supports efforts to increase local water supplies and increase recycled water use in Southern California, this project would compete with other critical needs within the Reclamation program, including other Title XVI projects currently under construction, for funding priority in the President's Budget.

Madam Chairwoman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 1738. I would be pleased to answer any questions at this time.

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**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 2265**

Madam Chairwoman and Members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on H.R. 2265, legislation to authorize the Secretary of the Interior to participate in the Magna Water District water reuse and groundwater recharge project. For reasons discussed below, the Department cannot support H.R. 2265.

H.R. 2265 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of permanent facilities needed to establish recycled water distribution and wastewater treatment and reclamation facilities in the Magna Water District in Salt Lake County, Utah.

H.R. 2265 authorizes a \$12 million Federal cost share for the project. Reclamation's Regional and Program offices are reviewing the Magna Water District's draft Feasibility Report this month to determine its compliance with the requirements identified in the Title XVI Water Reclamation and Reuse Program Directives and Standards (D&S) and Section 1604 of Public Law 102-575, as amended. Reclamation anticipates making a final determination as to the project's feasibility in the next few months.

As a threshold matter, I'd like to express the Department's general support for the Title XVI Reclamation and Reuse program. The 2010 budget proposal includes funding for Secretary Salazar's Water Conservation Initiative and Title XVI is an important element of that program. Also, on July 1, the Department announced the award of approximately \$135 million in grants for specific authorized Title XVI projects. We recognize that water reuse is an essential tool in stretching the limited water supplies in the West.

However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects at this time. As a practical matter, Reclamation is concerned that a proliferation of authorized projects would be detrimental to effective overall program management because there would be a dilution of available funding and a diminished ability of the Bureau to carry out and complete individual projects.

Reclamation will, however, continue to work with project proponents to evaluate the feasibility of their projects. To that end, Reclamation recently revised and improved its directives and standards that govern the review of Title XVI projects. By doing so, we believe that Reclamation can play a constructive role with local sponsors, as well as Congress, in evaluating the merits of proposed water recycling projects. Information regarding a project's feasibility should be fundamental to Congress' evaluation of new authorizations.

Madam Chairwoman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 2265. I would be happy to answer any questions at this time.

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**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 2442**

Madam Chairwoman and Members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on H.R. 2442, legislation to expand the Bay Area Regional Water Recycling Program (BARWRP). Although Reclamation commends BARWRP's goals, for reasons discussed below the Department cannot support H.R. 2442.

H.R. 2442 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of six new projects for water recycling and distribution of non-potable water supplies in the greater San Francisco Bay Area. The legislation would also increase the Federal cost share for two previously-authorized Title XVI projects in the same area to \$16.3 million from \$10.5 million. H.R. 2442 would increase the number of BARWRP projects from eight to 14.

As a threshold matter, I'd like to express the Department's general support for the Title XVI Reclamation and Reuse program. The 2010 budget proposal includes funding for Secretary Salazar's Water Conservation Initiative and Title XVI is an important element of that program. Also, on July 1, the Department announced the award of approximately \$135 million in grants for specific authorized Title XVI projects. Reclamation also recently selected 27 Title XVI projects—26 of which are in California—that will receive American Recovery and Reinvestment Act of 2009 funding. We recognize that water reuse is an essential tool in stretching the limited water supplies in the West.

However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects at this time. As a practical matter, Reclamation is concerned that a proliferation of authorized projects would be detrimental to effective overall program management because there would be a dilution of available funding and a diminished ability of the Bureau to carry out and complete individual projects.

Reclamation will, however, continue to work with project proponents to evaluate the feasibility of their projects. To that end, Reclamation recently revised and improved its directives and standards that govern the review of Title XVI projects. By doing so, we believe that Reclamation can play a constructive role with local sponsors, as well as Congress, in evaluating the merits of proposed water recycling projects. Information regarding a project's feasibility should be fundamental to Congress' evaluation of new authorizations.

Many Federal Title XVI projects are located in the greater San Francisco Bay area, a region that encompasses the United States' largest west coast estuary and the source of drinking water for two-thirds of California. Many of the local project sponsors work together through entities such as the Bay Area Recycled Water Coalition. Over the past decade, such agencies have invested nearly \$300 million of local funds in water recycling projects.

Reclamation commends these agencies for working together to coordinate their efforts to address the regional issues of water supply and water quality. Reclamation, in collaboration with each project sponsor, is assisting in the preparation of project-specific feasibility reports and will review all submitted documents for compliance with applicable Federal environmental and cultural regulations.

H.R. 2442 authorizes the appropriation of over \$38 million of new or increased Federal cost shares. The Department supports efforts to increase local water supplies and increase recycled water use in northern California. However, the Department does not support the authorization of new Title XVI projects which have not yet received a determination that they are feasible for construction. Also, as discussed above these projects would compete with other needs within the Reclamation program, including other Title XVI projects currently under construction, for funding priority in Reclamation's Budget.

Madam Chairwoman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 2442. I would be happy to answer any questions at this time.

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**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 2522**

Madam Chairwoman and Members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on H.R. 2522, a proposal to raise the ceiling on the Federal share of the cost of the Calleguas Municipal Water District (District) Recycling Project. For reasons discussed below, the Department cannot support H.R. 2522.

H.R. 2522 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.) commonly called Title XVI, to increase the ceiling on the federal share of the costs of the Calleguas project to \$60 million. Current Federal law limits the Federal share of individual project costs to 25 percent of the total, or a maximum contribution of \$20 million. Raising the cost share further would further strain Federal budgetary resources.

The District submitted a feasibility study as required by the Title XVI statute, and it was approved in April of 2000. The feasibility study included nine distinct components: five wastewater reclamation and reuse projects, three brackish groundwater recovery projects, and a regional brine disposal project. A cooperative agreement was executed in September 2000, to provide Federal funding for one of the wastewater reclamation and reuse projects known as the Conejo Creek Diversion Project. This project was completed in September, 2003, and is currently producing about 9,000 acre-feet of recycled water annually. The total Federal share for this component was almost \$1.7 million.

In January, 2003, a cooperative agreement was executed to provide federal funding for the Regional Brine Line component. To date, Reclamation has provided about \$10 million to the District as the federal share of costs for this facility, which will provide a means to dispose of brine wastes from facilities such as brackish groundwater recovery projects throughout Ventura County. The FY 2010 Budget requested \$1.4 million for the Calleguas Municipal Water District Recycling project.

The Regional Brine Line is being constructed in three phases, starting with Phase 1 near the coast, and progressing inland. The current estimated cost of Phase 1, which includes an ocean outfall, is about \$76 million. The 25 percent federal share of Phase 1 would be \$19 million, which would obviously be reduced slightly because Reclamation has already provided \$1.7 million for the Conejo Creek Diversion Project. There would be no additional Federal funds available for Phases 2 and 3, which together are estimated to cost about \$145 million; nor for any of the remaining seven projects that were identified in the feasibility study due to the current ceiling. This legislation would authorize \$40 million in additional federal funds.

As a threshold matter, I'd like to express the Department's general support for the Title XVI Reclamation and Reuse program. The 2010 budget proposal includes funding for Secretary Salazar's Water Conservation Initiative and Title XVI is an important element of that program. Also, on July 1, the Department announced the award of approximately \$135 million in grants for specific authorized Title XVI projects. Reclamation also recently selected 27 Title XVI projects—26 of which are in California—that will receive American Recovery and Reinvestment Act of 2009 funding. We recognize that water reuse is an essential tool in stretching the limited water supplies in the West.

However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects at this time. As a practical matter, Reclamation is concerned that a proliferation of authorized projects would be detrimental to effective overall program management because there would be a dilution of available funding and a diminished ability of the Bureau to carry out and complete individual projects.

Reclamation will, however, continue to work with project proponents to evaluate the feasibility of their projects. To that end, Reclamation recently revised and improved its directives and standards that govern the review of Title XVI projects. By doing so, we believe that Reclamation can play a constructive role with local sponsors, as well as Congress, in evaluating the merits of proposed water recycling projects. Information regarding a project's feasibility should be fundamental to Congress' evaluation of new authorizations.

Madam Chairwoman, this concludes my testimony. Thank you for the opportunity to comment on H.R. 2522. I would be pleased to answer any questions at this time.

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**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 2741**

Madam Chairwoman and Members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on H.R. 2741, the City of Hermiston, Oregon, Water Recycling and Reuse Project. For reasons discussed below the Department cannot support H.R. 2741.

H.R. 2741 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of permanent facilities to reclaim and reuse water in the City of Hermiston, Oregon. Current federal law limits the federal share of individual project costs to 25 percent of the total, or a maximum federal contribution of \$20 million.

The City of Hermiston is located in north central Oregon and is one the largest communities within the Bureau of Reclamation's Umatilla Project Area. As part of their Wastewater Treatment Plant Improvements Project, the City of Hermiston is

exploring the option of delivering reclaimed water to the West Extension Irrigation District to be used as agricultural water. Based on the city's current population, the reuse project would deliver an additional 1,132 acre-feet of water to the West Extension Irrigation District during the irrigation season. By 2026, it is estimated that the project would yield 1,685 acre-feet of reused water. The total estimated cost for this project is about \$21.5 million.

H.R. 2741 includes authorization for design, planning, and construction of this project, of which the Federal cost share is limited to 25 percent of the total cost. No Title XVI related appraisal or feasibility levels studies have been completed for this project.

The City of Hermiston is part of an agricultural community and recent changes in the state of Oregon's recycled water regulations reduce the barriers to using such water for the irrigation of food crops. There have also been a number of discussions between the City of Hermiston and the West Extension Irrigation District's governing board and the District has taken a favorable view of the project.

As a threshold matter, I'd like to express the Department's general support for the Title XVI Reclamation and Reuse program. The 2010 budget proposal includes funding for Secretary Salazar's Water Conservation Initiative and Title XVI is an important element of that program. Also, on July 1, the Department announced the award of approximately \$135 million in grants for specific authorized Title XVI projects. We recognize that water reuse is an essential tool in stretching the limited water supplies in the West.

However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects at this time. As a practical matter, Reclamation is concerned that a proliferation of authorized projects would be detrimental to effective overall program management because there would be a dilution of available funding and a diminished ability of the Bureau to carry out and complete individual projects.

Reclamation will, however, continue to work with project proponents to evaluate the feasibility of their projects. To that end, Reclamation recently revised and improved its directives and standards that govern the review of Title XVI projects. By doing so, we believe that Reclamation can play a constructive role with local sponsors, as well as Congress, in evaluating the merits of proposed water recycling projects. Information regarding a project's feasibility should be fundamental to Congress' evaluation of new authorizations.

Madam Chairwoman, this concludes my statement. Thank you for the opportunity to comment on H.R. 2741. I would be pleased to answer any questions at this time.

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Mr. CONNOR. H.R. 2950, the Uintah Prepayment Bill. The Department supports H.R. 2950, with a clarification as set forth in my written statement.

H.R. 2950 is legislation that would allow for prepayment of current and future repayment obligations of the Uintah Water Conservancy District in Utah.

The District's current contract from 1992 requires them to repay about \$5.5 million through the year 2037 at the project interest rate of 3.2 percent, with annual payments of about \$226,000.

My written statement provides more details on this legislation and on the Jensen unit of the central Utah project. But in summary, the Department believes that the proposed legislation will provide for terms favorable to the District and the United States and provide flexibility to address any future unknowns if future additions to the Jensen unit do not materialize.

[The prepared statement of Mr. Connor on H.R. 2950 follows:]

**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 2950**

Madam Chairwoman and members of the Subcommittee, I am Mike Connor, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to provide the Department of the Interior's views on H.R. 2950. The legislation allows for prepayment of the current and future repayment contract obligations of the Uintah

Water Conservancy District (District) of the costs allocated to their municipal and industrial water (M&I) supply on the Jensen Unit of the Central Utah Project (CUP). H.R. 2950 would amend current law to change the date of repayment to 2019 from 2037. The legislation would also allow repayment to be provided in several installments and requires that the repayment be adjusted to conform to a final cost allocation. The Department supports the goals of H.R. 2950. However, the legislation should be amended to clarify that the early repayment will be of an amount equal to the net present value of the foregone revenue stream. Under any repayment scenario, the Federal Treasury must be made whole.

The District entered into a repayment contract dated June 3, 1976, in which they agreed to repay all reimbursable costs associated with the Jensen Unit of the CUP. However, pursuant to Section 203(g) of the Central Utah Project Completion Act of 1992 (P.L. 102-575) the District's contract was amended in 1992 to reduce the project M&I supply under repayment to 2,000 acre-feet annually and to temporarily fix repayment for this supply based upon an interim allocation developed for an uncompleted project. The 1992 contract required the District to repay about \$5.545 million through the year 2037 at the project interest rate of 3.222% with annual payments of \$226,585. The net present value of the amount remaining from this income stream starting in 2009 is \$3,887,364.<sup>1</sup>

However, the costs allocated to the contracted M&I supply, and the M&I supply available through additional contract amendments, may be significantly revised in the future upon project completion and Final Cost Allocation. An additional currently unallocated cost of \$7,419,513 is expected to be allocated to the contracted 2,000 acre-feet.<sup>2</sup> Assuming that the costs allocated to the contracted 2,000 acre-feet will be increased by \$7,419,513 with the reallocation in 2019, the net present value of the stream of benefits from this reallocation is \$4,654,454. Therefore, under Reclamation's assumptions, the net present value of the total stream of benefits anticipated under this contract is \$4,654,454 plus \$3,887,364, or \$8,541,818. The contracted M&I amount is \$4.1 million and the adjustment amount is \$7.4 million. In total non-discounted dollars, the Conservancy District owes the Federal government \$11.6 million.

Under Reclamation law, water districts are not authorized to prepay their M&I repayment obligation based upon a discounted value of their remaining annual payments.

This legislation would authorize early repayment by the Uintah Conservancy District to the Federal government. Because there is an interest component to the M&I repayment streams to be repaid early, early repayment without an adjustment for interest would result in lower overall repayment to the United States. However the Bureau believes that the language in this bill requiring that the early repayment be "under terms and conditions similar to those used in implementing section 210 of the Central Utah Project Completion Act (Public Law 102-575), as amended" is intended to require that the United States allow the early repayment in such a way as to keep the United States whole. We interpret this to mean that the Bureau of Reclamation would collect the present value of the whole amount that would be due without early repayment. Thus, given Reclamation's assumptions the present value of the payments collected under this legislation will be at least \$8,541,818, although the legislation allows some flexibility in the timing of the repayment and under some scenarios the total amount due could be higher.

The language in H.R. 2950 should be amended to clarify that this legislation is requiring that the Federal government be paid what it is owed by the Conservancy District. In supporting the concept of early repayment of the amount owed under this contract, the United States is reserving the right to seek full repayment to the U.S. Treasury.

While the Department supports the goals of H.R. 2950, the legislation should be amended to clarify that the U.S. Treasury will be repaid in full; our support depends upon language that will clearly establish that early repayment under this legislation must be of an amount equal to the net present value of the foregone revenue stream.

This concludes my testimony. I will be pleased to answer any questions the Subcommittee may have.

<sup>1</sup>All net present value figures cited in this testimony were calculated by discounting the payment stream to the year 2009 using the rate from 30-year Treasury constant maturities for the week ending July 10, 2009. The exact net present value will fluctuate based on the date of the calculation and the Treasury rate.

<sup>2</sup>This allocation will be subject to revision should there be additions to the project.

Mr. CONNOR. Finally, with respect to the White Mountain Apache Tribe proposed settlement, H.R. 1065 would authorize a settlement of the Federal Indian reserve water rights of the White Mountain Apache Tribe in Arizona.

To begin with, this Administration strongly supports the resolution of Indian water rights claims through a negotiated settlement. Settlements improve water management by providing certainly not just for the quantification of the Tribes' water rights but also for the rights of all water users, both Indian and non-Indian.

Indian water rights settlements are consistent with the Federal Trust's responsibility to Native Americans and with a policy of promoting Indian self-determination and economic self-sufficiency. For these reasons and more, for over 20 years, Federally recognized Indian tribes, states, local parties and the Federal government have acknowledged that when possible negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims.

However, the Department's general policy of support for negotiations cannot translate into support for every proposed settlement. As discussed in my written statement, while we appreciate that much good work has gone into this proposed settlement, we are unable to support H.R. 1065 at this point in time.

The Administration has a number of concerns about the specific language of this legislation. For example, Reclamation recently completed a review of the engineering estimates for the rural water system authorized in Section 7 of the bill. This project is a centerpiece of the settlement.

Based on that review, Reclamation determined that the Tribe's cost estimate of roughly \$126 million is not sufficiently detailed to provide the necessary assurance that the project can be constructed for that amount of money. This raises an uncertainty as to the actual Federal contribution that will be necessary to implement the settlement.

The Administration is also concerned about the mechanism under which the project construction funds would be handled. As introduced, H.R. 1065 has conflicting provisions regarding how the Secretary is to handle the money appropriated for construction of the rural water system.

Section 14 of the bill requires the establishment of a trust fund into which construction monies would be deposited. This trust fund would be managed in accordance with the American Indian Trust Fund Management Reform Act of 1994. The Tribe would be able to withdraw these funds and spend them after submitting a plan to the Secretary.

This is an unusual and potentially cumbersome way to deal with construction funds, particularly when compared to the option of constructing the project under the Indian Self-Determination and Education Assistance Act, the P.L. 93.638 program.

The waivers and releases authorized in Section 12 of the bill are also of serious concern to the Administration because they do not adequately protect the United States from future liability and do not provide the measure of certainty and finality that the Federal contribution contained in the bill should afford. The U.S. Forest Service has also raised concerns about the waiver provisions. We

believe the issues, however, raised are not irreconcilable if we are given the opportunity to work with the parties toward resolving them.

My written statement details additional concerns surrounding the financial structure of the settlement and some process considerations. In the interest of time, I will just add that the Administration needs to complete its analysis of this settlement, particularly the financial aspects.

The Administration appreciates the willingness of the settlement parties to negotiate their differences in a cooperative spirit. We are committed to working with Congress and all parties to developing settlement legislation that the Administration can support.

This concludes my statement. Thank you again for the invitation to appear today, and I welcome the opportunity for questions.

[The prepared statement of Mr. Connor on H.R. 1065 follows:]

**Statement of Michael L. Connor, Commissioner, Bureau of Reclamation,  
U.S. Department of the Interior, on H.R. 1065**

Madam Chairwoman and Members of the Subcommittee, I am Michael L. Connor, Commissioner of the Bureau of Reclamation. I am pleased to provide the Administration's views on H.R. 1065, the White Mountain Apache Tribe Water Rights Quantification Act of 2009. H.R. 1065 would authorize a comprehensive settlement of the Federal Indian reserved water rights claims of the White Mountain Apache Indian Tribe in Arizona.

This Administration supports the resolution of Indian water rights claims through negotiated settlement. However, our general policy of support for negotiations is premised on the federal contribution to the settlement being appropriate. Before the Administration can support a settlement, there must be a thorough analysis of the costs it would entail and the benefits to be received in order to assess the appropriateness of the proposed federal contribution. As I will discuss later, while the Administration appreciates that much good work has gone into this proposed settlement, we are unable to support it at this time.

**Negotiated Indian Water Rights Settlements**

Settlements improve water management by providing certainty not just as to the quantification of a tribe's water rights but also as to the rights of all water users. That certainty provides opportunities for economic development for Indian and non-Indians alike. Whereas unquantified Indian water rights are often a source of tension and conflict between tribes and their neighbors, the best settlements replace this tension with mutual interdependence and trust. In addition, Indian water rights settlements are consistent with the Federal trust responsibility to Native Americans and with a policy of promoting Indian self-determination and economic self-sufficiency. For these reasons and more, for over 20 years, federally recognized Indian tribes, states, local parties, and the Federal government have acknowledged that, when possible, negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims.

**White Mountain Apache Tribe Water Rights Quantification Act of 2009**

The heart of this bill is provisions ratifying and approving the White Mountain Apache Quantification Agreement dated January 13, 2009, a settlement reached between the tribe and other non-federal parties regarding the quantification of the Tribe's water rights. H.R. 1065 requires the Bureau of Reclamation to plan, design, construct, operate, maintain, replace, and rehabilitate a rural water system to serve the White Mountain Apache tribe. It also establishes a trust fund for the operation and maintenance of the system to be constructed. Finally, the bill includes authorizations for the Secretary to carry out a number of other activities that appear to be intended to promote economic development on the White Mountain Apache reservation.

These economic development activities include (1) providing financial and technical assistance to completing the Hawley Lake, Horseshoe Lake, Reservation Lake, Sunrise Lake, and Big and Little Bear Lake reconstruction projects and facilities improvements; (2) conducting a feasibility study of options for improving the manufacture and use of timber products derived from commercial products derived from commercial forests on the White Mountain Reservation and forest management

practices; (3) rehabilitating and improving the Alchesay-Williams Creek National Fish Hatchery Complex; (4) constructing a White Mountain Apache Tribe Fishery Center; (5) rehabilitating Canyon Day and other historic irrigation systems on the reservation; (6) planning, design, and construction of snow-making infrastructure, repairs, and expansion at Sunrise Ski Park; and (7) planning, designing, and constructing any recommended on-reservation recreation impoundments following a feasibility study of such impoundments.

H.R. 1065 is the culmination of cooperative negotiations among the Tribe and many non-Indian water users throughout northern and central Arizona. The negotiations were focused on the need for a long term solution to the problems of an inadequate Reservation's domestic water supply and quantifying the Tribe's water rights. The Tribe and other non-Federal parties reached agreement in 2008. The parties are to be commended for that effort.

There is much in the proposed settlement that is positive. The rural water system authorized through this bill would replace and expand the current water delivery system on the Reservation, which relies on a diminishing groundwater source and is quickly becoming insufficient to meet the needs of the Reservation population. We do not question the Reservation's need for reliable and safe drinking water. Although a system such as the one proposed may turn out to be the best way to address the Reservation's need, the Administration has many concerns about the specific language of this legislation as introduced, which are summarized below. We also have concerns about the large federal contribution expected in the proposed settlement. We would like to work with the sponsor of legislation and the settlement parties to address our concerns.

#### **Water Rights Allocation**

Under Section 5 of H.R. 1065, the Tribe would have the right to divert up to 99,000 acre-feet of water from a combination of groundwater, surface water, and Central Arizona Project water. We understand that the Tribe believes that this is a favorable quantification of its federal reserved water rights. The Department of the Interior's preliminary analysis indicates that the allocation is appropriate and we hope to have a final Administration analysis in the near future.

#### **Concerns about the Cost Estimate for Construction of the Rural Water System**

The centerpiece of the settlement is the construction and operation of the White Mountain Apache Rural Water System (WMAT Rural Water System) described in Section 7. This system would consist of the Miner Flat Dam, a 155 foot high dam along the North Fork of the White River that would have an anticipated total storage capacity of 8,400 acre-feet with a surface area of approximately 160 acres; water treatment facilities and a pipeline conveyance system extending approximately 50 miles throughout the Reservation. The surface water delivered from this system is anticipated to meet population requirements through 2040 or beyond.

The Bureau of Reclamation recently completed a review of the Design, Engineering, and Construction (DEC) estimates for the WMAT Rural Water System. Based on that review, Reclamation determined the Tribe's cost estimate of roughly \$126.2 million, which is in the proposed legislation, is not sufficiently detailed or comprehensive to provide the necessary assurance that the project can be constructed for that amount of money. Moreover, the legislation does not provide any cap on the amount of Federal funds that can be expended for project construction. The Administration is concerned about authorizing a project in cases such as this where we are very uncertain as to end costs. Our experience has been that projects authorized in this manner can become far more expensive than originally contemplated.

Further work is needed to bring the cost estimate up to the feasibility level generally required by Reclamation authorities before a project is recommended for authorization. This work will require Reclamation funding. At this time, Reclamation is developing a cooperative agreement to allow the Tribe to complete the planning, engineering, and design of a rural water system, pursuant to P.L. 110-390, under the Indian Self-Determination and Education Assistance Act, P.L.93-638. The real cost of the WMAT Rural Water System will certainly be refined as this effort moves forward.

In addition to concerns about the cost estimate, the Administration is also concerned about the mechanism under which project construction funds would be handled, which could add to the costs of project construction. As introduced, H.R. 1065 has differing provisions regarding how the Secretary is supposed to handle the money appropriated for construction. Section 14 of H.R. 1065 requires the establishment of a trust fund, the "Rural Water System Construction Fund" into which construction monies would be deposited. This trust fund would be managed in accord-

ance with the American Indian Trust Fund Management Reform Act of 1994. The Tribe would be able to withdraw these funds and spend them after submitting a plan to the Secretary. This is an unusual and cumbersome way to deal with construction funds. Reclamation, the bureau responsible for constructing the WMAT Rural Water System and the bureau to which the funds would typically be appropriated, would have to deposit construction funds into a trust account managed by a different bureau.

Under section 7(g) of H.R. 1065, the Tribe has the option of performing the planning, design, construction, operation, maintenance, rehabilitation, and replacement of the WMAT Rural Water System in accordance with the provision of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). Reclamation believes that having the tribe carry out the construction under an ISDEAA framework is one alternative that would accomplish the intended purposes of this act in a more direct and efficient manner than the trust fund model set forward in section 14. However, the Tribe has had financial management and accounting issues with other P.L. 93-638 contracts and grants. The Department encourages the use of the Indian Self-Determination and Education Assistance Act and would support its use for the projects called for in H.R. 1065 if additional language could be formulated and added to the legislation allowing the Secretary of the Interior to require appropriate accounting and review measures to insure that Federal funds are expended as intended. At the very least, the legislation needs to clarify whether the Secretary is being called upon to establish a trust fund to be controlled by the Tribe or to accomplish the construction through an ISDEAA contract. We look forward to working with the bill sponsors on this clarification. Ultimately, the Administration's goal in this or any other settlement is to define, with as much certainty as possible, the Federal costs necessary and appropriate to achieve implementation of the settlement.

#### **Title to the Rural Water System**

H.R. 1065 requires that the WMAT Rural Water System be held in trust by the United States. This stands in sharp contrast to the manner in which title to domestic water supply systems is handled in other enacted and pending water rights settlements. Generally, title is transferred to tribes or other project users once construction is complete. The Administration believes transferring title to the domestic water supply system is more consistent with concepts of self determination and tribal sovereignty and we would prefer that the WMAT Rural Water System be so transferred.

#### **Concerns about the Waivers and Releases**

The waivers and releases authorized in Section 12 of the bill are of serious concern to the Administration. We note that the Department of Justice has concerns that the waivers set forth in the bill do not adequately protect the United States from future liability and do not provide the measure of certainty and finality that the Federal contribution contained in the bill should afford. The U.S. Forest Service also has concerns about the waiver provisions. We believe that the issues raised are not irreconcilable if we are given the opportunity to work with the parties towards resolving them. Recently enacted settlements, such as the Duck Valley Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement, P.L. 111-11, provide an example of waiver and release provisions that were negotiated with the parties in a manner that addressed many of the Justice Department's concerns.

#### **Additional Concerns about the Financial Structure of this Settlement**

In addition to authorizing the WMAT Rural Water System, H.R. 1065 also authorizes appropriations for several other projects as part of the settlement: (a) snow-making facilities (\$25 million); (b) fish hatcheries (\$12.47 million); (c) irrigation rehabilitation (\$4.95 million); (d) a forest products feasibility study and implementation funds (\$25 million); and (e) recreation lakes improvements (\$48.67 million), a total of approximately \$116 million in addition to the amount authorized for the rural water system. However, under H.R. 1065 as introduced, the waivers by the Tribe and the United States of the Tribe's federal reserved water rights become effective once there is funding to construct the rural water system. With the exception of the funding for the rehabilitation of the irrigation systems on the reservation, the other settlement activities authorized in this legislation are completely uncoupled from the waivers. The final effectiveness and enforceability of the settlement is not contingent on these other appropriations, but only upon the appropriations for the design and construction of the WMAT Rural Water System. Other settlements have followed a different model under which a tribe receives an appropriation in a fund to accomplish its own development priorities in using the water it receives under a settlement. We believe that model might be preferable, although the Administra-

tion has not determined what would be an appropriate amount of federal funding for such a fund.

We also note that the bill as introduced would require all of the funding for the rural water system to be appropriated by October 31, 2013. Given the realities of federal budgeting, it will be much more realistic to provide a longer period to budget for what are ultimately determined to be the appropriate federal costs of this system. To the extent that one of the factors driving the settlement proponents to ask for this money upfront is a desire for waivers that come into effect earlier, we would suggest that they look at other settlements involving construction where waivers are able to come into effect but are subject to nullification if construction does not get completed within the time frame established in the settlement agreement and authorizing legislation.

#### **Process Concerns and Conclusion**

This legislation has to be analyzed and understood within the context of the large numbers of Indian water rights settlements which are expected to be introduced during the course of the 111th Congress. We need to establish negotiating approaches and standards that will result in fair consideration and treatment of all of the settlements that this Congress will be asked to review. While we are aware that the settling parties worked closely with the Federal negotiating team in developing the parameters of this settlement, we have also been informed by the team that issues involving the cost of the settlement were not considered. We believe that these costs need to be discussed and negotiated and that the benefits of the settlement must justify the costs. The Administration needs to complete its analysis of the settlement so that we can inform the parties what level of funding we would be able to support, and we need to explore alternative funding mechanisms that will provide a realistic chance for this settlement to be implemented in a way that fulfills the promise that it represents to the Tribe and to others for a comprehensive settlement.

In conclusion, the Administration appreciates and is encouraged by the willingness of the settlement parties to negotiate their differences in a cooperative spirit. We are committed to working with Congress and all parties to develop settlement legislation that the Administration can support.

Thank you, Madam Chairwoman, for the opportunity to present this testimony. I will be pleased to answer questions you and other Members might have.

Mrs. NAPOLITANO. Thank you, Mr. Connor. And I read most of your testimony except for what came in this morning. I certainly would appreciate all of it coming in so that I have a chance to go over it and draw some of my questions out of your testimony.

I have the greatest respect for the work that the Bureau does and look forward again to working extensively the next few Congresses to be able to see what we can do to help promote Title XVI and other projects, but specifically Title XVI, to help address some of the drought, what are the tools that they have to address the drought in the West.

And you talk about the Native American tribes, and I am just wondering how much help do they have to be able to do the things that are necessary to come before a subcommittee and get in line to be able to get assistance. Should we consider possibly setting aside a fund or creating a fund to deal with Indian water right claims? Because it is going to hopefully be more available to more tribes as we go forth.

Mr. CONNOR. Well, I certainly don't have a position from the Administration on whether a new fund should be established for any water rights settlements.

I do know based on existing law there are a couple of opportunities that exist already out there as part of the Navajo settlement that was enacted in the last Congress. There is a provision there that establishes a Reclamation Indian water rights trust fund to help pay for Reclamation's role in implementing Indian water

rights settlements. And that comes into effect in the resources available to implement those settlements as of the year 2020.

There is also as part of the Global AIDS Package the bill known as PEPFAR that was enacted by Congress last year. There is a provision there that would also establish a fund to be used to meet certain needs on Indian lands in three areas, law enforcement, healthcare and the implementation of Indian water rights settlements. And I know there has been discussion in the Legislative Branch about putting resources in there.

So I guess I just note we don't have a position on a new fund, but there are some existing situations that are under provisions already in law that Congress I know is looking at.

Mrs. NAPOLITANO. OK. But that brings to mind then is there enough money in those funds to be able to adequately address the concerns that most of the tribes have, one. Two, maybe having a hearing with all those agencies, the different areas where those funds are, to sit at table and find out what is there so that we know and be able to refer as they come to a subcommittee to request assistance.

Mr. CONNOR. Well, I think getting all of that information out on the table would be a very good first step. We are certainly concerned from the Bureau of Reclamation's perspective about the backlog that exists presently with respect to authorized Indian water rights settlements, which is in the tune of about a billion dollars. And certainly, this bill and other bills that are currently before Congress would add to that overall backlog of expectations of coming up with the money to implement those settlements that the parties are looking to implement.

Mrs. NAPOLITANO. We look forward to working with you on that, Commissioner. Mr. Chaffetz?

Mr. CHAFFETZ. Thank you, Madame Chair, I appreciate it. I would just ask unanimous consent to insert into the record my statement regarding the Magna Water District Water Reuse and Groundwater Recharge Act of 2009.

Mrs. NAPOLITANO. Without objection, so ordered.

Mr. CHAFFETZ. Thank you.

[The statement submitted for the record by Mr. Chaffetz follows:]

**Statement of The Honorable Jason Chaffetz, a Representative in Congress from the State of Utah**

Thank you Madam Chairwoman and Ranking Member McClintock for holding this hearing on H.R. 2265, The Magna Water District Water Reuse and Groundwater Recharge Act of 2009. H.R. 2265 is the House companion bill to S. 745 sponsored by Sen. Orrin Hatch (R-UT).

I want to formally welcome, Ed Hansen, the manager of the Magna Water District. This is his first time testifying before a congressional committee. He's a good man. Go easy on him.

H.R. 2265 amends the Reclamation Wastewater and Groundwater Study Facilities Act, also known as Title XVI. This legislation authorizes \$12 million in federal funding. Total cost of the project is \$51 million.

The Magna Water District is located in Salt Lake County and includes the Magna Township, western areas of West Valley City, and a corner of south west Salt Lake City.

**Project Description**

This project achieves the following:

- Restoration of a currently contaminated drinking water supply.
- Implementation of water reuse and groundwater recharge.

- Reduction in high quality drinking water usage for irrigation.

A new electrolysis facility is being built to remove perchlorate and arsenic from the Barton Well Field resulting in two products: high quality drinking water and a concentrated waste stream.

The drinking water will be pumped directly into the District's potable water system. The concentrated waste stream will flow by gravity to the existing wastewater treatment plant where a bioreactor is being constructed to treat the waste stream.

The bioreactor will produce high quality effluent that will be disinfected and combined with the effluent from the existing wastewater treatment plant to be used for irrigation, eliminating the need to use a high quality drinking water for outdoor irrigation uses. The project will result in a projected annual reduction of 580 million gallon of high quality, potable water used for outdoor irrigation.

The existing wastewater treatment plant effluent is discharged into the Great Salt Lake where it is unrecoverable. With this new project, the areas being irrigated are also within the recharge zone for groundwater recovery wells that provide water for the District's expanding secondary water irrigation system.

#### **Justification for Federal Funding**

Federal funding for this project is justified so that the Magna Water District may comply with federal environmental mandates. Moreover, this federal funding is justified since the district is addressing water contamination caused by the Department of Defense and its contractors.

The Bureau of Reclamation has reviewed the project and has found the project to be feasible.

I look forward to hearing the Administration's testimony and addressing their concerns.

Thank you, again, Madam Chairwoman and Ranking Member McClintock, for holding this hearing. I look forward to working with you and members of your staff to move this needful project forward.

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Mr. CHAFFETZ. If I may, my understanding regarding the Magna project is that, again having not seen the testimony that came this morning, and my apologies for being late with other committee assignments, that the project is feasible, but the question is much more in tune with resources and other projects that are in line before this one.

Can you help summarize that for me?

Mr. CONNOR. I think you have characterized the issue correctly. We look at these projects, and I think in each of the written statements it weighs this out. There are two aspects from which Bureau of Reclamation is evaluating these authorizations. One is the basic feasibility, and the directives and standards that Reclamation has to evaluate project feasibility, which were really new, not new but revised last year and put in place, and which we have been applying to these new authorizations.

As you know, the Magna project that is in your bill as of last week was certified as feasible, having gone through that process. But even in that context, then we have to look at the existing backlog of projects that we have. And to summarize there, we have basically a \$600 million backlog in authorized Title XVI projects. And that is after the \$135 million of Recovery Act money that we just announced on July 1 to be applied to those projects.

So, given that backlog and given the available resources at this time, that is the basis for the position that we are not supporting new project authorizations.

Mr. CHAFFETZ. Understood. Just one other brief comment. Having visited the facility in Utah recently for the first time, I appreciate the fine men and women who are serving there, that are serving our country and, by all evidence, are doing a great job. It is a

wonderful facility. So I thank you, and I yield back, Madame Chair. Thank you.

Mrs. NAPOLITANO. Thank you for your statement. And now just a couple questions, Commissioner.

Public Law 109-451 authorized Reclamation to establish comprehensive programmatic criteria, including prioritization and eligibility criteria as well as criteria to evaluate appraisal and feasibility studies for the rural water program. In your opinion, are similar criteria needed for Title XVI programs? And has the development of these directives and standards negated the need for legislative criteria?

Mr. CONNOR. Well, I think the promulgation of the directives and standards are sufficient to evaluate project feasibility. And we have been applying those directives and standards as I mentioned. And based on that application, I think over the last two years, 2008 and 2009, there have been 20 new projects that have been authorized by Congress, most, if not all, that have been evaluated and certified under those directives and standards. So that, in my mind, addresses the feasibility aspect of this.

In moving forward and in tough budgetary times, in evaluating the priorities for funding under Title XVI, there may be room to look at projects and develop criteria under which we would allocate the limited resources and prioritize the projects that should be funded.

We did some aspect of that in the Recovery Act funds, the \$135 million, although I should note that we certainly looked at the projects themselves and evaluated them. But also we had to apply the criteria that was established as part of the Recovery Act, a lot of which involved shovel-readiness, when we could get the money obligated, when it could be used by the project sponsors. So those were some other criteria that were specific to the Recovery Act.

Mrs. NAPOLITANO. But when you talk about the feasibility study, are you referring to the feasibility study that applies to a Title XVI program not under the principals and guidelines, is this true? Is this correct?

Mr. CONNOR. That is correct.

Mrs. NAPOLITANO. OK.

Mr. CONNOR. They are specific feasibility criteria that have been developed for the Title XVI program itself. Although there are similarities and there are certain aspects that are pulled out of the general principal and guidelines for larger water projects, the feasibility directives and standards are customized to the Title XVI project based on the local sponsor's input and our role.

Mrs. NAPOLITANO. Thank you. And I would like to ask that a list of those projects that have met the feasibility be provided to this Subcommittee.

Mr. CONNOR. Yes, Madame Chairwoman, we can do that.

Mrs. NAPOLITANO. Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Madame Chairwoman. The first question I have is just over the cost-effectiveness issues. What criteria are used to evaluate whether these things make financial sense?

Mr. CONNOR. Well, we do have economic considerations as one aspect. There are nine different categories as part of the directives

and standards. Economic considerations and analyses are part of those.

I can get back to you on the written record as far as all elements of those economic considerations. I do know that they look at project alternatives as one aspect of that, so there is some comparison that is done as part of that analysis. But as far as the whole level of details in evaluating cost-effectiveness, that is actually one of the items in there. They look at cost-effectiveness.

Mr. MCCLINTOCK. I am looking at some of the numbers before us, and I find them absolutely stunning. Just the projects that are on the agenda today, even amortizing the costs over 30 years, it comes to nearly \$1,000 per acre-foot. That just doesn't seem to me to make any sense at all.

Mr. CONNOR. Well, I haven't looked at them, at the projects, as far as a cost per acre-foot. I guess in looking at the projects, one perspective that I can give is the Title XVI program uses a 25 percent Federal cost share and leverages a lot of local community money to develop those projects. And those communities it seems safe to say have evaluated their options for providing additional water supply to their communities and have determined that this is one of the most cost-effective options for them to come up with a drought-resistant supply.

Mrs. NAPOLITANO. A thousand dollars per acre-foot? I mean, the most expensive I have ever heard imported water to run is about \$400 per acre-foot, and that includes moving it about 500 miles. So \$1,000 per acre-foot just sounds completely off the scale. I just wonder why in the world would we be interested in encouraging that? I mean, if a local community wants to squander its citizens' money in that way, that is between them and the local citizens. But why should the rest of the taxpayers of America be pulled into that silly decision?

Mr. CONNOR. Well, I think I would want to go back and, before answering that question, go back and evaluate these projects and see whether in fact they are \$1,000 per acre-foot and evaluate why those communities believe that that is the best investment that they can provide water supply through.

Mr. MCCLINTOCK. Have you found any of these recycling projects under Title XVI to be less expensive per acre-foot than the alternative of importing or harvesting water?

Mr. CONNOR. That is a part of our analysis of the Title XVI projects. I can get back to you on details of what we found.

Mr. MCCLINTOCK. Have you ever determined a recycling project that is producing water for less than the cost of importing it?

Mr. CONNOR. I will have to get back to you with the details.

Mr. MCCLINTOCK. OK. It seems to me that is a pretty basic question if you are evaluating cost-effectiveness and particularly if you are giving any kind of serious consideration to cost-effectiveness. Don't you agree?

Mr. CONNOR. That is a fundamental question. I do agree with that.

Mr. MCCLINTOCK. If I can move to the question of the Federal nexus, why is it that a taxpayer in Alturas, California, for example, should be called upon to finance a water project in Downey, California, for example?

Mr. CONNOR. Well, I think going back to the initial authorization of the Title XVI program, the view is that there was a direct Federal nexus in helping local communities in California I guess be less reliant on imported water supplies from the Colorado River and elsewhere.

Mr. MCCLINTOCK. But Alturas doesn't get any of its water from the Colorado or from any other sources that Downey draws from. They are two entirely separate water systems. Why should one be forced to subsidize the cost of the other?

Mr. CONNOR. Well, I guess there are Federal issues in a lot of different river basins, et cetera. This was viewed as a Federal objective to help people, communities be able to develop local supplies and get off the Colorado River.

In that situation, which was the basis for the original authorization, there is a Federal interest in California Bay Delta and water recycling projects there as part of an overall solution to help address the serious water issues that exist in the northern California area. In other areas of the country, I know Title XVI projects have been used which have helped forestall, address new water supplies in other water-short basins such as the Middle Rio Grande.

And the development of these projects certainly has helped at least delay, and maybe negate, the need for additional surface water supplies, which has helped alleviate some of the environmental issues that exist in other river basins.

Mr. MCCLINTOCK. My concern is to me it sounds like the government's attitude is cost is no object and fairness is no object.

Two more questions if I may, Madame Chairwoman.

First, the feasibility issue. You said that these projects are evaluated on a much different set of criteria in terms of feasibility than say a dam project. What are those differences?

Mr. CONNOR. Well, once again, the details of those differences of how the feasibility criteria for Title XVI projects differ from the overall P and Gs, I am going to have to get back to you on the written record. I am happy to do that.

I think what is driving the differences, though, is recognizing that this is a 75 percent local cost share and the Federal government is a contributor of up to 25 percent of the cost. So we are not shouldering the burden of developing these projects, so the analysis is a little different. But there is still an analysis to ensure that the Federal investment for these projects is a good and legitimate one.

Mr. MCCLINTOCK. Final question going to the Uintah bill. I was stunned as I pulled out a pocket calculator and realized that the water allocation is 2.1 million gallons for every one of the 15,000 residents. What is the justification for that?

Mr. CONNOR. That is the White Mountain Apache Tribal Settlement Bill?

Mr. MCCLINTOCK. Pardon me, I am sorry. I am sorry, White Mountain Apache.

Mr. CONNOR. Well, I know that the allocation of water in that particular settlement was negotiated by not only the Tribe and the State but a lot of water users in the area, in fact all of the water users that perceive themselves at risk from the unquantified tribal water rights. So that was an agreement that was developed by the

parties in allocating Arizona's water resources, and those parties thought that that was a legitimate allocation.

The Federal team that participated in some of the negotiations has done a preliminary analysis, viewing that as a legitimate allocation of water, based on the tribal claims and other criteria that they have looked at, including the fact that the water is available from Arizona.

Mr. McCLINTOCK. What is the Tribe going to use all of that water to do?

Mr. CONNOR. I am not aware of all the tribal water needs. Certainly the centerpiece of the settlement is utilizing a portion of that water for its rural water supply project, so M&I needs basically. And I am sure the Tribe has agricultural uses and other opportunities to use water in addition to that.

Mr. McCLINTOCK. Thanks.

Mrs. NAPOLITANO. Mr. Miller.

Mr. MILLER. Thank you, Madame Chair.

Commissioner, let me just follow on here. As I look at your testimony, it suggests that you can't support the authorization of these new projects because there is a backlog of projects already.

Mr. CONNOR. That is correct.

Mr. MILLER. Have you thought about the reverse of that on how you work on the backlog in terms of the budget allocations? I know you have come with this budget, the first one of this Administration. And I recognize that there was money, the \$135 million that was in the stimulus bill. But when we look forward to 2011, I would assume that backlog would suggest that there is some priority here by the Congress, by local water users, that this is a viable way to go.

So how do we turn that notion around that because there is a backlog we can't support it—as opposed to how are we going to get the backlog whittled down, especially when we have some anticipation of the continuation of the drought in a good chunk of the West and certainly in California?

Mr. CONNOR. To answer your initial question, I have given that a lot of thought. Quite frankly, that is the heart of the matter of how are we going to address the backlog that exists. I would just note part of my testimony also is we strongly view that we should be evaluating the feasibility of projects, and some of these projects have not achieved that feasibility determination. So that is part and parcel.

But the heart of your question, how are we going to whittle away at this backlog and do we not understand that this is a priority for Congress and a priority because these are good water projects, we are looking very closely at that question.

As I noted in my statements, Secretary Salazar has a water conservation initiative which did have significant resources in the 2010 budget. We view the Title XVI program to be part of that initiative. Granted, it was \$9 million in the 2010 budget that was a couple-million-dollar increase over previous budgets, and we are going to be evaluating the whole water conservation initiative taking this data as part of that discussion that there is this huge backlog that produces good results in addressing a lot of water supply issues.

Mr. MILLER. May I assume from your answer then that we have moved on from what a lot of people have speculated that the Bureau just didn't see this as part of their mission? They just didn't see water recycling and reuse as part of their mission? That that is now incorporated as part of when you look at the overall mission of the Bureau and the Department of the Interior?

Mr. CONNOR. Title XVI is an important part of the Bureau of Reclamation's mission.

Mr. MILLER. Well, that is very helpful to know that, because I think that what we see here is, I would say to my colleague, Mr. McClintock, it is not just a question of whether the price of the water, the recycled water, the reuse of the water versus delivered water, the reason many of these projects are being considered is because the delivered water isn't being able to be delivered.

A lot of this is about water stability and whether or not people will be able to rely on those supplies for economic decisions that local communities have to make, either about creating jobs. In some cases, some manufacturing in our state, a fair amount of manufacturing in our state is very water-intensive and whether or not that water will be available or whether it is building new communities if California continues to gain in population as it sort of has over the historical past.

So I think that when we look at this as a component of the water development in the West this is significant. In terms of what we like to think we would build on is a system that is flexible to move water for competing economic needs, for competing environmental needs, for competing demands from growth and also take into accommodation that we do go through and we have gone through these cycles of water availability.

And I expect that in some instances, if you compare this water to water that people are talking about developing behind new dams or reworked dams or whatever the project we are going to use, when you look at the actual yield and the availability on a consistent basis, this is probably a fair comparison.

But that is your job. You will have to look at those comparisons and the feasibility, because obviously if the projects just are not feasible, we shouldn't be funding them. That is the test that I think most of the local entities have thought about as they decide to commit local resources. That is one of the initial screens that you go through—that there is some determination by the local individuals.

The question of what happens to the people in Alturas, the same question is true whether you raise Shasta Dam or you build Temperance Flat or you build something else or a new canal or rework the pumps. Those are shared expenses of trying to keep California water use together and sustainable and hopefully somewhat predictable.

So I think that these are a very important component of the traditional mission of the Department of the Interior in terms of water development and allocations and uses throughout the West. And certainly, when it comes to times of scarcity that we are now experiencing, I think that many of these projects really let us—the second use of the water or third use of the water becomes very valuable when you look at the water budget in many of these geo-

graphical areas. It is not just in California but throughout much of the West.

So I would hope that we could work with you to develop a consistent policy, a priority of this policy, as a component of the traditional mission of the Department of the Interior in the programs of water development throughout the West.

I think that the match, I would like other people to have the skin in the game. You know, in the past, we did an awful lot of water development in the West where other people didn't have much skin in the game. They are beneficiaries and they are interested in it and all the rest of it, but those bills still have not been paid.

So I think this is a much better way to go. The Chairwoman has been an absolute champion of recycling and reuse. And while there were a lot of doubters I think in the beginning, when we look at the water predicament in our state, you start to see the urgency of trying to figure out how we can build this kind of flexibility, whether it is increased storage in normal or perhaps wet years or whether it is the ability to draw on that water or to recycle that water or reuse that water in whatever mix of components people have in their plans, become very, very important to try to provide some sustainability and predictability for the economy of our state and other regions of the West.

So I would hope that with this hearing and with an opportunity with this Committee to work with you that we could incorporate this into a major component and priority of the Department as it considers going forward in the West.

In my years here, when we reconfigured the Central Utah project and the Garrison project, we recognized that a lot of those uses didn't make much economic sense, given the way the West has developed. There were other competing economic interests where that water was more valuable, more viable, and the rest of that. And that should be a continual process within the Department of the Interior, within the Congress, and within the states as our states' populations and economies change over time.

And I would hope that we would also be willing to add new technologies, new sources of the use of water, to help us get through that.

And so I look forward to working with you. I have a great sense of urgency about these projects that we are seeking to authorize in this Committee. We look forward to your screening them for their feasibility.

I think I had a couple of projects the first time that really went through a real feasibility study. We got through it, and so I welcome that process. And I think all of those who testify today know that they are going to have to meet that test.

So thank you very much for your time. My apologies, I have a markup. Mr. McClintock, are you coming to my markup? No.

Mr. MCCLINTOCK. Not after the last one, Mr. Chairman.

Mr. MILLER. The last one is not over yet in the Education Committee. But I just want you to know I am very, very interested in the success of this program, and I mean success in all ways, for the taxpayers, for water users in the West. Thank you.

Mrs. NAPOLITANO. Thank you. Thank you, Mr. Miller, and I couldn't have said it any better.

The one thing I would like to ask the Commissioner to clarify in response to continuing a little bit of your question, Mr. Miller, and to Mr. McClintock's point, it isn't just about the cost, it is about certainty of water delivery. Do you agree, sir?

Mr. CONNOR. Certainly. I think one of the motivating factors for communities in looking at water reuse is certainly its drought resistance, its certainty as far as supply. And given other issues ongoing in the West now, I can see why that is a high priority that local communities place on developing water.

Mrs. NAPOLITANO. Thank you, sir. Mr. Walden.

Mr. WALDEN. Thank you, Madame Chairwoman. And again, I find myself in agreement with the gentleman from California. The only question I ask is, did you want Mr. McClintock at your markup? I won't go there.

Mr. MILLER. That crossed through my mind.

[Laughter.]

Mr. WALDEN. I know we want him there, but I am going to leave all that California stuff to you all. But I thank you for your comments.

Mr. Connor, thank you, and I look forward to getting some time with you down the road. I know this is your first time before this Committee, and while I am not a member of it, I was for a number of years. And my district, 70,000 square miles in eastern Oregon, has just a couple of water issues going on.

It seems to me on this legislation and legislation like it, while I understand the Administration's opposition or acknowledge it, I guess I would look at it from this perspective. There are a lot of projects in the queue, and you don't have enough money right now to fund them all. I get that. But it looks to me like it is not harmful for this Committee to move forward and put another one in the queue, to go through the process to determine this is worthwhile so that when funding does come you are ready to go.

I mean, we do that all the time in all kinds of other committees I am on. We authorize things and say no, the authorizing committee has reviewed the project and determined it makes sense. Then those higher up in Appropriations decide is the money there to pay for it.

And so I would hope you would think about that. I understand you have already testified in OMB and all that stuff. But it just seems to me that the duty of this Committee is to say no, this is a good project and when the money is there, this should happen. And then people can go ahead and kind of begin to plan.

There is another one coming in the Rogue Valley, southern Oregon, that is upwards of 30,000 acre-feet of water that would go back into the Rogue River that could displace—it is a very complex one, but anyway, they end up using the recycled water. It solves an irrigation issue, it puts more water in the river, I mean, all of that, and the water going in is more pure than the water in the river.

And so I think these are the kinds of projects that make a lot of sense and help us get ahead of the curve on our water needs and our recycling needs and frankly improving the water quality.

At some point, I hope to sit with you and have a discussion about the Administration's views on the Klamath Basin Restoration

project. I know you will be deeply engaged in that. I know Secretary Salazar has made it clear that the Administration intends to move forward. There are obviously a lot of complex issues involved in the KBRA and a lot of controversy surrounding it.

And so I look forward to an opportunity sometime to sit down and have that discussion with you, sir.

Mr. CONNOR. I would welcome the opportunity.

Mr. WALDEN. And I thank you for being here today. And after my stirring remarks, I am sure you will reconsider your opposition to my bill.

Thank you, Madame Chairwoman.

Mrs. NAPOLITANO. You are welcome. Do we have any other questions for the Commissioner?

Mr. MCCLINTOCK. I just want to address the question of reliability. It seems to me that the reason that California is now suffering from unreliable water supplies is the fact that half of our water is being diverted to meet various environmental regulations and only a portion of the state water project was ever completed, which gets back to my concerns that the last generation has dropped the objective of abundance as the principal objective of water and power policy and has instead moved now to rationing shortages that are caused by the abandonment of abundance as a national object.

Mr. MILLER. If the gentleman would yield, I just would say I think you will find that half of the water is not being diverted for environmental reasons. In fact, when you look at the shortage this year, a very small percentage of the water is related to environmental reasons.

But understand that those environmental reasons are also linked to economic reasons. In fact, a lot of this discussion over the fish, for a lot of small businesspeople up and down the north and central coast, that environmental reason is whether or not they will have a livelihood. For the people who do the dockside supplies, whether it is ship channel reefs or whether it is icemakers or fish salespeople or the trucking firms and all the rest of that, hook onto those issues.

So this isn't just throwing away jobs in one area for jobs in the other areas. But I think when you examine this, you will find out that in fact very little of that is—we have an overall—we have much more demand on water than the water that is available in the current system. And this is one way that we think we can better manage that and get a greater yield out of that water.

Mrs. NAPOLITANO. Thank you. I will stop the discussion at this moment. We need to move over for them. I wish they were true because I also have my own two cents on it, and I don't want to get started. When you put in enough water meters, I will start with that. Thank you, sir.

With that, Commissioner, thank you so much. I would love to have you sit around and listen, and possibly we may want to bring you up to answer a question or two. But thank you so very much. I look forward to working with you. And so with that, we dismiss you, and we will call up our next panel.

Mr. CONNOR. Thank you.

Mrs. NAPOLITANO. Mr. Desi Alvarez, Deputy City Manager for the City of Downey, California, testifying on H.R. 1738; Mr. Edwin Hansen, General Manager at Magna Water District, Magna, Utah, H.R. 2265; Mr. Gary Darling, General Manager, Delta Diablo Sanitation District, Antioch, H.R. 2442; Susan Mulligan, General Manager of Engineering, or Manager of Engineering, Calleguas Municipal Water District, Thousand Oaks, California, on H.R. 2522; Ed Brookshier, City Manager, Hermiston, Oregon, H.R. 2741; Scott Ruppe, General Manager, Uintah Water Conservancy District, Vernal, Utah, H.R. 2950.

Welcome. And we will begin with Mr. Alvarez from Downey.

**STATEMENT OF DESI ALVAREZ, DEPUTY CITY MANAGER,  
DOWNEY, CALIFORNIA [H.R. 1738]**

Mr. ALVAREZ. Madame Chairwoman and honorable members of the Committee, my name is Desi Alvarez, Deputy City Manager of the City of Downey. On behalf of the City of Downey, I would like to express our gratitude to Congresswoman Roybal-Allard for introducing this legislation and to Chairwoman Napolitano for co-sponsoring the bill.

I would also like to publicly thank all of the cities that have written letters in support of this project, which is vital to the City of Downey and, we believe, to the region as a whole. I appreciate the opportunity to testify on H.R. 1738, the Downey Regional Water Reclamation Project, and will be happy to answer any questions you may have.

The proposed legislation is associated with the construction of an advanced water treatment facility that will improve water supply and water reliability in southeast Los Angeles County by ensuring a local, reliable, safe, cost-effective and energy-efficient source of drinking water for five cities serving approximately 450,000 people.

The project will eliminate dependence on expensive imported water from the Sacramento San Joaquin Delta, and it is of utmost importance because of environmental and economic considerations. And that is why the City of Downey has proposed to build this project.

The ability to treat recycled water and put it to beneficial use enhances the region's drinking water reliability and security. And in these economic times, this project will provide tangible benefits through the creation of approximately 650 jobs.

The Cities of Cerritos, Downey, Norwalk, Pico Rivera and South Gate are located in southeast Los Angeles County and rely on pumped water from the Central Basin for the majority of their potable water needs, which is approximately 50 million gallons of water per day.

The Cities' reliance on the local groundwater supply is economically preferable to meet 100 percent of their water needs. However, that is not possible since the amount of water each city can pump in any given year is limited to the sustainable yield of the basin, which limits each city's extraction rights. Since annual potable water demands are currently greater than the Cities' extraction rights, any increase in water demands will further stress the already-tight water situation.

Presently the difference between the allowable extractions from the basin and greater water demands leaves the Cities dependent on using imported water, the main source being from the northern California through this delta, a less-than-viable long-term solution for providing water to the region.

Our increase in demand for water has resulted in the need for a project like this. Importing northern California water which was to be moved through the delta is an unfavorable option due to the high cost and its unreliability as to the long-term supply source, due to the impacts of pumping on the ecosystem of the delta, thus the alternative of providing for water needs for the local sustainable reliable water supply from highly treated recycled water.

This project is consistent with the California Water Plan update, which promotes regional water supply diversification and increased use of recycled water. The project will provide 5 million gallons per day of net new potable water, which may be delivered through pipeline connections far more efficiently, as we are proposing, by injection into the groundwater basin for extraction by participating cities using regular groundwater pumping wells.

The project will be built at the City of Downey's utilities yard, selected because it is located near an existing recycled water transmission main, has space available to house the facility, has an existing five-million-gallon storage tank which will be dedicated to the project.

A new 18-inch influent recycled water pipeline will be constructed to connect to an existing recycled water transmission line at Firestone Boulevard, and the project will consist of an advanced treatment plant using microfiltration, ultrafiltration, and reverse osmosis, as well as ultraviolet light with hydrogen peroxide for disinfection. The project has environmental water security and economic benefits on our local region and on a national level.

The use of the local water supplies will also help us be much more independent in our future as our water demands continue to increase. On behalf of the Cities of Cerritos, Norwalk, Pico River and South Gate, the City of Downey is requesting support for H.R. 1738, which authorizes funds for the design and construction of a five-million-gallon-per-day advanced recycled water treatment plant.

The project is essential to ensure the sustainability of the Cities' drinking water supplies. The City of Downey has invested significant time and funds in preparation of this project and is ready to proceed with project implementation.

In light of the numerous economic, environmental and regulatory benefits the project affords the Central Basin in Los Angeles County, I ask for your continued support of this important legislation. I thank the Committee and you, Madame Chairwoman, for your time and consideration. I am available to answer any questions.

[The prepared statement of Mr. Alvarez follows:]

**Statement of Desi Alvarez, Deputy City Manager,  
City of Downey, California, in support of H.R. 1738**

**Introduction**

Madame Chair and Honorable Members of the Committee, my name is Desi Alvarez, and I am the Deputy City Manager of the City of Downey, California. On behalf of the City of Downey, I'd like to express our gratitude to Congresswoman Roybal-

Allard for introducing this legislation and to Chairwoman Napolitano for co-sponsoring the bill. I'd also like to publicly thank all of the cities that have written letters in support of this project, which is vital to the City of Downey and, we believe, to the region as a whole. I appreciate the opportunity to testify on H.R. 1738, the Downey Regional Water Reclamation and Groundwater Augmentation Project and to answer any questions you may have.

The proposed legislation is associated with the construction of a water treatment and groundwater storage facility that will dramatically improve water supply and water reliability in Southeast Los Angeles County. The Downey Regional Water Reclamation and Groundwater Augmentation Project will ensure a local, reliable, safe, cost-effective and energy-efficient source of drinking water for five cities and nearly 450,000 people. Eliminating dependence on expensive imported water from the vulnerable Sacramento-San Joaquin Delta is of utmost importance, environmentally and economically, and that is why the City of Downey has proposed to build this regional project. The ability to treat recycled water and store it in the groundwater basin directly enhances the region's drinking water reliability and security. Furthermore, in these tough economic times, this project provides tangible benefits to the region before the project is completed, through the creation of approximately 648 jobs.

#### **Project Need**

The Cities of Cerritos, Downey, Norwalk, Pico Rivera, and South Gate are located in the Central Groundwater Basin in Southeast Los Angeles County and rely on water pumped from the Basin to meet the majority of their potable water needs. The combined population of the five cities is approximately 450,000, with a current demand of nearly 50 million gallons of water per day. The cities' reliance on groundwater supply is economically preferable and would be sustainable, except that the amount of water each city can pump in any given year is limited by the sustainable yield of the basin, which limits each city's extraction rights. Since annual potable water demands are currently greater than each city's extraction rights, any increase in water demand will further stress the already tight water situation.

Presently, the difference between the allowable extractions from the Basin and the greater water demands leaves cities dependent on using imported water, the main source being from Northern California through the Sacramento-San Joaquin Delta (Delta), a less than viable long-term solution for providing water to the region. Increasing populations throughout the Central Groundwater Basin have led to increased water demand overall. Importing Northern California water, which must be moved through the Sacramento-San Joaquin Delta, is an unfavorable option due to the high cost; unreliability as a long-term source of water; excessive carbon footprint and energy usage resulting from pumping water up the 8,000 foot Tehachapi Mountains; and adverse impacts on the ecosystem of the Delta, of which this subcommittee is well aware, based on the proceedings of the CalFed Bay Delta Program.

Thus, the alternative of providing for water needs with a local, sustainable, reliable water supply from highly treated recycled water is highly desirable. This alternative capitalizes on two local and underutilized resources: the dewatered space in the Central Groundwater Basin and the millions of gallons of unused recycled water produced each year by the County Sanitation Districts of Los Angeles County. Treating the locally-produced recycled water and storing it through the use of groundwater injection wells will augment the water supply available to pumpers in the Central Groundwater Basin. It also enhances the quality of the groundwater, as in many cases the extensively treated recycled water has fewer total dissolved solids (TDS) than the water naturally occurring in the Basin. Furthermore, this Project is consistent with the California Water Plan Update, which promotes regional water supply diversification and increased use of recycled water.

#### **Project Description**

The Downey Regional Water Reclamation and Groundwater Augmentation Project would provide advanced treatment of recycled water for injection and storage in the Central Groundwater Basin. Product water capacity of the advanced recycled water treatment plant will produce five million gallons per day of net new potable water which would be injected into the groundwater basin for extraction by participating Cities via regular groundwater pumping wells.

The project will be built at the City of Downey's Utilities Yard, selected because it is located near an existing recycled water transmission main, has space available to house the facility, and has an existing five million gallon storage tank which will be dedicated to the project. A new 18-inch influent recycled water pipeline will be constructed (see Figure 1. Project Area Map) to connect the existing recycled water

transmission main at Firestone Boulevard and the San Gabriel River to the new treatment plant at the Utilities Yard. The influent pipeline would convey tertiary treated recycled water from the County Sanitation District's Los Coyotes Water Reclamation Plant to the proposed advanced water treatment plant. Physical components of the advanced treatment plant include an influent tank, an inter-process storage tank, pump stations, filters, and strainers and process streams and pipelines (see Table 1. Project Components). The recycled water would be further filtered with microfiltration and ultrafiltration membranes; treated with a reverse osmosis system; and disinfected using ultraviolet light with hydrogen peroxide treatment.

The resulting high-purity reclaimed water would then be introduced into the Central Groundwater Basin through three aquifer storage and recovery wells. Following injection, the stored water would be available for extraction to augment the local water supply.

#### **Project Benefits**

The Downey Regional Water Reclamation and Groundwater Augmentation Project has environmental, water security, and economic benefits on a local, regional and national level (summarized in Table 2. Project Benefits). The project is consistent with state and federal objectives that aim to reduce reliance on water imported from the Delta, to promote regional water supply diversification and to increase the use of recycled water. Augmenting the water supply so that local water is more available than imported water reduces reliance on the Delta and "drought-proofs" the local water supply.

The use of local water supplies will also reduce energy consumption and greenhouse gas production because local water, unlike imported water, does not need to be pumped up and over the 8,000 foot Tehachapi Mountains. Another environmental benefit of the project is an improvement in water quality in the San Gabriel River and in the Central Groundwater Basin because the production of ultra-high quality recycled water through treatment with reverse osmosis will result in reduced total dissolved solid contaminant levels. Finally, this project will benefit the local, state, and national economy through the creation of approximately 648 jobs resulting from increased construction (direct), manufacturing (indirect), and consumer spending (indirect) labor (based on the IMPLAN Model Input/Output Data from the Los Angeles County Economic Roundtable).

#### **Conclusion**

On behalf of the Cities of Cerritos, Norwalk, Pico Rivera, and South Gate, the City of Downey is requesting support for H.R. 1738, which authorizes funds for the design and construction of a five million gallon-per-day advanced recycled water treatment plant with groundwater storage wells. The Downey Regional Water Reclamation and Groundwater Augmentation Project is essential to ensure the sustainability of the Cities' drinking water supplies. The participating cities and the Southeast Water Coalition actively support this project. The City of Downey has invested significant time and funds in preparation of this project, and is ready to proceed with project implementation, pending completion of final plans and specifications. It is anticipated that the environmental impact report could be completed by the end of September 2010, a construction contract could be awarded by October of 2011, and project close-out could be completed by September 2013.

In light of the numerous economic, environmental, and regulatory benefits the Downey Regional Water Reclamation and Groundwater Augmentation Project affords the Central Groundwater Basin in Los Angeles County, I ask for your continued support of this important legislation.

I thank the committee and you, Madame Chair, for your time and your consideration.

## Tables

Table 1. Project Components

Influent Tank	RO System
MF Feed Pump Station and Autostrainers	Advanced Oxidation (UV/H <sub>2</sub> O <sub>2</sub> ) Process
MF System	Product Water Pump Station
Inter-Process Storage Tank	Chemical Storage and Feed Systems
RO Transfer Pump Station and Cartridge Filters	Process Waste Streams
RO Feed Pump Station	Process Pipelines

Table 2. Project Benefits

CATEGORY	BENEFIT
<b>Environmentally Friendly</b>	Reduced energy footprint and effects on the environment vs. other potential water supplies (i.e. imported water)
	Reduced greenhouse gas emissions vs. other potential water supplies (i.e. imported water)
<b>Water Supply Reliability</b>	Long-term water supply reliability ("drought-proof" supply) to the Cities' population
	Protects against potential disruptions in SWP and CR imported water supplies due to earthquakes, mandatory use restrictions, or other emergencies
<b>Water Quality</b>	Reduced TDS levels in the San Gabriel River and Central Groundwater Basin due to production of ultra high quality recycled water via treatment with RO
<b>Sensitivity to SWP and CR Imported Water Supplies</b>	Reduced reliance on SWP and CR imported water
<b>Regional O&amp;M Costs</b>	Reduced pumping costs to purveyors in surrounding area due to increased groundwater levels
<b>Consistency with State and Federal Objectives</b>	Consistent with California Water Plan Update, which promotes regional water supply diversification and increased use of recycled water
	Creation of new jobs from increased direct (construction), indirect (manufacturing), and induced (consumer spending) labor
<b>Regional Objectives</b>	Available to interested purveyors in the Central Groundwater Basin
	Assists regional groundwater replenishment operations by making the Central Groundwater Basin more dependable
	Basis for future groundwater storage projects in the region

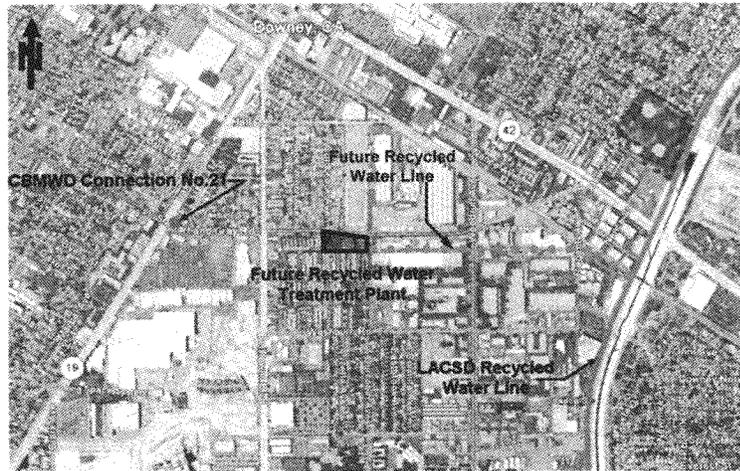
**Table 3. Summary of Project Costs**

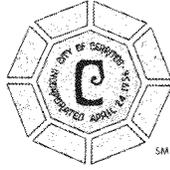
(Cost estimates for design and installation of the treatment plant and associated piping are based on a feasibility study completed by Black and Veatch Consulting Engineers in December 2008 and using cost from similar projects.)

<b>Contractual</b>	<b>Cost</b>
• General Conditions	\$1.36M
• Overall Site Work and Miscellaneous	\$3.51M
• Influent Recycled Wastewater Pipeline	\$1.40M
• Influent Tank (Rehabilitation)	\$0.33M
• MF Feed Pump Station/Autostrainers	\$0.80M
• Chemical Feed Facilities (MF Process)	\$0.43M
• MF CIP	\$1.46M
• RO CIP	\$0.82M
• RO Cartridge Filters	\$0.31M
• RO Flash Pumps	\$0.70M
• RO Feed Pumps	\$1.49M
• RO Membrane Building	\$10.24M
• Waste Equalization Tank, Pump Station, and Strainer Backwash Sump	\$0.66M
• Inter-Process Storage Tank	\$0.84M
• RO Transfer/MF Backwash Pump Station	\$0.70M
• Chemical Feed Facilities (RO Process)	\$0.34M
• Ultraviolet/Hydrogen Peroxide (UV/H <sub>2</sub> O <sub>2</sub> ) Disinfection	\$5.75M
• Product Water Pump Station	\$0.90M
• Instrumentation and Control (I&C) Installation	\$0.18M
• Pipe Supports	\$0.13M
• Miscellaneous Fittings and Small Piping	\$0.13M
<b>Subtotal</b>	<b>\$32.48M</b>
• 15% Contingency	\$4.87M
<b>Total</b>	<b>\$37.35M</b>

**Table 4. Project Schedule**

Complete Environmental Impact Report	September 2010
Complete Construction Documents	March 2011
Advertise Bid and Award Project	October 2011
Begin Construction	January 2012
Complete Construction	May 2013
Plant Start-Up and Trouble Shooting	August 2013
Project close-out and final reports	September 2013

**Figure 1. Project Area Map**



# CITY OF CERRITOS

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OFFICE OF THE MAYOR  
**BRUCE W. BARROWS**

July 16, 2009

The Honorable Grace Napolitano  
Chairwoman, Subcommittee on Water and Power  
House Committee on Natural Resources  
United States House of Representatives  
1234 Longworth House Office Building  
Washington, D.C. 20515

Re: H. R. 1738 – Downey Regional Water Reclamation and Groundwater Augmentation

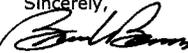
Dear Congresswoman Napolitano:

On behalf of the City of Cerritos, we would like to express our support for HR 1738, the Downey Regional Water Reclamation and Groundwater Augmentation Project. This project will create an energy-efficient, environmentally friendly, highly reliable supplemental water supply serving the cities in the Central Groundwater Basin of Los Angeles County.

The proposed legislation would provide funding for the construction of a water treatment and groundwater storage facility that will dramatically improve water supply and water reliability in the cities of Cerritos, Downey, Norwalk, Pico Rivera and South Gate. Eliminating dependence on expensive imported water from the vulnerable Sacramento-San Joaquin Delta is of utmost importance, environmentally and economically, and that is why the City of Downey has proposed to build this regional project. The ability to treat recycled water and store it in the currently-underutilized Central Groundwater Basin directly enhances the region's drinking water reliability and security. Furthermore, in these tough economic times, this project provides tangible benefits to the region before the project is completed, through the creation of approximately 648 new jobs.

Although the City of Cerritos has had a tertiary water system for many years, this water can only be used for irrigation purposes which is distributed within a closed system to water medians, parks, schools and other public facilities. The proposed Downey Regional Water Reclamation and Groundwater Augmentation Project will process and inject reclaimed wastewater into the aquifer which will meet the standards of the Department of Public Health for drinking water. Therefore, there is no duplication of efforts with regards to the two methods of processing the reclaimed wastewater, as the final products are for two distinctly different uses.

On behalf of the City of Cerritos, we urge your support for HR 1738.

Sincerely,  
  
Bruce W. Barrows  
MAYOR

cc Desi Alvarez, City of Downey



# City of Downey

FUTURE UNLIMITED

July 16, 2009

**CITY COUNCIL**

**MAYOR**

DR. MARIO A. GUERRA

**MAYOR PRO TEM**

ANNE M. BAYER

**COUNCIL MEMBERS**

LUIS H. MARQUEZ  
ROGER C. BROSSMER  
DAVID R. GAFIN

**CITY MANAGER**

GERALD M. CATON

**CITY CLERK**

KATHLEEN L. MIDSTOKKE

Representative Grace Napolitano, Chairwoman  
Subcommittee on Water and Power  
House Committee on Natural Resources  
US House of Representatives  
1234 Longworth House Office Building  
Washington, D.C. 20515

Re: H. R. 1738 – Downey Regional Water Reclamation and Groundwater Augmentation

Dear Representative Napolitano:

The City of Downey fully supports HR 1738, the Downey Regional Water Reclamation and Groundwater Augmentation Project. This critical project will create an energy-efficient, environmentally friendly, highly reliable supplemental water supply serving the cities in the Central Groundwater Basin of Los Angeles County.

The proposed legislation would provide funding for the construction of a water treatment and groundwater storage facility that will dramatically improve water supply and water reliability in the cities of Cerritos, Downey, Norwalk, Pico Rivera and South Gate. Eliminating dependence on expensive imported water from the vulnerable Sacramento-San Joaquin Delta is of utmost importance, environmentally and economically, and that is why the City of Downey has proposed to build this regional project. The ability to treat recycled water and store it in the Central Groundwater Basin directly enhances the region's drinking water reliability and security. Furthermore, in these tough economic times, this project provides tangible benefits to the region before the project is completed, through the creation of approximately 648 new jobs

As mayor of the City of Downey, I strongly urge your support for HR 1738.

Sincerely,

Mario A. Guerra  
Mayor

MAG:sdI

CHERI KELLEY  
Mayor  
GORDON STEFENHAGEN  
Vice Mayor  
JESSE M. LUERA  
Councilmember  
MICHAEL MENDEZ  
Councilmember  
RICK RAMIREZ  
Councilmember  
ERNE V. GARCIA  
City Manager



12700 NORWALK BLVD., P.O. BOX 1030, NORWALK, CA 90651-1030 \* PHONE: 562/929-5700 \* FACSIMILE: 562/929-5773 \* WWW.CLNORWALK.CA.US

July 16, 2009

Rep. Grace Napolitano, Chairwoman  
Subcommittee on Water and Power  
House Committee on Natural Resources  
US House of Representatives  
1234 Longworth House Office Building  
Washington, D.C. 20515

**Re: H. R. 1738 – Downey Regional Water Reclamation and Groundwater Augmentation**

Dear Rep. Napolitano:

On behalf of the City of Norwalk, I would like to express my support for HR 1738, the Downey Regional Water Reclamation and Groundwater Augmentation Project. This project will create an energy-efficient, environmentally friendly, highly reliable supplemental water supply serving the cities in the Central Groundwater Basin of Los Angeles County.

The proposed legislation would provide funding for the construction of a water treatment and groundwater storage facility that will dramatically improve water supply and water reliability in the cities of Cerritos, Downey, Norwalk, Pico Rivera and South Gate. Eliminating dependence on expensive imported water from the vulnerable Sacramento-San Joaquin Delta is of utmost importance, environmentally and economically, and that is why the City of Downey has proposed to build this regional project. The ability to treat recycled water and store it in the currently-underutilized Central Groundwater Basin directly enhances the region's drinking water reliability and security. Furthermore, in these tough economic times, this project provides tangible benefits to the region before the project is completed, through the creation of approximately 648 new jobs

On behalf of the City of Norwalk, I urge your support for HR 1738.

Sincerely,

  
Cheri Kelley  
Mayor



## City of South Gate

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www.cityofsouthgate.org FAX (323) 569-2678

HENRY C. GONZALEZ, Mayor  
GREGORY MARTINEZ, Vice Mayor  
MARIA DAVILA, Council Member  
W.H. (BILL) DE WITT, Council Member  
GIL HURTADO, Council Member

July 16, 2009

Rep. Grace Napolitano, Chairwoman  
Subcommittee on Water and Power  
House Committee on Natural Resources  
US House of Representatives  
1234 Longworth House Office Building  
Washington, D.C. 20515

**Re: H. R. 1738 – Downey Regional Water Reclamation and Groundwater Augmentation**

Dear Rep. Napolitano:

On behalf of the City of South Gate, I would like to express my support for HR 1738, the Downey Regional Water Reclamation and Groundwater Augmentation Project. This project will create an energy-efficient, environmentally friendly, highly reliable supplemental water supply serving the cities in the Central Groundwater Basin of Los Angeles County.

The proposed legislation would provide funding for the construction of a water treatment and groundwater storage facility that will dramatically improve water supply and water reliability in the cities of Cerritos, Downey, Norwalk, Pico Rivera and South Gate. Eliminating dependence on expensive imported water from the vulnerable Sacramento-San Joaquin Delta is of utmost importance, environmentally and economically, and that is why the City of Downey has proposed to build this regional project. The ability to treat recycled water and store it in the currently-underutilized Central Groundwater Basin directly enhances the region's drinking water reliability and security. Furthermore, in these tough economic times, this project provides tangible benefits to the region before the project is completed, through the creation of approximately 648 new jobs.

On behalf of the City of South Gate, I urge your support for HR 1738.

Sincerely,

  
Henry C. Gonzalez  
Mayor

Mrs. NAPOLITANO. Thank you, Mr. Alvarez.  
And now we will move on to Mr. Edwin Hansen, General Manager at Magna Water District, Magna, Utah.

**STATEMENT OF EDWIN J. HANSEN, GENERAL MANAGER,  
MAGNA WATER DISTRICT, MAGNA, UTAH [H.R. 2265]**

Mr. HANSEN. Madame Chairwoman and members of the Committee, I thank you for the opportunity to address you this morning.

I am the General Manager of the Magna Water District. We serve the Magna Township, the northwest quadrant of the Salt Lake Valley, along with West Valley City and parts of the southwest section of Salt Lake City.

I want to thank Representative Chaffetz for his support of this bill, Representatives Matheson and Bishop for co-sponsoring this bill on our behalf. All three of the representatives' districts bound Magna's area.

Magna serves a population of approximately 28,000 people. The Title XVI project now before the Committee has a unique opportunity to restore drinking water supply by removing arsenic and perchlorate from the Barton Well Field while implementing a water reuse groundwater recharge project.

Over the past century, the historic uses of the nearby land have been for copper mining and rocket fuel production. We also have a DOD facility that is located just south of the district. Both of these facilities necessitated an aggressive response from our district from the contamination and from the unfunded mandated arsenic safe drinking water rule. The District invested and is investing in a new EDR, electro dialysis treatment facility, which will remove the contaminants from the drinking water and provide the population safe drinking water. The facility after producing the drinking water will produce a highly concentrated brine stream with the contamination in it.

The District over the past decade has been looking at alternative treatments for handling this concentrated brine stream. The District along with a couple of engineers has developed a BIOBROx treatment system that will remove and destroy the contaminated in the concentrated brine stream.

The concentrated brine stream leaves the facility and is entered into the wastewater collection system, which in turn is delivered to our wastewater treatment plant. The BIOBROx process allows this high-concentrated brine along with the contamination to pass through these bioreactors. These bioreactors are 12 foot in diameter, 15 feet high. There are six of them. When constructed, they will treat just under four MGD a day.

The effluent coming off these bioreactors will be type I reuse irrigation water and will be ready for treatment and then allowed to be pumped back out into the reuse/recharge system. The District has master-planned over the last 20 years and looked at alternative costs for water and import water. They felt with the District's support and the community's support that the alternative was to treat the water and have invested \$36 million in this project.

The cost of import water is projected to be over \$1,000 per acre-foot. So we feel that this concentrated brine stream, rather than being discharged directly out to the environment, our option was better to treat it and reuse the water as a sustainable water source for this area of Salt Lake County.

I thank you for the opportunity. If you have any questions, I will be happy to answer them.

[The prepared statement of Mr. Hansen follows:]

**Statement of Edwin Hansen, Magna Water District (Utah), on H.R. 2265**

Good Morning. My name is Ed Hansen. I am the General Manager of the Magna Water District, which is comprised of Magna Township, located in the western areas of West Valley City, and a corner of South West Salt Lake City in Salt Lake County, Utah

I want to thank Representatives Chaffetz, Matheson and Bishop for sponsoring this bill on our behalf. All three of these Congressional Districts intersect at our near the area which serves the 28,000 people who reside in our service area.

Through this Title XVI project now before the committee, the Magna Water District has a unique opportunity to restore a drinking water supply by removing arsenic and perchlorate from the Barton Well Field while implementing a water reuse and groundwater recharge project. Over the past century, the historic uses of the nearby land are copper mining and rocket fuel production, both of which has necessitated an aggressive response by our district.

A new electrodialysis reversal (EDR) facility is currently being constructed to remove perchlorate and arsenic from the Barton Well Field resulting in two products: high quality drinking water and a concentrated waste stream.

The drinking water will be pumped directly into the District's potable water system while the waste stream will flow by gravity to the existing wastewater treatment plant (WWTP) site where a bioreactor is being constructed to treat the waste stream.

The bioreactor will produce high quality effluent that can be disinfected and along with the effluent from the existing WWTP and used for irrigation through a reuse and secondary water irrigation system, thus eliminating the need to use high quality drinking water for outdoor irrigation uses.

The existing WWTP effluent is currently discharged into the Great Salt Lake where it is unrecoverable by the District. There is synergy in the proposed system where as the areas being irrigated are also within the recharge zone for groundwater recovery wells that provide water for the District's expanding secondary water irrigation system.

This reclamation project will result in a projected annual reduction of 580 million gallons (1,780 acre-feet) of high quality, potable project water used for outdoor irrigation

Magna Water District is seeking funds, on a matching basis, to implement this project that will generate a several benefits to its water users:

1. It will reduce the current use of treated high quality project water thus cutting operating costs,
2. It will preserve an 8 cubic feet second (cfs) water right located at the WWTP outfall,
3. It will preserve and sustain their valuable water resources, and to promote water conservation.

Utah ranks as the second driest state in the nation following Nevada, but is number one in per capita water use (municipal and industrial) at about 300 gallons of water per person per day. The residents of Magna are willing to invest in a portion of the project that they know will benefit the District as well as other surrounding communities.

In fact, as a part of this reclamation project, the District and its water users have already invested more than \$20 million in treatment facilities to remove arsenic and perchlorate from their water supply.

The high cost of water treatment has forced the District to evaluate water usage and to investigate possibilities for reducing nonpotable water use. In 2004, recognizing the demand for high quality drinking water for outdoor irrigation in their existing system, the District planned, designed and installed the first phase of a secondary water system.

Phase I of this system targets all of the District's large water users such as schools, churches, golf courses, and parks.

As a result of the secondary water system planning and implementation efforts, District reports show a dramatic drop in potable usage for those using the secondary system. Private residences that connected to the secondary water system showed similar results; in most cases, nearly a 98% reduction in potable water usage for outdoor watering was achieved.

The District continues to master plan to address the growing needs of its population by maximizing the use of its potable water supply for domestic, in-home uses and using expansion of the secondary water system for outdoor purposes thereby preserving its valuable potable water resources.

A key element of this Phase II is to utilize the high quality product (reuse) water from the bioreactor at the District's wastewater treatment facility to increase the supply of water available for outdoor use. Reuse of water from the District's bioreactor will control potable water capital and operating costs and enhance water conservation efforts.

In addition, all new development within the District boundary is currently required to install secondary water piping and infrastructure that complies with District standards to further maximize the District's ability to preserve potable water resources. This policy allows funding for this system to primarily benefit existing users and requires new development to bear the cost of secondary and reuse systems that are to its benefit.

The total cost of the project is estimated to be approximately \$51 million. Project funding sources include approximately \$3 million in Federal funding and \$36 million funded by the District. Passage of this legislation will allow the District to fund the remaining \$12 million through the Bureau of Reclamation's Water Reclamation and Reuse (Title XVI). When this happens, the people of Magna and our larger service area will be able to rely on a sustainable water supply that continues to be clean, safe and dependable. Thank you for this opportunity to testify. I would be happy to answer any questions.

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Mrs. NAPOLITANO. Thank you for your testimony.

Now we turn to Gary Darling, General Manager of Delta Diablo Sanitation District, Antioch, California.

**STATEMENT OF GARY DARLING, GENERAL MANAGER, DELTA DIABLO SANITATION DISTRICT, ANTIOCH, CALIFORNIA [H.R. 2442]**

Mr. DARLING. Good morning, Madame Chairwoman. My name is Gary Darling, and I am the General Manager of Delta Diablo Sanitation District in the Bay Area, Antioch, California. I appreciate the invitation to appear today to present testimony on behalf of the Bay Area Recycled Water Coalition and our strong support of H.R. 2442.

At the outset, I want to extend the Coalition's deepest appreciation to Congressman George Miller for his vision and leadership in introducing this much-needed water legislation, which will help eight Bay Area communities increase their municipal water supplies.

I also want to commend the co-sponsors, Representatives Eshoo, Lofgren, Tauscher, Speier, Honda, Stark, McNerney and Woolsey.

I last appeared before your Subcommittee in May of 2007. At that time, I sought support for H.R. 1526, which was signed into law in May 2008. This resulted in the authorization of seven new recycled water projects for the Bay Area, and I want to commend you, Madame Chairwoman, for your leadership in that effort. You have always taken a personal, direct interest in California's water supply issues, and many recognize your invaluable contributions.

I am proud to report that our coalition's objective of working together in collaboration rather than pursuing individual agency interests is successfully producing recycled water projects.

As you are aware, California has serious water supply challenges. In February, Governor Schwarzenegger warned that California faces its third consecutive year of drought, and it must prepare for the worst, a fourth, fifth or even sixth year of a drought.

As our state's water needs continue to grow, so do our responsibilities to secure long-term sustainable water options. An increasing population coupled with decreasing Sierra snowpack make it imperative that we act very actively, seek conservation and water recycling programs to withstand the impacts of climate change and drought.

As you correctly point out on your website, Madame Chairwoman, our nation's water infrastructure is aging and deteriorating. Huge quantities of water that could be recycled are instead flushed out to the sea.

Now the Bay Area uses a little over a million acre-feet of water per year, which is about one fourth of the storage availability in Shasta Reservoir. Half of that ends up in our sewer system, and that water is practically drought-proof and it is available for recycled water projects.

The projects undertaken to date by the Bay Area Recycled Water Coalition have resulted in over 22,000 acre-feet of recycled water being developed, and there are more opportunities to develop additional water supplies, but we cannot do it alone.

Federal funding and support is the strongest foundation we have to guarantee the successful implementation of water-efficient technologies. As Secretary of the Interior Ken Salazar indicated during his visit to the Delta this past April, it is time to modernize, it is time to make hard choices, and it is time for the Federal government to reengage in full partnership with the 21st century water system for the State of California.

The six new projects in H.R. 2442 will generate over 8,000 acre-feet of brand-new water supply for the Bay Area. That is enough water to meet the needs of nearly 24,000 homes. These projects help answer President Obama's call to ensure the safety of our environment and to rebuild our economic vitality and investments for future generations.

Congressman McClintock asked three specific questions that I will try to address very briefly. What is the Federal nexus? The Federal nexus is all six of these projects draw water out of the Delta. Three of them are specific Federal water contractors. There are 126 Federal contractors in the State of California, and the Bureau is never able to meet the full allocation of water for those contractors. So this is a new water supply. It is water that was called upon under the previous legislation, the Central Valley Project Improvement Act, called on the Bureau to identify new water sources. This is a new water source.

Feasibility, all of our projects are committed to going through the feasibility project. One of the projects that is in my district was the very first in the Nation to gain complete acceptance through the feasibility process, and we are committed to that.

Cost-effectiveness, that is a very good question. Our board members of all the Bay Area agencies ask exactly that.

You had asked is there a project out there that produces recycled water less than \$1,000 an acre-foot. Our project costs to deliver recycled water, the operating cost is less than \$300 an acre-foot for operating and maintenance of those facilities.

The capital costs to put that new infrastructure in needs to be compared to the capital costs for any new water supply. So building

a reservoir or desalination plant, an inter-tie groundwater project, if you compare the cost of new infrastructure for those facilities versus these type of facilities, it is extremely competitive.

So, with that, we are asking for your support of H.R. 2442 to build on an already progressive and proven partnership between the Federal government and local communities to expand the successful regional water recycling program across the San Francisco Bay area.

Accordingly, the Coalition urges support for H.R. 2442. Thank you very much.

[The prepared statement of Mr. Darling follows:]

**Statement of Gary W. Darling, General Manager, Delta Diablo Sanitation District, City of Antioch, California, on H.R.2442**

Madam Chairwoman, good morning. My name is Gary Darling and I am the General Manager of the Delta Diablo Sanitation District in Antioch, California.

I appreciate the invitation to appear today to present testimony on behalf of the Bay Area Regional Water Recycling Coalition (BARWC), a partnership of Bay Area regional water recycling agencies, in strong support of H.R.2442, the "Bay Area Regional Water Recycling Program Expansion Act of 2009."

At the outset, I want to extend the Coalition's deepest appreciation to Congressman George Miller for his vision and leadership in introducing this much-needed water legislation which will help eight Bay Area communities increase their municipal water supplies through innovative water recycle projects. I also want to commend Representatives Eshoo, Lofgren, Tauscher, Speier, Honda, Stark, McNerney, and Woolsey for being original cosponsors of the bill, which also affects critical projects in their Districts.

Madam Chairwoman, as a matter of background, the Coalition has projects authorized under Title XVI of Public Law 102-575 as amended through the Bay Area Regional Water Recycling Program. This Program is a partnership of Federal, State and local agencies focused on feasible use of recycled water in the San Francisco Bay Area—home to one-sixth of California's population. Since 1999, when our Bay Area Water Recycling Master Plan was completed, our agencies have invested over \$280 million planning, designing and building water recycling projects. With continued State and Federal funding assistance, including the President's American Recovery and Reinvestment Act, we can continue to successfully develop recycled water projects that provide new sustainable dry weather supplies to the Bay-Delta area, benefitting not only our region, but also the State of California and the nation.

I last appeared before this Subcommittee in May 2007. At that time, as spokesperson for BARWC, I sought support for H.R.1526, which was signed into Public Law 110-229 in May 2008. This resulted in authorization of seven new projects and subsequent funding for five of these. I want to commend you, Madam Chairwoman, for your leadership in that effort. You have always taken a personal, direct interest in California's water supply issues, and many recognize your invaluable contributions.

I'm proud to report that our Coalition's objective of working together in collaboration rather than pursuing individual agency interests is successfully producing water reuse projects focused on creating long-term sustainability and drought-tolerant water supplies. Reuse projects with regional and statewide benefits have received priority funding and implementation support.

To give you a brief example, one of the projects where the Subcommittee's support has made a difference is the Redwood City Recycled Water Project, which recently completed construction of recycled water treatment, storage, pumping and distribution facilities, providing recycled water for landscape irrigation, commercial, and industrial uses. Through this authorized BARWC project, Redwood City is currently saving approximately 50 million gallons of drinking water per year. The City is currently seeking authorization for a new project to meet its goal of saving 300 million gallons of drinking water by 2010. This is just one project in the BARWC.

There is still much work to be done around the important issues of water efficiency and conservation. We have an urgent need to address the issues of water stress and scarcity which plague much of the western region of our great nation.

According to the Natural Resources Defense Council, water will be one of the major environmental issues of the 21st century. It's a natural resource that is al-

ready in short supply across parts of the United States and the world—and it will become even scarcer as our population grows and our climate changes.

As you are already aware, California has serious water supply challenges. Currently two-thirds of the San Francisco Bay Area's water supply is imported. In February, Governor Schwarzenegger warned that "California faces its third consecutive year of drought and [it] must prepare for the worst—a fourth, fifth or even sixth year of drought."

As our State's need for water continues to grow, so too does our responsibility to secure long-term sustainable water options. An increasing population coupled with decreasing precipitation and Sierra snowpack make it imperative that we actively seek conservation and water recycling programs to withstand the effects of climate change and drought.

Water recycling and reuse enables us to address these challenges. Research indicates recycled water could meet thirty percent of the projected increase in 2030 regional water demands. Water sourced from storage reservoirs is equivalent of up to five times more than that which is produced by water recycling. Using virtually drought-proof recycled water for irrigation, landscaping and industrial purposes dramatically reduces dependence on freshwater.

However, water sourcing is only one component of the challenge we face. As you correctly point out on your website Madam Chairwoman, "Our nation's water infrastructure is aging and deteriorating. Huge quantities of water that could be recycled are instead flushed out to sea." Lack of adequate infrastructure remains one of our biggest obstacles to offering more recycled water, faster and more efficiently across our communities. Installation of designated "purple" pipeline remains one of the largest costs associated with recycled water.

Our Coalition is actively working to implement viable water recycling programs. Projects have been undertaken by Coalition members resulting in over 22,000 acre-feet of recycled water being supplied to Bay Area communities and businesses. And there are many more opportunities for us to be active leaders in addressing the growing issues of water conservation and reuse.

But we can't do it alone. Federal funding and support is the strongest foundation we have to guarantee the successful adoption and implementation of water-efficient technologies and practices. Federal support enables us to stretch limited water supplies and protect precious ecosystems to the benefit of citizens in a far broader geography than simply the communities our agencies serve.

As Secretary of the Interior Ken Salazar indicated during his visit to the Delta this past April, "It is time to modernize, it is time to make hard choices and it is time for the Federal government to reengage in full partnership with the 21st century water system for the State of California." Water recycling and reuse technology must be a large component of this new system.

Today I'm asking your support for H.R.2442 which builds on the success of last Congress by making six additional recycled water projects eligible for a 25% federal cost-sharing investment. This will enable more cities across the Bay Area to connect with the recycled water network by installing new pump stations, piping and storage tanks. This will directly result in reduced demand from six Bay Area communities on scarce fresh water from the Bay-Delta.

These six new projects will generate over 8,000 acre-feet per year of new sustainable water supply. That's over 2.6 billion gallons per year or 7.2 million gallons per day. That's enough to meet the needs of nearly 24,000 homes. It will reduce wastewater discharges to aquatic environments, and reduce the demand for limited fresh water from our fragile Bay-Delta system.

Water recycling is a responsible water supply option that is less energy-intensive than almost all other water supply options. As there is a steady supply of wastewater, recycled water is virtually drought-proof. However, without Federal partnership providing vital 25% capital, we risk these valuable projects not being developed. H.R.2442 will enable us to build six new projects and fully fund two more. It will allow for valuable financial support in these difficult economic times to public agencies being challenged with decreasing revenue and increasing expenditures. Without these cost sharing measures, many of our projects risk not being completed or may fail to get started at all.

These six innovative water recycling projects covered under H.R.2442 answer President Obama's call to ensure the safety of our environment and to rebuild our economic vitality and investments now for future generations. Because when we protect our resources, we protect our future.

California's water supply continues to be precious, but limited. In the San Francisco Bay Area, our Coalition is actively undertaking unprecedented collaborative water recycling projects which answer the challenge of ensuring we have sufficient

freshwater supplies to maintain a good quality of life and sustain our much needed economic growth—not just for today or tomorrow, but in the future as well.

I'm here today to ask the Subcommittee to join with our Coalition once again to lead a new direction of water recycling initiatives which can directly benefit millions of Californians and the Bay-Delta ecosystem. These projects offer the Federal government an opportunity to leverage Federal funds for significant benefit. These projects help achieve the objectives of the Central Valley Project Improvement Act and the Bay Delta Conservation Plan. Investing in the work being undertaken by our Coalition will result in advanced technologies which protect the health of our communities and environment, while providing long-term economic benefits.

Your support for H.R.2442 will build on an already progressive and proven partnership between the Federal government and local communities to expand the successful regional water recycling program across the San Francisco Bay Area.

Accordingly, the Coalition urges support for H.R.2442. Thank you.

Mrs. NAPOLITANO. Thank you, sir, for your testimony.

And we move on to Susan Mulligan, Manager of Engineering, Calleguas Municipal Water District in Thousand Oaks, California. Ma'am.

**STATEMENT OF SUSAN MULLIGAN, MANAGER OF ENGINEERING, CALLEGUAS MUNICIPAL WATER DISTRICT, THOUSAND OAKS, CALIFORNIA [H.R. 2522]**

Ms. MULLIGAN. Chairwoman Napolitano, members of the Subcommittee and staff, good morning. Thank you for the opportunity to testify today on this very important issue.

My name is Susan Mulligan. I am the Manager of Engineering for Calleguas Municipal Water District, which provides water to about 75 percent of the population of Ventura County or 650,000 people about 50 miles northwest of Los Angeles, California.

I want to thank you for holding this hearing on H.R. 2522, which proposes to raise the ceiling on the Federal share of the cost of the Calleguas Municipal Water District Recycling project.

I also want to thank Congressman Elton Gallegly for sponsoring this important bill that will provide much-needed additional water supplies to our region and improve the quality of our local natural resources.

Calleguas Municipal Water District is a public agency created in 1953 to provide southeastern Ventura County with a reliable supply of high-quality supplemental water. Calleguas's service area faces serious water supply and water quality challenges.

Calleguas imports about 120,000 acre-feet per year from the State Water Project, as you know, a system of reservoirs, aqueducts and pumping facilities that convey water from the Sacramento Bay Delta in northern California to southern California.

The ability of the State Water Project to convey reliable supplies has been hampered by an ongoing drought and decisions which have mandated that significantly more water remain in the Bay Delta for habitat needs. Climate change is expected to further reduce available supplies as precipitation decreases and less water is stored in snowpack. Calleguas needs to develop additional supplies if it is to reliably sustain its existing residents, businesses and agriculture.

In addition to the water supply challenge, the quality of the region's local water supplies is deteriorating. The Calleguas service area has experienced increasing salinity levels since its supplies

were first put to use by farmers in the 1880s. Much of the local groundwater is now too saline for use as drinking water and is harmful to the county's billion-dollar-a-year agricultural industry, particularly for sensitive crops like berries and avocados.

This project resolves both of those problems. It will improve water supply reliability and reduce imported water supplies by making it possible to put the local brackish water supplies to beneficial use. The project is a regional pipeline that will collect salty water generated by groundwater desalting facilities in the region, allowing them to produce higher-quality water for municipal, industrial and agricultural uses instead of using imported supplies.

The salty water from these facilities and excess recycled water from other sources will be conveyed for reuse elsewhere. Potential uses near the coast include wetlands restoration, irrigation of salt-tolerant crops such as sod and coastal game preserves. The use of this nonpotable water source will help reduce groundwater pumping near the coast and imported water use. Any surplus supplies will be safely discharged to the ocean where natural salt levels are much higher.

In addition to its water supply and water quality benefits, the project will also benefit the environment by improving the quality of flows in local creeks, reducing greenhouse gas emissions by using less intensive local water resources instead of imported sources which require substantial pumping and reducing dependence on imported water from the sensitive Bay Delta ecosystem.

The project is being built in phases. Phase 1 is largely complete and includes 48-inch-diameter pipe extending nine miles through the Cities of Oxnard and Port Hueneme and unincorporated areas of Ventura County. This phase also includes a 30-inch-diameter ocean outfall extending 4,500 feet into the ocean, which is currently under construction. Phase 1 will facilitate the reclamation and reuse of about 15,000 acre-feet per year of water.

Phase 1 was authorized by P.L. 104-266 and will be completed at an estimated cost of \$83.8 million. Once complete, the cost of Phase 1 will cause Calleguas to reach the \$20 million cap in our Federal authorization.

H.R. 2522 will authorize the Bureau's support for Phases 2 and 3 of the project, which will extend pipe an additional 26 miles through the Cities of Simi Valley, Moorpark and Camarillo. Completion of Phases 2 and 3 will facilitate the reclamation and reuse of about 43,000 acre-feet per year of water in addition to that facilitated by Phase 1.

Federal support for these phases through the Bureau would be limited to the lesser of \$40 million or 25 percent of the construction costs. Implementation of the project will facilitate recycled water use, reduce the demand on import of water, remove salt from the watershed, facilitate restoration of coastal wetlands, help sustain important agricultural operations and provide overall benefits to Ventura County and the State of California.

Thank you again, Chairwoman Napolitano, for your time and consideration. I am ready to answer any questions you may have.

[The prepared statement of Ms. Mulligan follows:]

**Statement of Susan Mulligan, Manager of Engineering,  
Calleguas Municipal Water District, on H.R. 2522**

Chair Napolitano, members of the Subcommittee, and staff, good morning and thank you for the opportunity to testify today on this very important issue.

My name is Susan Mulligan and I am the Manager of Engineering for Calleguas Municipal Water District, which provides water to about 75 percent of the population of Ventura County, or 650,000 people, about 50 miles northwest of Los Angeles, California.

I want to thank you for holding this hearing on H.R. 2522, which proposes to raise the ceiling on the Federal share of the cost of the Calleguas Municipal Water District Recycling Project which funds the construction of a 35 mile brine line.

I also want to thank Congressman Elton Gallegly for sponsoring this important bill that will provide much needed additional water supplies to our region and improve the quality of our natural resources.

Calleguas Municipal Water District (Calleguas) is a public agency created in 1953 to provide southeastern Ventura County with a reliable supply of high quality supplemental water. The District serves an area of approximately 350 square miles that includes the cities of Camarillo, Moorpark, Oxnard, Port Hueneme, Thousand Oaks, and Simi Valley, as well as surrounding unincorporated areas. Calleguas' service area faces serious water supply and water quality challenges.

Calleguas' imported water supply is dwindling. Calleguas imports about 120,000 acre-feet per year (AFY) from the State Water Project (SWP), a system of reservoirs, aqueducts, and pumping facilities that conveys water from the Sacramento-San Joaquin Bay-Delta in northern California to southern California. The ability of the SWP to convey reliable water supplies has been hampered by an on-going drought and regulatory decisions which have mandated that significantly more water remain in the Bay-Delta for habitat needs. Climate change is expected to further reduce available supplies as precipitation decreases and less water is stored in snowpack. Calleguas needs to develop additional water supplies if it is to reliably sustain its existing residents, businesses, and agriculture. Water conservation alone cannot provide sufficient savings to avert potential future water supply shortages.

The quality of the region's local water supplies is deteriorating. Calleguas' service area generally overlies the Calleguas Creek Watershed. Calleguas Creek and many of its tributaries are listed as "impaired" for salinity under the Clean Water Act. The Calleguas service area has experienced increasing salinity levels since its water supplies were first put to use by farmers in the 1880s. Contributing factors include naturally occurring minerals, agricultural runoff, and lack of surplus water to flush salts from the environment. Salinity levels have increased with each cycle of urban use for municipal and industrial purposes. Groundwater over-draft along the coastline has led to seawater intrusion into coastal groundwater basins, impairing the quality of freshwater aquifers. Much of the local groundwater is too saline for use as drinking water and is harmful to the County's billion dollar a year agricultural industry, primarily for sensitive crops like berries and avocados. High salinity levels in soils and surface water can also be detrimental to sensitive habitat. Without a means of removing salt, the area will continue to experience long-term increases in salinity levels as the salts are cycled and concentrated.

Solutions to these supply and quality problems are being implemented through a collaborative process. Beginning in 1996, a broad coalition of local property owners, water and wastewater agencies, environmental groups, agricultural parties, governmental entities, and other private interests joined together to develop the Calleguas Creek Watershed Management Plan, which is centered around implementation of the Calleguas Municipal Water District Recycling Project (Project).

The Project will improve water supply reliability and reduce dependence on imported water supplies by making it possible to put local brackish water supplies to beneficial use. The only way to remove salinity from water is through a membrane treatment process, such as reverse osmosis, which produces a highly saline waste concentrate which must then be managed and disposed. If the concentrate were to be discharged to wastewater or creeks, it would perpetuate the cycle of salt build up.

The Project is a regional pipeline that will collect salty water generated by groundwater desalting facilities and excess recycled water and convey that water for reuse elsewhere. Any surplus supplies will be safely discharged to the ocean, where natural salt levels are much higher. The Project is being built incrementally in phases, as shown on the attached map. Phase 1 is largely complete, with one pipeline section and an ocean outfall currently under construction. Once complete, the cost for Phase 1 will cause Calleguas to reach the \$20 million cap in their federal authorization.

Much of the local wastewater is treated to a high level of bacteriological quality but is too saline for discharge to local creeks. The Project will either provide a means for that wastewater to be demineralized for use as a high quality irrigation supply or a means of conveying that wastewater to potential users near the coast which can tolerate saline water. Potential uses include wetlands restoration, irrigation of salt-tolerant crops (such as sod), and coastal game preserves.

The use of this non-potable water source will help reduce groundwater pumping and imported water use. The Project will also export salts out of the watershed to help achieve compliance with regulatory requirements for salts in local groundwater and surface water resources. Additionally, the Project will facilitate the development of new, local water supplies through treatment of brackish groundwater.

The Project is vital to the region's water reliability as imported supplies become increasingly vulnerable to drought, climate change, catastrophic levee failures from flood and/or seismic events, and regulatory shutdowns of pumping facilities for habitat protection.

The Project will improve surface water and ground water quality by moving salts out of the watershed. Salt will be removed from groundwater and the concentrate from the treatment process sent to the Project. Tertiary treated wastewater which is too saline for discharge to local streams will be sent to the Project during wet periods when it is not needed for irrigation. Ventura County has abundant sources of groundwater, but much of the water is too high in salts for municipal and agricultural use. By treating groundwater to remove salts and moving those salts away from surface waters and groundwater, water agencies in Ventura County solve a water quality problem, while improving local water supply reliability.

In addition to its water supply and water quality benefits, the Project will also benefit the environment by improving the quality of flows in local creeks, reducing greenhouse gas emissions by using less energy-intensive local water resources instead of imported sources which require substantial pumping, and reducing dependence on imported water from the sensitive Bay-Delta ecosystem in Northern California.

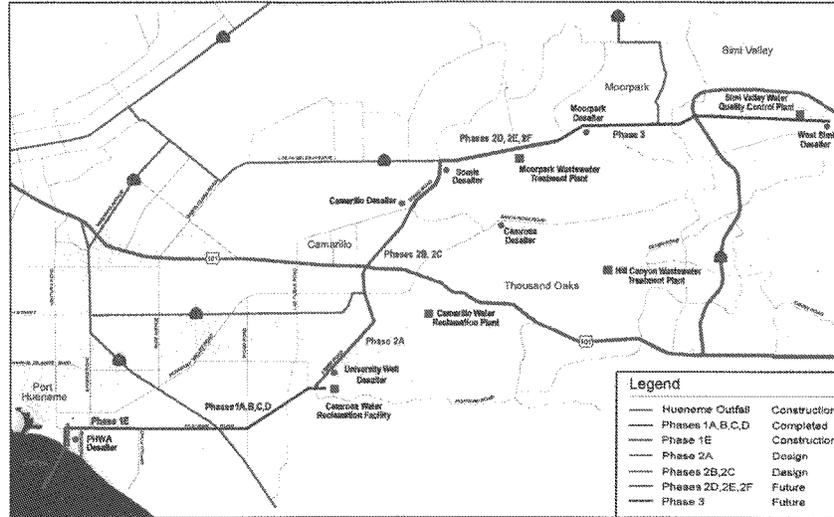
Phase 1 of the project was authorized by P.L. 104-266, Section 2, and will be completed at an estimated cost of \$83.858 million (maximum Federal share of \$20 million). Phase 1 includes 48 inch diameter pipe extending nine miles through the cities of Oxnard and Port Hueneme and unincorporated areas of Ventura County, and also includes a 30 inch diameter ocean outfall extending 4,500 feet into the ocean. Phase 1 will facilitate the reclamation and reuse of about 15,000 acre-feet per year of water.

H.R. 2522 will authorize Bureau of Reclamation support for Phases 2 and 3 of the Project, which will extend the 18-inch through 30-inch diameter pipe an additional twenty-six miles through the cities of Simi Valley, Moorpark, and Camarillo, and unincorporated areas of Ventura County. Completion of Phases 2 and 3 of the Project will facilitate the reclamation and reuse of about 43,000 acre-feet per year of water. Federal support for these phases of the project through the Bureau would be limited to the lesser of \$40 million or 25 percent of the construction costs.

The Project is the only truly reliable, environmentally-sensitive, and cost-effective solution to the water supply and water quality issues in the Calleguas service area. Implementation of the Project will facilitate recycled water use, reduce the demand on imported water, remove existing salts, reduce salinity loadings, facilitate restoration of coastal wetlands, help sustain important agricultural operations in Ventura County, and provide overall benefits to Ventura County and the State of California.

Calleguas Municipal Water District takes its role as water supply manager for the County very seriously. Calleguas, local cities and retail water agencies, and the local community, are all looking for water supply and water supply reliability solutions. Local brackish groundwater and recycled municipal wastewater are good solutions. H.R. 2522 can be the tool that enables us to achieve this water supply and we very strongly urge your support for this legislation.

Thank you again, Madame Chair, for your time and consideration and I am here ready to answer any questions you may have.



Calleguas Regional Salinity Management Project

July 2009

Mrs. NAPOLITANO. Thank you, Ms. Mulligan.  
Mr. Brookshier, City Manager of Hermiston, Oregon. Sir.

**STATEMENT OF ED BROOKSHIER, CITY MANAGER,  
HERMISTON, OREGON [H.R. 2741]**

Mr. BROOKSHIER. Chairwoman Napolitano and members of the Subcommittee, thank you for holding this hearing and allowing me to testify in support of H.R. 2741.

My name is Ed Brookshier, and I am the City Manager for the City of Hermiston, Oregon, a rural agricultural community of 16,000 on the state's east side.

I wish to publicly thank Congressman Greg Walden for introducing this important piece of legislation that is crucial to the city's reclamation and reuse of its municipal wastewater. This reclamation effort will provide high-quality recycled water for reuse as a source of irrigation supply.

The city's recyclable water production is estimated to be 3,600 acre-feet annually, of which 1,800 acre-feet will supply irrigation and 1,800 acre-feet will be discharged to the Umatilla River for winter use.

This new partial source of drought-proof irrigation water will provide an added supply to the Bureau of Reclamation-owned and locally operated West Extension Irrigation District.

The benefits of developing a high-quality source of recycled water followed by its use as a source of irrigation are numerous and extend to the West Extension Irrigation District, the City of Hermiston, the Confederated Tribes of the Umatilla Indian Reservation and the region as a whole.

The West Extension Irrigation District benefits from this project by obtaining an additional source of supply which is both high in quality and drought-proof. Since water is delivered to the District, energy required for pumping is also reduced by approximately \$13,000 a year. In addition, the 1,800 acre-feet of irrigation water provided annually will supply water to 600 acres, reducing the demand on the District's surface water supply sources.

Finally, this added source of partial irrigation water improves the District's operational flexibility.

The City of Hermiston benefits primarily through meeting its upcoming national pollutant discharge elimination system permit. This permit requires the city to develop high-quality recycled water and remove its discharge from the Umatilla River continuously from April 1 to October 31 of each year.

The West Extension Irrigation District provides the long-term, multifarm discharge option that allows the city to remove its discharge from the river during this period of each year. If the city is unable to discharge to the District, it will be in continuous violation of current temperature standards and periodic violation of the ammonia standard contained within the city's permit.

Secondary benefits to the city include a reduction in energy costs from reduced pumping, estimated to be \$42,000 a year, and the certainty that this solution, though expensive, will serve for decades to come.

The Confederated Tribes of Umatilla Indian Reservation will also benefit from development of high-quality recycled water throughout the year. These benefits include a significant improvement in the quality of recycled water discharged to the Umatilla River in winter, further protection of sensitive salmon habitat during summer when the recycled water is used for irrigation in lieu of river discharge, increased environmental monitoring at the recycled water treatment facility and the long-term nature of this solution.

The region as a whole also benefits from treatment that develops high-quality recycled water. This water source is protective of the environment in both summer and winter and provides an added source of irrigation supply to agriculture, which is the backbone of the Hermiston economy.

The Hermiston Water Recycling Project is estimated to be completed and on line in two and one half years. This effort will have an immediate economic impact to our local economy as much-needed jobs will be created through an infrastructure project of this size.

More importantly, the addition of the new and reliable water source created by this project will have a profound long-term impact on the farming industry in our area, which faces an uncertain future due to dwindling water supplies.

Madame Chairman, while I understand and appreciate the strict budgetary limitations that your Committee and Congress as a whole are faced with, I believe the Hermiston Recycled Water Facility is a worthwhile Federal investment. Combined with the serious regulatory issues the City of Hermiston is faced with and the need for added drought-proof sources of recycled water in the Hermiston area for irrigation, it is essential that we complete construction of this project in a timely manner. Federal participation

in this endeavor is vitally important to ensure that this becomes a reality.

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

[The prepared statement of Mr. Brookshier follows:]

**Statement of Ed Brookshier, City Manager, City of Hermiston, Oregon,  
on H.R. 2741**

Chairwoman Napolitano and Members of the Subcommittee, thank you for holding this hearing and allowing me to testify in support of H.R. 2741. My name is Ed Brookshier and I am the City Manager for the City of Hermiston, Oregon. I wish to publicly thank Congressman Greg Walden for introducing this important piece of legislation that is crucial to the City's reclamation and reuse of its municipal wastewater. This reclamation effort will provide a high quality recycled water for reuse as a source of irrigation supply. The City's recycled water production is estimated to be 3,600 acre-feet annually, of which 1,800 Acre-feet will supply irrigation and 1,800 acre-feet will be discharged to the Umatilla River in winter. This new partial source of drought proof irrigation water will provide an added supply to the Bureau of Reclamation owned and locally operated West Extension Irrigation District.

Hermiston, Oregon is a progressive, growth-oriented urban center with a total trade area population of 320,900. Located in a relatively dry section of the state of Oregon, positioned between the Cascade Mountains to the west and the Blue Mountains to the East, Hermiston is placed in a unique geographical area that offers an extended growing season and a variety of agricultural crops and products. The immediate Hermiston area has been able to diversify its economy with food processing, cold storage and warehousing and distribution facilities.

The benefits of developing a high quality source of recycled water followed by its use as a source of irrigation are numerous and extend to: The West Extension Irrigation District, the City of Hermiston, The Confederated Tribes of the Umatilla Indian Reservation and the region as a whole.

The West Extension Irrigation District benefits from this project by obtaining an additional source of supply, which is both high in quality and drought proof. Since water is delivered to the District, energy required for pumping is also reduced by approximately \$13,000 annually. In addition, the 1,800 acre-feet of irrigation water provided annually will supply water to 600 acres, reducing the demand on the District's surface water supply sources. Finally, this added source of partial irrigation water improves the District's operational flexibility.

The City of Hermiston benefits primarily through meeting its upcoming National Pollutant Discharge Elimination System Permit (NPDES). This permit requires the City to both develop a high-quality recycled water and remove its discharge from the Umatilla River continuously from April 1 to October 31 of each year. The West Extension Irrigation District provides the long term, multi-farm discharge option that allows the City to remove its discharge from the River during this period of each year. If the City is unable to discharge to the District it will be in continuous violation of current temperature standards and periodic violation of the ammonia standard contained within the City's NPDES Permit. Secondary benefits to the City include a reduction in energy cost from reduced pumping, estimated to be \$42,000 annually, and the certainty that this solution, though expensive, will provide service for decades to come.

The Confederated Tribes of the Umatilla Indian Reservation will also benefit from development of high-quality recycled water throughout the year. These benefits include a significant improvement in the quality of recycled water discharged to the Umatilla River in winter; further protection of sensitive salmonid habitat during summer when the recycled water is used for irrigation in lieu of River discharge; increased environmental monitoring at the recycled water treatment facility and the long-term nature of this solution.

The region as a whole also benefits from treatment that develops high-quality recycled water. This water source is protective of the environment in both summer and winter and provides an added source of irrigation supply to agriculture, which is the backbone of the Hermiston economy. The Hermiston Water Recycling Project is estimated to be completed and online in 2 1/2 years. This effort will have an immediate economic impact to our local economy as much needed jobs will be created through an infrastructure project of this size. More importantly, the addition of the new and reliable water source created by this project will have a profound long-term

impact to the farming industry in our area which faces an uncertain future due to dwindling water supplies.

Madam Chairman, while I understand and appreciate the strict budgetary limitations that your Committee and Congress as a whole are faced with, I believe that the Hermiston Recycled Water facility is a worthwhile federal investment due to the numerous federal objectives that will be advanced through this project. Combined with the serious regulatory issues the City of Hermiston is faced with and the need for added drought proof sources of recycled water in the Hermiston Area for irrigation, it is essential that we complete construction of this project in a timely manner. Federal participation in this endeavor is vital to ensure that this becomes a reality.

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

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Mrs. NAPOLITANO. Thank you, sir.

We move on to Mr. Scott Ruppe, General Manager at Uintah Water Conservancy District in Vernal, Utah.

**STATEMENT OF SCOTT RUPPE, GENERAL MANAGER, UINTAH WATER CONSERVANCY DISTRICT, VERNAL, UTAH [H.R. 2950]**

Mr. RUPPE. Thank you very much, Madame Chairwoman and members of the Subcommittee. I am grateful to be able to appear here today and testify in support of H.R. 2950. I want to thank Representative Jim Matheson for introducing this bill on behalf of the Uintah Water Conservancy District.

The District was formed in 1956 for the purpose of conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing, municipal and other beneficial uses and for the purpose of constructing drainage works.

The District operates and maintains the Vernal and Jensen units of the Central Utah Project, which was authorized by Congress as part of the Colorado River Storage Project Act of 1956. The District encompasses almost all of Uintah County, Utah, in eastern Utah adjacent to the Colorado border.

At the time of its construction in 1984 to 1987, the Jensen unit was to provide 18,000 acre-feet of municipal and industrial water to the residents of Uintah County. Six thousand acre-feet were to be developed with the construction of the Red Fleet Dam, which was built, and another 12,000 acre-feet were to be developed at a later date with the construction of the Burns Bench Pump station on the Green River near Jensen, Utah.

Due to the economic bust in the mid- to late eighties, the demand for water that had been foreseen was no longer there. Also in 1989, an amendatory contract was signed with the Bureau of Reclamation reducing the amount of water subscribed to by water providers to 2,000 acre-feet.

The Bureau desires to do a final cost allocation in the Jensen unit. If that allocation were done without developing the remaining 12,000 acre-feet, the cost per acre-foot would be approximately two and a half times as much as if the 12,000 acre-feet were developed. At this time, not all of the 6,000 acre-feet of water in Red Fleet Dam have been subscribed to even though the demand for that water has increased recently.

A block notice was issued to the District from the Bureau of Reclamation for the 2,000 acre-feet, and the District contracted with municipalities, water improvement districts and a private company for all of that water.

Since that time, the additional 4,000 acre-feet of municipal and industrial water has remained unsubscribed. The Bureau of Reclamation took 700 acre-feet to increase the conservation pool in the reservoir, which leaves 3,300 acre-feet of available water. The Burns Bench Pump station will not be constructed until all of the municipal and industrial water available in Red Fleet is subscribed to.

In the past year, due in large part to the projected growth, the District had received requests for all of the remaining municipal and industrial water available in Red Fleet. Five entities, Vernal City and Ashley Valley Water and Sewer, have requested 1,000 acre-feet each; Maeser Water has requested 675 acre-feet; Jensen Water has requested 175 acre-feet; Uintah County in conjunction with Jensen Water has requested 150 acre-feet, and a private company has requested 300 acre-feet.

The price of the water was set by the amendatory contract. The amount per acre-foot was based on the cost of the Jensen unit, including an estimated cost of the pump station divided by the 18,000 acre-feet. The resulting cost is \$5,555.21 per acre-foot and is payable by dividing that amount by the number of years remaining until 2037, with the last payment being made in 2037. Water purchased in 2006 would be paid for at a rate of \$179.07 per acre-foot per year for 31 years. In 2009, it would be \$198.40 for 28 years.

The District approached the Bureau about the possibility of discounting those payments at either the 3.222 rate used by the Bureau to calculate the repayment or the Federal funds rate at the time of the discounting. According to the Bureau, the amendatory contract does not allow for prepayment.

The District then determined that it would ask legislation similar to that used by Central Utah Water Conservancy District that has allowed for prepayment of the repayment contracts for the Bonneville unit. Prepayment of our contract with the Bureau will substantially reduce the cost to the District and will also produce substantial payment to the Federal Treasury, which we estimate between \$4 and \$5 million.

H.R. 2950 directs the Secretary of the Interior to allow for prepayment of the specified contract between the United States and the Uintah Water Conservancy District, providing for prepayment, repayment of municipal and industrial water delivery facilities under terms and conditions similar to those used in the implementing provisions of the Central Utah Project Completion Act. It also provides that the prepayment may be provided in several installments to reflect a substantial completion of the delivery of facilities and shall be adjusted to conform to a final cost allocation, and it may not be adjusted on the basis of the type of prepayment.

The Administration has suggested that the bill be amended to clarify that the District intends to pay the entire present value of future cash flows. That was always our intention, and we agree to work with the Administration to develop the language that will clarify that intent.

Again, I thank you for the opportunity to testify today. I will be happy to respond to any questions.

[The prepared statement of Mr. Ruppe follows:]

**Statement of Scott Ruppe, General Manager, Uintah Water Conservancy  
District, In Support of H.R. 2950**

Madame Chairwoman and members of the Subcommittee, I am grateful to be able to appear here today and testify in support of H.R. 2950. I want to thank Rep. Jim Matheson for introducing this bill on behalf of the Uintah Water Conservancy District (District). The District was formed in 1956 for the purpose of "conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing, municipal and other beneficial uses, and for the purpose of constructing drainage works." The District operates and maintains the Vernal and Jensen Units of the Central Utah Project, which was authorized by Congress as part of the Colorado River Storage Project Act of 1956. The District encompasses almost all of Uintah County, Utah in eastern Utah adjacent to the border of Colorado.

At the time of its construction (1984-1987), the Jensen Unit was to provide 18,000 Acre Feet (AF) of M&I water to the residents of Uintah County. Six thousand AF were to be developed with the construction of Red Fleet dam (which was built) and another 12,000 AF were to be developed at a later date with the construction of the Burns Bench Pump station on the Green River in Jensen, Utah. Due to the economic bust in the mid to late 80's, the demand for water that had been foreseen was no longer there. Also, in 1989 an amendatory contract was signed with the Bureau of Reclamation (Bureau) reducing the amount of water subscribed to by water providers to 2,000 AF.

The Bureau desires to do a final cost allocation on the Jensen Unit. If that allocation were done without developing the remaining 12,000 AF, the cost per AF would be approximately 2.5 times as much as if the 12,000 AF were developed. At this time, not all of the 6,000 AF of water in Red Fleet Dam has been subscribed to even though the demand for that water has increased recently. A Block Notice was issued to the District from the Bureau of Reclamation for the 2,000 AF and the District contracted with the municipalities, water improvement districts, and a private company for all of that water. Since that time the additional 4,000 AF of M&I water has remained unsubscribed. The Bureau of Reclamation took 700 AF to increase the conservation pool in the reservoir which leaves 3,300 AF of available water. The Burns Bench pump station will not be constructed until all of the M&I water available in Red Fleet is subscribed to. In the past year, due in large part to the projected growth, the District has received requests for all of the remaining M&I water available in Red Fleet. Vernal City and Ashley Valley Water and Sewer have each requested 1,000 AF, Maeser Water has requested 675 AF, Jensen Water has requested 175 AF, Uintah County in conjunction with Jensen Water has requested 150 AF, and a private company has requested 300 AF.

The price of the water was set by the amendatory contract. The amount per AF was based on the cost of the Jensen Unit (including an estimated cost of the pump station) divided by 18,000 AF. The resulting cost is \$5,555.21 per AF and is payable by dividing that amount by the number of years remaining until 2037 with the last payment being made in 2037. Water purchased in 2006 would be paid for at a rate of \$179.07 per AF per year for 31 years. The District approached the Bureau about the possibility of discounting those payments at either the 3.222% rate used by the Bureau to calculate the repayment or the federal funds rate at the time of the discounting. According to the Bureau, the amendatory contract does not allow for prepayment. The District then determined that it would seek legislation similar to that used by the Central Utah Water Conservancy District that has allowed for prepayment of the repayment contracts for the Bonneville Unit. Prepayment of our contract with the Bureau will substantially reduce the cost of water to the District. H.R. 2950 will also produce a substantial payment to the federal treasury, which we estimate to be between \$4-5 million.

H.R. 2950 directs the Secretary of the Interior to allow for prepayment of the specified contract between the United States and the Uintah Water Conservancy District providing for repayment of municipal and industrial water delivery facilities under terms and conditions similar to those used in implementing provisions of the Central Utah Project Completion Act. It also provides that the prepayment: (1) may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid; (2) shall be adjusted to conform to a final cost allocation; and (3) may not be adjusted on the basis of the type of prepayment financing utilized by the District.

Again I want to thank you for the opportunity to testify today and will be happy to respond to any questions.

Mrs. NAPOLITANO. Thank you for your testimony. And now we will begin with some of the questioning.

Before I do that, I will give two minutes to Mr. Baca for an opening statement.

**STATEMENT OF HON. JOE BACA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BACA. Well, thank you very much, Madame Chair, and thank you for your leadership. And I want to welcome my new Ranking Member, Tom McClintock, that I happened to work with at the State Legislature in California. Congratulations on your new appointment. I hear it is quite fast you got here. I don't know how you did that, Tom, but that was quite fast. So congratulations. I don't know if they are punishing you. I think you are doing it for the right reasons, especially as it pertains to California and the crisis that we have and as we deal with our nation.

Let me begin by saying that the world's water crisis is one of the largest public health issues of our time, and I state that it is one of our time. Nearly 1.1 million people roughly or 20 percent of the world population lack access to safe drinking water.

Ensuring clean and safe drinking water is a top priority. Clean drinking water is the right that all families deserve. It impacts not only the family, the children and all of us as we begin to grow, and especially as we look at many of the women that are having babies as we look at perchlorate, which is one of the areas that has affected the Illinois Park quite a lot. So clean water becomes very important. The bill we are discussing today will help shed light on various water issues in our nation.

Today we will hear about of course the water issues found in California, Arizona, Utah, Oregon and Michigan. By addressing Title XVI authorization and providing directions to the Bureau of Reclamation and by helping settle the tribal water rights, we will bring us one step closer to finding a solution to many of our water problems. And I hope that we continue to work together.

I commend Congresswoman Grace Napolitano, our Chair, for her leadership on water, and I look forward to working with her and our new Ranking Member, Tom McClintock, on an important issue impacting all of us. Thank you.

Mrs. NAPOLITANO. Thank you, Mr. Baca, for keeping within time for your comments.

Mr. Costa, two minutes.

**STATEMENT OF HON. JIM COSTA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. COSTA. Thank you very much, Madame Chairwoman. Again, I want to commend you for putting this hearing together. It is an important issue. I too as Congressman Baca served with Congressman McClintock, and welcome. We have a whole California gathering here it seems.

But the issue at hand really is how we balance the needs of our current water needs not only in the Southwest but throughout the country and its long-term applications to conjunctive use programs that balance our groundwater usage with our surface water sup-

plies and how we use all the water management tools in our water toolbox to get there.

I am particularly interested, Madame Chairwoman, in terms of the balance of our needs of our various communities because larger communities, larger service agencies, have more resources to deal with cleanup and recycling of groundwater as we apply the conjunctive use efforts. Smaller communities, smaller service areas, don't have the resources to meet various standards, and how we provide cost-effective ways in terms of health and safety is always a concern.

I think partnerships are very critical. We have had some very important partnerships in California with both urban and agricultural water agencies and how they share resources for long-term water usage.

So I look forward to listening to the hearing, and I thank you again for putting this effort together.

Mrs. NAPOLITANO. Thank you, Mr. Costa. And I will start the round. It looks like we may have a vote, so we will have to cut it short.

To Mr. Alvarez, Mr. Hansen, Mr. Darling, Ms. Mulligan, and Mr. Brookshier, has a feasibility study been completed for your projects—and I would like yes or no answers, and we won't go into detail—including compliance with all state, Federal, environmental requirements? Yes or no, please. If no, do you expect for your feasibility study to be completed and construction started?

Third question, are you working with Reclamation to complete your projects? Yes or no. And have you experienced obstacles? Mr. Alvarez.

Mr. ALVAREZ. Madame Chairwoman, no, we have not completed all of our feasibility and planning work. We have made significant efforts in that area.

And I am sorry, your second question?

Mrs. NAPOLITANO. Do you expect your feasibility study to be completed and construction started?

Mr. ALVAREZ. Our planning horizon is for four years to complete all of the environmental final design and construction.

Mrs. NAPOLITANO. And you are working with Reclamation?

Mr. ALVAREZ. We are working with the Bureau of Reclamation.

Mrs. NAPOLITANO. Mr. Hansen?

Mr. HANSEN. Yes, we have completed all requirements, and the project is ready to go, it is shovel-ready, ready to implement.

Mrs. NAPOLITANO. And you are working with Reclamation?

Mr. HANSEN. Yes.

Mrs. NAPOLITANO. Mr. Darling.

Mr. DARLING. All six new projects have the Title XVI feasibility determination process—it is in process. They are not complete.

Mrs. NAPOLITANO. When do you expect completion?

Mr. DARLING. They will be complete as soon as we have enough staffing availability with the Bureau Staff. We literally only have one person for the mid-Pacific Region that works full-time on this, so it is a matter of staffing actually. That impacts the timing. But I do like to point out that the bill is to authorize for the planning, design and construction. So this is for the planning. That is why

we need this authorization, in order to tell the Bureau to help plan this project.

Mrs. NAPOLITANO. OK.

Ms. MULLIGAN. Our feasibility is complete. It was complete before we began construction on Phase 1. And we are working with Reclamation to complete the project. The feasibility is already complete.

Mrs. NAPOLITANO. OK. Was the original authorizing bill for Phase 1 including expansion?

Ms. MULLIGAN. It was for Phase 1 and included expansion to Phase 2 and 3, yes.

Mrs. NAPOLITANO. Thank you. Mr. Brookshier.

Mr. BROOKSHIER. All of our feasibility is complete. We have one environmental review that we are still working on. That is with the National Marine Fisheries Service. We are in consultation with the Bureau.

Mrs. NAPOLITANO. Thank you. Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Madame Chairwoman. The first question I would have, the first observation I would make is we have five districts here that want to get into a relationship with the Federal government. We have one here that has been in such a relationship and wants to get out because of all the regulatory burdens and costs that are associated. So you might all want to gather outside the hearing room here and kind of exchange notes because maybe there is somebody among you who is sadder but wiser for their relationship with the Federal government. That is just an observation.

The question I would like to pose to each of you along the lines of cost-effectiveness is simply this. What is the estimated cost per acre-foot of water under the recycling project that you are proposing, and what is the overall cost to your district of water per acre-foot?

Mr. ALVAREZ. Congressman McClintock, the estimated cost for our facility would basically be capital costs, about \$7,000 an acre-foot.

Mr. MCCLINTOCK. How much?

Mr. ALVAREZ. Seven thousand dollars an acre-foot.

Mr. MCCLINTOCK. Seven thousand dollars per acre-foot.

Mr. ALVAREZ. Yes. And if the City of Downey tried to acquire some additional water rights earlier this year that became available in our Central Basin, those water rights went for \$7,000 an acre-foot. So the capital costs of providing this would be equivalent to basically what the market price for water in our region is today.

Mr. MCCLINTOCK. And what is the market price for water in your region today?

Mr. ALVAREZ. Seven thousand dollars an acre-foot.

Mr. MCCLINTOCK. Is the market price?

Mr. ALVAREZ. That was the price of the most recent sale of water in the Central Basin of which the City of Downey participated in. It went through a bid process, and we were not the high bidder, although we were close to that \$7,000 an acre-foot.

Mr. MCCLINTOCK. And that is the overall cost of water to your agency?

Mr. ALVAREZ. That is the cost of acquiring the water rights. In addition to that—

Mr. MCCLINTOCK. No, no, what is the overall cost per acre-foot to your agency of your water supply? I am just trying to get a sense of whether rates are going to be going up.

Mr. ALVAREZ. To answer your question, am I looking at what am I going to need to pay for water to meet my water demands, and that would be \$7,000 an acre-foot plus the cost of production, treatment and distribution.

Mr. MCCLINTOCK. What is the cost, overall cost, of water for your district per acre-foot?

Mr. ALVAREZ. Today?

Mr. MCCLINTOCK. Today.

Mr. ALVAREZ. If we discount the cost of the water we already have access to—

Mr. MCCLINTOCK. No, no, no, I am talking about the water you currently have access to. What are you paying for it? What is the average cost of water to your district per acre-foot?

Mr. ALVAREZ. Our overall treatment production cost is about \$350 an acre-foot.

Mr. MCCLINTOCK. Three hundred fifty dollars per acre-foot, OK. Magna Water District?

Mr. HANSEN. Our cost per acre-foot for our water is just under \$400 an acre-foot. That is the treated cost for drinking water.

Mr. MCCLINTOCK. What is the purchase cost? What do you buy it for?

Mr. HANSEN. That is. We have purchased all of our water rights. We have our own water rights. We have some surface water.

Mr. MCCLINTOCK. And what is the cost of water for this particular recycling project?

Mr. HANSEN. Our estimated cost to recycle this water through the new technology we have is a little over \$100 an acre-foot.

Mr. MCCLINTOCK. So it is going to be \$100 per acre-foot for the recycling water as opposed to \$400 for your overall costs?

Mr. HANSEN. For drinking water, yes.

Mr. MCCLINTOCK. OK. Now is that \$100 added to the cost or \$100 for the recycled water?

Mr. HANSEN. They are two separate systems. They are both a metered, three-tiered water system with rates. And secondary reuse water is a little over \$100 an acre-foot.

Mr. MCCLINTOCK. OK. How about Diablo?

Mr. DARLING. Wet water, wet-year water supplies in the Bay Area range anywhere from \$200 to say \$600 an acre-foot with infrastructure that was built in the 1920s and 1930s. Our recycled water projects range anywhere from \$300, as I mentioned earlier, up to over \$1,000 an acre-foot.

But I think an important distinction is wet-year versus dry-year water supply, if dry-year was even available, during this drought period, one of the water districts in the Bay Area imposed surcharges on its customers for \$14,000 an acre-foot. So the cost of a dry-year water supply is astronomical. This recycled water is an on-demand water supply available 365 days a year at a very competitive price.

Mr. McCLINTOCK. Right. When something is scarce, it becomes expensive. When it is plentiful, it is cheap. That is true of anything, and that gets back to that central issue of abundance. The more abundant the water supply, the cheaper it will be. And it has gotten a lot more expensive since we dropped abundance as the principal object of our public policy. Calleguas.

Ms. MULLIGAN. Our imported water supply is purchased from Metropolitan Water District of Southern California. Their price right now is just over \$900 an acre-foot to us. And we are currently in allocations from them so that if a 15 percent reduction isn't achieved, they have penalties that go as much as two times to four times that for water again to scarcity.

Mr. McCLINTOCK. And what is the overall cost of water right now to Calleguas?

Ms. MULLIGAN. Calleguas, \$900 per acre-foot, just over \$900. And then under these allocations, there are severe penalties, two to four times that amount for the water.

Mr. McCLINTOCK. And under this project?

Ms. MULLIGAN. Under this project, which is largely capital, the costs are very little O&M costs because it is a pipeline, is if you amortize the capital over 30 years at about 5 percent, you get \$1,500 an acre-foot for the water. But with the rising price of imported water, we think that it will catch up within the next decade so that it equals the cost of Metropolitan Water.

Mr. McCLINTOCK. And then finally Hermiston.

Mr. BROOKSHIER. Our costs, our current operating costs would work out to about \$7,000 per acre-foot. If I am calculating this correctly, it would appear that the project costs that we are looking for here would be in the neighborhood of \$4,000 per acre foot.

Mr. McCLINTOCK. See, now again \$7,000, I think that amount seems astronomical.

Mr. BROOKSHIER. We are a municipal system, and that is what it costs to operate.

Mr. McCLINTOCK. That is the overall cost of—

Mr. BROOKSHIER. Overall cost to operate based on our current use.

Mr. McCLINTOCK. OK, thank you. Just a moment.

Yes, let me just ask one other question. One of the principal propositions that has been put forward in support of these projects is that it reduces—this would be what I have to tell rate peers in Alturas. You don't get any benefit from these projects, but you are going to be called to pay for them through your taxes. But the argument that is being made is, well, this does reduce the draw from many Federal water systems, including the Delta system, for example.

Would you accept a proviso in this legislation that requires the District to reduce its draw on the Federal system for every gallon that is generated by these Federally financed recycling projects?

Ms. MULLIGAN. Yes, we would.

Mr. McCLINTOCK. You would actually agree to reduce your draw on the system on a gallon-per-gallon basis?

Ms. MULLIGAN. Yes. Growth would need to be calculated into that to the extent there were growth. But since all of our water comes from the imported supply, it would be easy to document that

this acre-foot-for-acre-foot reduces the amount we would take from northern California.

Mr. MCCLINTOCK. OK. Other districts?

Mr. DARLING. As I mentioned earlier, all of our projects directly draw out of the Delta, and the Delta is in a process, as you are aware, between Judge Wagner's decisions and the Endangered Species Act of basically shutting down. So these projects are in lieu of—this already is taking place that the amount of water available from the Delta is decreasing by itself. So these are replacement supplies. These are insurance policies.

So, if there were a certainty that the water was there to begin with, that might be something that would be acceptable. But there is no certainty in terms of Delta water supplies.

Mrs. NAPOLITANO. Thank you. Very quickly, we need to move on.

Mr. ALVAREZ. We would and I would like to qualify that to the extent that right now there are agencies that would be participating in this that are importing water, that would be easy to document. There are other agencies that would not be looking for an alternative water supply, which would then put a stress on the imported water system. And that would be a more difficult one to document because it would be an indirect transfer.

Mrs. NAPOLITANO. Anybody else?

Mr. HANSEN. I think Magna is unique where we have a pristine water supply. We are in the second driest state in the Union, and we have developed a technology that I believe may be utilized throughout the country. So I do think it is a wise investment.

Mrs. NAPOLITANO. Thank you, sir. Mr. Baca.

Mr. BACA. Thank you, Madame Chair.

Mr. Darling, H.R. 2442, regarding your response to the Federal nexus, would you go a step further and explain how it is not only a Federal issue but a global issue?

Mr. DARLING. Well, thank you, I absolutely will. I think long-term sustainability is extremely important in water and power issues and water particularly in the State of California and globally. The ocean has risen seven inches in the past 100 years at the Golden Gate Bridge. All models show that it is not going to decrease in terms of the amount that the ocean's level is increasing. It is actually accelerating.

And so the climate change issues for the Bay Area, the declining snowpack, all water resource options need to be on the table. All need to be developed. The writing is very clear on the wall that this investment is necessary on all fronts.

Mr. BACA. Thank you. And then saving water or the 7.2 million gallons per day, will it go a long way? Is that correct?

Mr. DARLING. I am sorry?

Mr. BACA. Saving water or 7.2 million gallons per day, will that go a long way? Is that correct? Just a yes or no answer.

Mr. DARLING. Yes, that will go a long ways toward helping the Bay Area water supply portfolio.

Mr. BACA. Thank you. Mr. Hansen, you responded to the costs associated with the project, but do you have a choice?

Mr. HANSEN. No.

Mr. BACA. Perchlorate is not going away, is that correct?

Mr. HANSEN. That is correct.

Mr. BACA. So we need to invest and clean that because we need to have good quality of water for every individual impacted, especially when we look at women that are really affected by that water itself if it is not clean because of the thyroids and children and others that drink that water. Is that correct?

Mr. HANSEN. That is correct.

Mr. BACA. Thank you. Mr. Hernandez, what will happen in the long run if H.R. 1739 does not pass? That is Question No. 1. And what if the project is not funded? How will your community prepare for a shortage in water supply and water reliability?

Mr. ALVAREZ. If H.R. 1738 does not move forward, the City of Downey and participating cities will be faced with the issue of how we do meet our existing and long-term water demand needs. That need is not going to go away. It is an existing need today, and we are living with a very limited available water supply.

If we do not get funding here, we will probably continue to develop this project and look for alternative funding sources. But without additional funding, it makes the viability of this project much more difficult.

Mr. BACA. Right. And definitely, will it have a greater impact if we don't, based on California's deficit of 26-point-some million dollars that we have right now and based on the agreement that they have come up with and not the additional dollars that would be available, so it would have a great impact in terms of the lack of ability of the state to provide any kind of funding if the Federal does not provide so.

Mr. ALVAREZ. Absolutely. And if you look at the California budget, in at least at our understanding today, our ability to meet our existing obligations are going to be much more difficult at the municipal level because of the requirements to balance the state budget.

Mr. BACA. Right. And especially as I looked at it as a reduction even on the educational perspective of it where a lot of our students are impacted by the quality of water that they have too as well in each one of our educational institutions. Isn't that correct?

Mr. ALVAREZ. Yes.

Mr. BACA. Thank you. I yield back the balance of my time.

Mrs. NAPOLITANO. Thank you. Mr. Walden.

Mr. WALDEN. Madame Chair, I have no questions at this time. I appreciate your courtesy.

Mrs. NAPOLITANO. Mr. Chaffetz?

Mr. CHAFFETZ. Thank you, Madame Chairwoman, I appreciate it.

I appreciate the bipartisan support for the Magna project for Mr. Matheson and Mr. Bishop. Just two brief questions in the essence of time.

There is a Federal nexus, a Federal component to this that I think this makes worthy of Federal investment of taxpayer dollars. Can you spend just a moment talking about why this Federal component is needed and justified given that that is partly what created the problem?

Mr. HANSEN. I believe the Safe Drinking Water Act which required us to remove the arsenic out of the water was an unfunded mandate. I also believe that the rocket industry and the Department of Defense and the issue of contaminating our water supply,

our sole water supply, I believe that along with the technology that has been developed by the District warrants the support of the Federal government.

Mr. CHAFFETZ. And just review again for us the investment that has already been made by the local state community there.

Mr. HANSEN. The local rate-payers have already invested \$36 million in this project and this technology.

Mr. CHAFFETZ. I just wanted to note for the record—and thank you, Mr. Hansen, for being here and for that—I just want to note for the record the significant investment that has been done at the local level, and with that, I yield back the balance of my time.

Mrs. NAPOLITANO. Thank you so very much.

Mr. Alvarez, we have had a discussion on this in my office in regard to the program that water replenishment district and the sanitation district and that whole basin are working on. You indicated to me there are two basins.

In working with the cities that are part of your bill, are you looking at working with the other entities? I understand there is going to be litigation or is litigation that might delay or put in question moving forward on something. So would you clarify that, please?

Mr. ALVAREZ. We have worked with a number of agencies, and we will be working with the water replenishment district to work on both projects.

Just for further clarification, the water replenishment district is a district that is there to replenish the groundwater basin, which is the difference between the sustainable yield of the basin and the overpumping that has been allowed by a court-adjudicated judgment that has been issued in the basin.

Their project basically will create net new water to make up for that replenishment. That is net new water above and beyond what the basin already yields; that is just basically to make up the difference between the sustainable yield of the basin and the adjudicated pumping rights in the basin.

Our project will be net new water that will go beyond the yield of the basin. So they are complementary projects. I think that we can work something out. I think that the litigation that has been raised has been an issue with respect to the adjudications. There are parties, including the water replenishment district, in court to amend those judgments.

Mrs. NAPOLITANO. Thank you.

Mr. Rupee, does repaying the debt the Conservancy District owed the Federal government imply that you would not need to comply with the environmental laws and regulations that you must comply with while in repayment?

Mr. RUPPE. No, no, Madame Chairman, we would still need to comply with all of those regulations.

Mrs. NAPOLITANO. Great.

Ms. Mulligan, how many more phases of the project? You answered that there is a second phase. How many more phases do you expect before you complete or do you think you need before you complete? And what would the Federal government need to provide to fund those additional phases?

Ms. MULLIGAN. The only phases which we envision are what we call Phases 2 and 3. We have built about eight miles, soon to be

about 10 miles, of the 35-mile pipe, and it was the most expensive. It is the largest diameter which is near the ocean which also includes the ocean outfall.

These Phases 2 and 3 extend the pipe the full 35 miles into the watershed. The estimated cost of that is an additional \$120 million, which is why the requested authorization is the \$40 million, which would be 25 percent of that amount.

Mrs. NAPOLITANO. And that is just for the brine.

Ms. MULLIGAN. That is just for the pipeline. The desalters are being funded locally.

Mrs. NAPOLITANO. OK. Do you have any other questions? Mr. Walden, do you have any questions? No?

Well, I believe that wraps up most of the questions that we had. We thank all of the witnesses for your insightful testimony and for being open to this Committee, the Subcommittee, in regard to the issues that are before us. And we look forward to continuing working with you. Thank you very much. You are dismissed.

Ms. MULLIGAN. Thank you.

Mrs. NAPOLITANO. I would like to call up the last panel, Honorable Ronnie Lupe, Chairman of the White Mountain Apache Tribe from White River, Arizona, and Mr. John Sullivan, Associate General Manager of the Salt River Project from Phoenix, Arizona. If you would take your seats, we will begin the next panel.

Commissioner Connor, would you like to join us at the table? Where are you, Commissioner? OK.

Chairman Lupe, you may start your testimony, sir. If you will put your mic on, and we will move right along. Thank you very much for being so patient.

And thank you, Commissioner, for staying with us.

**STATEMENT OF RONNIE LUPE, TRIBAL CHAIRMAN,  
WHITE MOUNTAIN APACHE TRIBE, WHITERIVER, ARIZONA**

Mr. LUPE. Thank you for the opportunity to testify before your honorable Subcommittee. We are here to ask the Subcommittee to support the quantification agreement that we have signed with the Phoenix Valley Cities, Salt River Project, State of Arizona, Central Arizona Water Conservation District and other downstream parties representing millions of people.

We are at the headwaters of the Salt River system and that we and everyone else depends upon to live. Years ago we traveled to Washington, D.C. and asked for funding to build a safe and reliable drinking water system for our people. Although we have hundreds of miles of streams on our land, we do not have enough drinking water for our people. The reason is Mother Nature.

We are 100 percent dependent upon a well field that was built in 1999. Over 14,000 people on our reservation depend upon it, almost our entire population. The well field is failing. Production is half of what it was in 1999. We have shortages. There is no recharge. There is natural arsenic in the water. We have to blend it to meet EPA standards. Water must be hauled by hand in one community and piped to another one 30 miles from the well field.

Drilling more wells will only place more straws in a failing system. It does not receive water from nature anywhere near the

amount we are removing. Everyone agrees that our needs can only be met by storage of surface water from our streams and rivers.

When we came to D.C. to seek funding to build a drinking water reservoir project, we were politely told that it was impossible unless we agreed to quantify and settle our water rights. We took heed of this advice and asked the Secretary of the Interior to appoint a Federal negotiation team to help us quantify and settle our reserve water rights. We prepared a water budget based on our historic, present and future water use needs.

Intense and hard negotiation followed with the Valley Cities, the Salt River Project and other state parties. This year all of the parties signed a quantification agreement that would settle our reserve water rights claims and fund facilities needed to put part of our water use in accord with all national environmental laws and regulations. We would receive funding for our drinking water storage dam, treatment plant and pipeline to serve our communities. The drinking water system would be held in trust by the United States.

An OM&R Trust Fund in the amount of \$50 million is included in the H.R. 1065 to fund OM&R costs after the drinking water system is in full operation, estimated to be about \$2.1 million annually. H.R. 1065 authorizes funding for other wet water economic development for parts of our water budget that will not only benefit our tribe but our entire White Mountain region. Specifically I am referring to the funding authorization in 16[c]-[f] of H.R. 1065.

Finally we have agreed to lease our entire 25,000 acre-feet cap water allocation received from the Secretary of the Interior to nine Valley Cities in the Phoenix metropolitan area and CAWCD for the next 100 years to make them whole for the water we use upstream.

We respectfully ask this Subcommittee's help to make our drinking water reservoir a reality for our people and to protect the water rights we have agreed upon in the quantification agreement. Thank you.

[The prepared statement of Mr. Lupe follows:]

**Statement of The Honorable Ronnie Lupe, Tribal Chairman,  
White Mountain Apache Tribe, Fort Apache Indian Reservation, Arizona**

To: The Honorable Grace F. Napolitano, Chairwoman, and The Honorable Tom McClintock, Ranking Member, and members of the Subcommittee:

Thank you for the opportunity to testify in support of the White Mountain Apache Tribe Water Rights Quantification Act of 2009, H.R. 1065, ("Quantification Act"). My name is Ronnie Lupe and I am the Tribal Chairman of the White Mountain Apache Tribe. We number about 15,000 people. We live on the Fort Apache Indian Reservation ("Reservation"), established November 9, 1871, on 1.66 million acres of aboriginal lands which we have occupied since time immemorial. Our Reservation is located about 200 miles Northeast of Phoenix in the White Mountain Region of East Central Arizona. (See attached map).

**Origin of Tribe's Vested Property Rights to Water**

The White Mountain Apache Tribe has retained actual, exclusive, use and occupancy of its aboriginal lands within Reservation boundaries designated by the Executive Orders dated November 9, 1871 and December 14, 1872, without exception, reservation, or limitation since time immemorial. The Tribe's vested property rights, which include its aboriginal and other federal reserved rights to the use of water, often referred to as Winters Doctrine Water Rights, that underlies, borders and traverses its lands, have never been extinguished by the United States and are prior and paramount to all other rights to the use of water in the Gila River drainage, of which the Salt River is a major source.

### **Headwaters of Salt River System on Tribal Land**

Except for a small portion of the Reservation that drains to the Little Colorado River Basin, virtually the entire Reservation drains to the Salt River. See attached location map referenced above. The headwaters and tributaries of the Salt River arise on our Reservation and are the principal sources of water for the Tribe, the downstream Cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe; the Salt River Reclamation Project and the Roosevelt Water Conservation District, among other parties to the Gila River and Little Colorado Adjudication Proceedings.

### **United States in Capacity as Tribe's Trustee Files Reserved Water Rights Claim**

In 1985, the United States, acting in its capacity as the trustee of the Tribe's water rights, filed a substantial reserved water rights claim in the name of the White Mountain Apache Tribe to the Salt River System as part of the Gila River Adjudication Proceedings still pending before the Maricopa County Superior Court, State of Arizona. It also filed claims for the Tribe in the Little Colorado River Adjudication Proceedings, also still pending before the Apache County Superior Court, State of Arizona.

### **Tribe's Reserved Water Rights Claim Inclusive of Base Flow**

At the urging of, and in collaboration with the Tribe, the United States amended its water rights filings for the Tribe in the Little Colorado River and the Gila River General Stream Adjudications in September 2000, to assert the Tribe's prior and paramount, aboriginal and federal reserved rights to the transbasin aquifer sources that sustain the base flow of the Tribe's Reservation springs and streams. The amended claim filed by the United States in its capacity as trustee for the Tribe, specifically recognizes the Tribe's unbroken chain of aboriginal title and time immemorial priority rights to the base flow of the springs and streams, and the contribution to those surface waters by rainfall and snowmelt runoff on the Tribe's Reservation.

### **Historical Conflict**

For decades, the White Mountain Apache Tribe has asserted its right to preserve, protect, use and develop its aboriginal and federally reserved water rights. As late as the 1950s, a physical confrontation became imminent between the Tribe and downstream water claimants when the Tribe began to develop outdoor recreation lakes on its Reservation by impounding water from streams within the Reservation's exterior boundaries. This activity was considered a threat to water supplies in the Salt River System by downstream water users in the Phoenix Metropolitan area and was vigorously opposed. A litany of water right controversies involving the White Mountain Apache Tribe, the United States in its role as the Tribe's conflicted trustee, and the Salt River Valley Reclamation Project, characterized the relationship the Tribe had with the Salt River Reclamation Project and downstream water users throughout the 20th century.

The Tribe's sizable and senior water rights claims in the pending Gila River and Little Colorado River Adjudication Proceedings generated considerable uncertainty regarding the availability of Salt River water supplies used by the downstream Salt River Project, which serves the greater Phoenix Metropolitan area. As many as 3.5 million people downstream depend in large part upon the water sources that arise on the Fort Apache Indian Reservation to which the White Mountain Apache Tribe claims sufficient water to meet its present and future needs.

### **Tribe's Aboriginal and Reserved Water Rights Quantified by 2009 Agreement**

This year, the White Mountain Apache Tribe Water Rights Quantification Agreement, ("Quantification Agreement") was formally approved and signed by the White Mountain Apache Tribe and by the downstream parties' respective governing bodies, including the Governor of the State of Arizona, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users Association, Roosevelt Water Conservation District, Arizona Water Company, the Cities of Avondale, Chandler, Glendale, Peoria, Mesa, Phoenix, Show Low, Scottsdale, Tempe, Gilbert, Buckeye Irrigation Company, Buckeye Water Conservation and Drainage District, and the Central Arizona Water Conservation District (CAWCD). The Quantification Agreement is an honorable, dignified and equitable quantification and settlement of our Tribe's reserved water rights.

The Quantification Agreement that was approved and signed by all the parties except the United States, (the United States does not sign the Quantification Agreement until H.R. 1065 is enacted by Congress), provides that the Tribe is permitted

to divert for beneficial use, approximately 99,000 + acre-feet annually, so long as the depletion from any diversion does not exceed 52,000 acre-feet annually.

This water use right was negotiated by the Tribe and state parties and reflects a water budget that will provide sufficient water to satisfy the Homeland purpose of our Reservation. The water budget includes present and future water needed for domestic and commercial purposes through the year 2100, irrigation, stock ponds, recreation lakes, storage reservoirs, federal fish hatcheries on our land, livestock, our sawmill, outdoor recreational resort housing development, and mineral development.

#### **H.R. 1065**

H.R. 1065 will authorize, confirm, and implement the Quantification Agreement and will thereby resolve uncertainties among all of the parties and claimants in both the Gila River and Little Colorado River Basins. The Act will quantify, preserve, recognize, and settle the reserved water rights of the White Mountain Apache Tribe in perpetuity, provide Tribal waivers and releases of claims regarding all State law water users in the Gila River and Little Colorado River basins, including the United States (except for the United States acting as trustee on behalf of other Indian Tribes).

#### **Tribal Claims Waived by Quantification Agreement Outlined in Liability Paper**

H.R. 1065 will also resolve potential claims by the White Mountain Apache Tribe against the United States for water related breach of trust damage claims that could potentially result in liability far in excess of the funding authorized by H.R.1065. Specifically, beginning with the completion of Roosevelt Dam for the Salt River Reclamation Project in 1911, the trustee United States, acting by and through its principal agent, the Secretary of the Interior, has as a matter of policy, suppressed, neglected, ignored, and opposed the reserved water use rights of the White Mountain Apache Tribe. These policies, fostered by an inherent conflict of interest on the part of the Secretary, favored development of the non-Indian Salt River Project at the expense of the welfare of the White Mountain Apache Tribe.

For example, as set forth in greater detail in the Tribe's Liability Paper, that has been submitted to the Department of Interior and to appropriate House congressional staff, the Secretary of the Interior in the 1950s and early 60's intentionally destroyed thousands of Cottonwood trees and other riparian vegetation along the Tribe's streams to increase water runoff to the Salt River Valley and Roosevelt Reservoir. The Secretary also cleared thousands of acres of Juniper trees under the auspices of rangeland restoration for the purpose of increasing runoff, not for the benefit of the White Mountain Apache Tribe, but for the benefit of the downstream water users in the Phoenix Metropolitan area. The ecosystem damage from this action continues and is ongoing. The cost of riparian restoration is in the hundreds of millions of dollars.

Another example of a water related, breach of trust damage claim that will be waived by the Tribe in H.R. 1065, are damages to water rights resulting from the doubling of the annual allowable cut of the Tribe's commercial forests by the Secretary for the purpose of increasing water runoff from the Tribe's Reservation to Roosevelt Reservoir for the benefit of the Salt River Reclamation Project.

Other potential water related, breach of trust damage claims, inter alia, which are discussed in the Liability Paper and that will be waived by H.R. 1065, will be claims arising from:

- an historic failure to maintain approximately 90 miles of irrigation ditches on the Reservation (waived after federal funding received to repair),
- failure to support future OM&R expenses for the Miner Flat Dam Project Rural Water System (waived after OM&R Trust Fund established),
- an historic failure to meet the trust obligation to provide a safe drinking water supply for the Tribe,
- suppression of irrigation development,
- expense of litigating the Tribe's reserved water rights claims,
- failure of the Secretary to reserve Tribe's water from contracts issued downstream for storage after Roosevelt Dam was originally built in 1911,
- failure of the Secretary to set aside New Conservation Storage (NCS), for the White Mountain Apache Tribe in the 1995-96 enlargement of Roosevelt Reservoir (result is that Tribe was compelled to obtain 25,000 acre-feet of CAP instead of retaining Salt River Water valued by SRP at \$6,000 per ac ft),
- failure of the United States to assert the reserved water rights of the White Mountain Apache Tribe in the EIS for the reallocation of CAP water, and

- holding the trustee United States harmless by relinquishing 26,000 acre-feet diversion annually (valued by SRP at \$6,000 per acre-foot), that had been earmarked for economic development on the Reservation's Bonito Prairie area.

#### **Value of Tribal Waivers**

The value of tribal waivers of potential water related breach of trust claims against the United States, as outlined in the Tribe's Liability Paper, far exceeds the authorization in H.R. 1065 for a dam, reservoir and drinking water system (\$127 million) ("Miner Flat Reservoir Project"), the OM&R Trust Fund (\$50 million) for the Miner Flat Reservoir Project, and the \$116 million authorized for "wet water economic development, supported by all parties (except the United States), for: (1) existing lakes infrastructure enhancement (\$23,675,000); (2) fish hatchery repair, rehabilitation and expansion (\$7.5 million); (3) a fisheries center (\$5 million); (4) repair of existing, but neglected BIA irrigation systems (\$4.95 million); (5) forest management study and Sawmill retooling to accommodate smaller diameter trees and reduce forest fire risk (\$25 million); (6) snowmaking infrastructure (\$25 million); and (7) future recreational lake development (\$25 million).

#### **Drinking Water Crisis**

The Tribe and Reservation residents are in urgent need of a long-term solution for their drinking water needs. Currently the Tribe is served by the Miner Flat Well Field. Well production has fallen sharply and is in irreversible decline. Over the last 8 years, well production has fallen by 50%, and temporary replacement wells draw from the same source aquifer that is being exhausted. The Tribe experiences chronic summer drinking water shortages. There is no prospect for groundwater recovery. The quality of the existing water sources threatens the health of our membership and other Reservation residents, including the IHS Regional Hospital and State and BIA schools. The only viable solution is replacement of failing groundwater with surface water from the North Fork of the White River. A small water diversion system along the White River (North Fork Diversion Project) will help the Tribe's short term drinking water needs, but this is only a temporary measure to replace the quickly failing well field.

#### **Reservoir Storage a Necessity**

Without reservoir storage behind Miner Flat Dam, a feature authorized by H.R. 1065, the stream flows of the North Fork of the White River, supplemented by short-term capacity of the Miner Flat Well Field, are together inadequate to meet community demands of the White Mountain Apache Tribe for the Greater Whiteriver Area, Cedar Creek, Carrizo and Cibecue and to maintain a minimum flow in the North Fork of the White River. The demands of the Tribe for its Rural Water System as proposed in H.R. 1065 will dry up the North Fork of the White River by 2020 or earlier, even in combination with a supplemental, diminished water source from the Miner Flat Well Field. Therefore, Miner Flat Dam is necessary to store 6,000 acre-feet of water during runoff periods for release and enhancement of the North Fork of the White River to meet demands of the Reservation rural water system and maintain a minimum flow for aquatic in riparian habitat preservation and enhancement. The Miner Flat Project will meet the increasing drinking water needs of the Reservation for a future population of nearly 40,000 persons in the decades to come. See attached Miner Flat Reservoir and Pipeline Location Map.

#### **Environmental Impact**

The dam and reservoir will be environmentally beneficial. The flow at the site of the proposed miner flat dam and reservoir averages 60,500 acre-feet annually. The dam will not alter the average annual flow of the North Fork of the White River at the dam or along the first 15 miles of river below the dam. It will only regulate the flow, storing water during periods of runoff and releasing like amounts of water during periods of seasonal low flow. The project can store and release a maximum of 6,000 acre-feet (the active conservation storage) on a seasonal, annual or multi-year basis. These releases are beneficial between the dam and the Alchesay National Fish Hatchery because they enhance the quantity of flow during low flow periods, such as May and June, and enhance the quality by lowering temperature, which has been historically problematic for the hatchery. The temperature is lowered by releasing cold water at depth in the reservoir. Miner Flat Dam will not stop the annual flow of the North Fork of the White River, but will only regulate the River's annual flow. The operating plan for the releases will meet environmental requirements.

**Funding Consideration for Quantification Agreement**

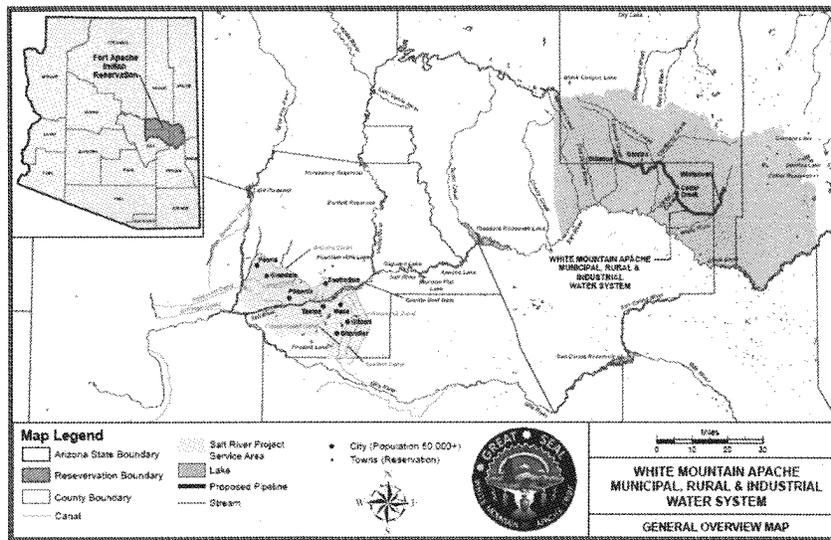
Funding for the WMAT Rural Drinking Water System, including the Miner Flat Dam Storage Facility, water treatment plant, and pipeline to deliver drinking water to Reservation communities is an indispensable component of the Quantification Act and Quantification Agreement.

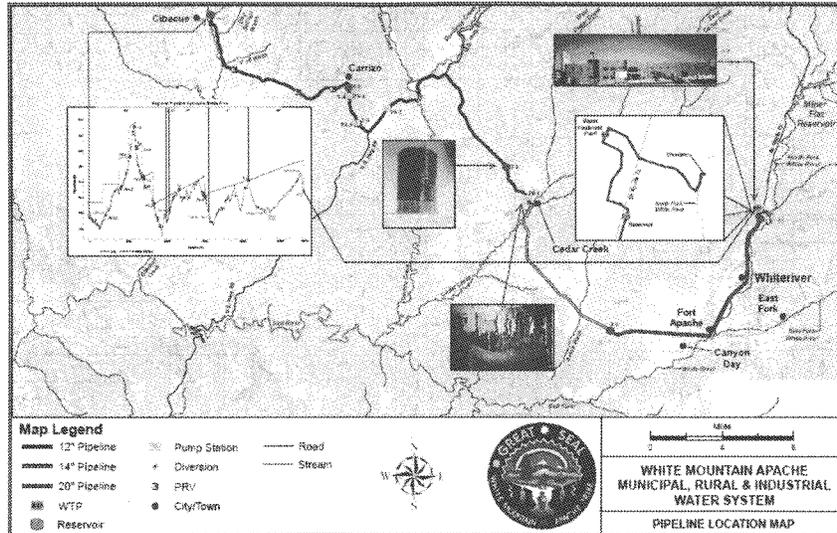
The language approved by all of the signing parties declares that the entire Drinking Water System, including the Miner Flat Dam, reservoir, treatment plant and pipeline, pumping stations and other infrastructure, shall be held in trust by the United States for the use and benefit of the White Mountain Apache Tribe. This is consistent with other authorized Bureau of Reclamation Indian rural water projects such as: Garrison Diversion Unit, Mni Wiconi, Fort Peck, North Central/Rocky Boy's, Santee Sioux, and Cheyenne River.

The Quantification Agreement and H.R. 1065 also provide that the Tribe waives any future OM&R cost claims against its trustee, the United States, upon establishment of a OM&R Trust Fund, the interest of which will be used to pay for the annual estimated OM&R cost of \$2.1 million for the Miner Flat Project. This is the deal the Tribe made with the signing parties in consideration for quantifying its substantial reserved water rights claim in the Salt River and Little Colorado River systems, waiving substantial damage claims, and relinquishing a considerable reserved water right in exchange for, and in reliance upon, funding for a safe drinking water system and for "wet water" economic development.

**Conclusion**

The White Mountain Apache Tribe is thankful for the opportunity to present testimony before this important Subcommittee and expresses its appreciation to Congresswoman Ann Kirkpatrick for introducing H.R. 1065, the companion bill to S.313, which was co-sponsored by our United States Senators Jon Kyl and John McCain. The Tribe also thanks the signing parties to the White Mountain Apache Water Rights Quantification Agreement for their continuous support of H.R. 1065.





Mrs. NAPOLITANO. Thank you, Mr. Chairman.  
Mr. Sullivan.

**STATEMENT OF JOHN F. SULLIVAN, ASSOCIATE GENERAL  
MANAGER, SALT RIVER VALLEY PROJECT**

Mr. SULLIVAN. Chairwoman Napolitano, Ranking Member McClintock, members of the Subcommittee, thank you for the opportunity to testify in support of H.R. 1065, the White Mountain Apache Tribe Water Quantification Act of 2009. My name is John Sullivan. I am the Associate General Manager of the Water Group at the Salt River Project or SRP.

Over the past four decades, SRP has worked with numerous tribes and stakeholders to resolve Indian water rights disputes in a manner that benefits both Indian communities and their non-Indian neighbors. In fact, last year I testified before this Subcommittee regarding Indian water rights settlements, and I identified some of the challenges and benefits associated with settling water rights disputes rather than litigating.

Thanks to the dedication of Chairman Lupe, the White Mountain Apache Tribal Council and all of the settling parties over the past several years, we have worked through many of the same challenges that I described last year to negotiate this quantification agreement. I am confident that, in turn, passage of H.R. 1065 and implementation of this agreement will allow the fundamental and direct benefits I also referenced in my testimony, in particular a reliable and certain water supply for all the parties to the settlement.

The agreement provides this long-term reliable supply for the Tribe by building infrastructure to deliver desperately needed drinking water to communities on the White Mountain Apache's Fort Apache Reservation. That is why the centerpiece of this legislation and quantification agreement is the Miner Flat Dam and Pipeline Project. This project will allow the Tribe to put their quan-

tified water right to beneficial use in the communities and provide a healthy living environment and economic opportunity.

The need for a sustainable and permanent water supply on the reservation is undeniable, and the analysis done by SRP came to the same conclusion as the studies done by the White Mountain Apache experts that the Miner Flat Dam & Pipeline is the best and most cost-effective solution to meet the municipal needs for the next 100 years for the Tribe.

The agreement's permanent quantification of water rights and conclusive settlement of outstanding claims on water originating on the Fort Apache Reservation gives SRP and the state parties water supply certainty. Four of the seven reservoirs operated by SRP are located on the Salt River downstream of the Fort Apache Reservation. They are at the headwaters of the Salt River.

Approximately 42 percent of the water delivered by SRP to Phoenix metropolitan area stakeholders originates there. Absent approval of this negotiated settlement, resolution of the pending claims could take many years, entail great expense and prolong water supply uncertainty. The effective implementation of the quantification agreement would allow SRP and the other settling parties to make better long-term decisions regarding their water supply, water usage and potential need for future water supplies.

Madame Chairwoman and members of the Subcommittee, this bill provides a win-win solution to a longstanding dispute and has widespread support in Arizona. It has now been approved by the appropriate boards and counsels of all of the state settling parties and many of the cities and water districts have sent this Subcommittee letters of support.

I would also like to thank Representative Kirkpatrick for introducing this bill and for all of her work on this issue. As we move forward, I look forward to working with this Subcommittee and the Department of the Interior to address any outstanding issues. Thank you, and I am happy to answer questions.

[The prepared statement of Mr. Sullivan follows:]

**Statement of John F. Sullivan, Associate General Manager, Water Group, Salt River Valley Water Users Association and Salt River Project Agricultural Improvement and Power District, on H.R. 1065**

Chairwoman Napolitano, Ranking Member McClintock, and members of the Subcommittee,

Thank you for the opportunity to testify in support of H.R. 1065, the White Mountain Apache Tribe Water Rights Quantification Act of 2009. I also thank Representative Ann Kirkpatrick for her introduction and continued support of this important legislation. My name is John F. Sullivan. I am the Associate General Manager, Water Group, of the Salt River Project ("SRP"), a large multi-purpose federal reclamation project embracing the Phoenix, Arizona metropolitan area. SRP has a history of negotiating and settling Indian water rights disputes in Arizona. Over the past four decades, SRP has worked with numerous tribes and stakeholders to resolve Indian water rights disputes in a manner that benefits both Indian communities and their non-Indian neighbors. Most important among the benefits is water supply certainty, which is a fundamental outcome of any water rights settlement.

SRP is composed of the Salt River Valley Water Users' Association ("Association") and the Salt River Project Agricultural Improvement and Power District ("District"). Under contract with the federal government, the Association, a private corporation authorized under the laws of the Territory of Arizona, and the District, a political subdivision of the State of Arizona, provide water from the Salt and Verde Rivers to approximately 250,000 acres of land in the greater Phoenix area. Over the past century, most of these lands have been converted from agricultural to urban uses and now comprise the core of metropolitan Phoenix.

The Association was organized in 1903 by landowners in the Salt River Valley to contract with the federal government for the building of Theodore Roosevelt Dam on the Salt River, located some 80 miles northeast of Phoenix, and other components of the Salt River Federal Reclamation Project. SRP was one of the first multi-purpose projects approved under the Reclamation Act of 1902. In exchange for pledging their land as collateral for the federal loans to construct Roosevelt Dam, which loans have long since been fully repaid, landowners in the Salt River Valley received the right to water stored behind the dam.

In 1905, in connection with the formation of the Association, a lawsuit entitled *Hurley v. Abbott, et al.*, was filed in the District Court of the Territory of Arizona. The purpose of this lawsuit was to determine the priority and ownership of water rights in the Salt River Valley to the natural flow of the Salt and Verde rivers and to provide for their orderly administration. The decree entered by Judge Edward Kent in 1910 adjudicated those water rights, provided water supply certainty to existing water users and, in addition, paved the way for the construction of additional water storage reservoirs by SRP on the Salt and Verde Rivers in Central Arizona.

Today, SRP operates six dams and reservoirs on the Salt and Verde Rivers in the Gila River Basin, one dam and reservoir on East Clear Creek in the Little Colorado River Basin, and 1,300 miles of canals, laterals, ditches and pipelines, groundwater wells, as well as numerous electrical generating, transmission and distribution facilities. The seven SRP reservoirs impound runoff from multiple watersheds, which is delivered via SRP canals, laterals and pipelines to municipal, industrial and agricultural water users in the Phoenix metropolitan area. SRP also operates approximately 250 deep well pumps to supplement surface water supplies available to the Phoenix area during times of drought. In addition, SRP provides power to nearly 900,000 consumers in the Phoenix area, as well as other rural areas of the State.

SRP holds the rights to water stored in these reservoirs, and for the downstream uses they supply, pursuant to the state law doctrine of prior appropriation, as well as federal law. Much of the water used in the Phoenix metropolitan area is supplied by these reservoirs.

The White Mountain Apache Tribe is located on the Fort Apache Reservation in eastern Arizona, established by Executive Order in 1871. The headwaters of the Salt River originate on the Fort Apache Reservation. Four of the seven reservoirs operated by SRP are located on the Salt River downstream of the Fort Apache Reservation, and approximately 42% of the water delivered by SRP to Phoenix metropolitan area customers originates on the Reservation. The United States, acting on behalf of the Tribe, has asserted claims in the pending Gila River Adjudication to the depletion of 179,000 acre-feet of water from these headwaters. These claims are based on the federal reservation of rights doctrine and largely encompass potential future uses of water by the Tribe on its Reservation.

Because resolution of the pending claims could take many years, entail great expense, and prolong water supply uncertainty, a group of Arizona water users began settlement negotiations with the White Mountain Apache Tribe about three years ago. In addition to the Tribe, the settlement parties include the United States, State of Arizona, Central Arizona Water Conservation District ("CAWCD"), Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association, Roosevelt Water Conservation District, Buckeye Irrigation Company, Buckeye Water Conservation and Drainage District, Arizona Water Company, and the Arizona cities and towns of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria, Show Low, and Gilbert.

The negotiations culminated in a comprehensive settlement ("Settlement") that resolves the longstanding water disputes and is embodied in the White Mountain Apache Tribe Water Rights Quantification Agreement and H.R. 1065, the White Mountain Apache Tribe Water Rights Quantification Act of 2009 currently before this Subcommittee. At this time, all of the state parties have formally approved and signed the Settlement through their boards and councils. The Settlement legislation confirms and approves the Tribe's settlement, specifies water reallocations to implement the Settlement, and authorizes a CAP water delivery contract with the Tribe. It provides parameters for Tribal CAP water leases and authorizes the Secretary to execute those leases. Furthermore, H.R. 1065 authorizes the Miner Flat Dam Project and funding for its construction, operation and maintenance, and repayment of the loan for planning and engineering that was authorized last year in P.L. 110-390.

Under the Settlement, the Tribe's water rights are quantified at a total diversion right of 99,000 acre-feet per year through a combination of surface water and Central Arizona Project ("CAP") water sources. The Tribe's surface water rights, the first component of the Tribe's quantified water rights, include the ability to divert

67,000 acre-feet per year from the Salt River system<sup>1</sup> and another 7,000 acre-feet per year from either the Salt River or Little Colorado River system. Maximum depletion amounts of 23,000 acre-feet per year from the Salt River system<sup>2</sup> and 4,000 acre-feet per year from either the Salt River or Little Colorado River system are also quantified by the Agreement. The second component of the Tribe's quantified water rights is a right to CAP water. The Tribe may deplete and put to its own use up to 25,000 acre-feet per year of CAP water or choose to lease some or all of this water to others. The Tribe has negotiated CAP water leases with the CAWCD and the valley cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, and Tempe.

For their part, the Tribe has committed to providing waivers and releases of claims benefiting all State law water users in the Gila River and Little Colorado River basins and the United States (except on behalf of other Indian Tribes), as part of the Settlement and in return for the quantified water rights described above.

Establishment of an adequate water storage and distribution system to meet the domestic and industrial water requirements of the Tribe and its members is a critical component of the parties' efforts to settle all existing disputes regarding the White Mountain Apache Tribe's water rights. The Tribe's existing system is supported by a wellfield, but the aquifer's supply is limited and insufficient to serve the reservation's municipal water needs. As an interim measure, the Tribe plans to construct a small temporary water diversion system along the White River. However, this is only a short-term solution. The Tribe and the settling parties have determined that construction and operation of the Miner Flat Dam Project would best address the Tribe's growing municipal, rural and industrial water diversion, storage and delivery demands. The Project, which is estimated to cost approximately \$128 million, would include a dam and pipeline for water distribution within the Reservation's boundaries including the growing communities of White River, Cedar Creek, Carrizo, and Cibecue. As part of the Project, pipelines would be constructed to connect water treatment plants to existing Whiteriver, Carrizo, and Cibecue area water distribution systems. Associated water system connections, access roads, buildings, and electrical transmission and distribution facilities would also be included within the Project's scope.

As part of the Settlement and in recognition of the Tribe's sustained efforts to provide a reliable drinking water source to its people, the non-federal settlement parties have agreed to support the Tribe in developing a long-term solution to this challenge. As an initial step, the White Mountain Apache Tribe Rural Water System Loan Authorization Act was introduced by Representative Pastor in the House and Senator Kyl in the Senate last year. This legislation (H.R. 6754 and S. 3128) was approved by Congress and signed into law by President Bush as P.L. 110-390. It authorized \$9.8 million in the form of a loan to the Tribe to be repaid beginning in 2013. The Act established the groundwork to begin Project construction once the Settlement is approved, allowing inflationary costs to be minimized, potentially saving millions of dollars and providing much needed water to the communities on the Fort Apache Reservation years earlier. We greatly appreciate this Committee's work and leadership in passing this legislation to allow work to begin on this important project.

H.R. 1065 will continue the progress made last year toward providing a sustainable water supply for the White Mountain Apache Tribe and certainty for water users in Arizona, and has the strong support of the settlement parties and numerous water users in the Little Colorado River Basin. We look forward to working with the Subcommittee on this bill. Chairwoman Napolitano and Ranking Member McClintock, thank you again for the opportunity to testify and for considering our views. I am happy to answer any questions.

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Mrs. NAPOLITANO. Thank you, Mr. Sullivan. I appreciate your testimony.

There are several questions that come up in regard to the project itself and, Chairman Lupe, the 99,000 diversion right, what is used by the Tribe and you release what amount down to other needs and what do you sell the water for, cost?

<sup>1</sup>Included within this total diversion right is 3,000 acre-feet per year which may be diverted beginning in the year 2100.

<sup>2</sup>Included within this total depletion right is 1,200 acre-feet per year which may be depleted beginning in the year 2100.

Mr. SULLIVAN. If I might, Madame Chairwoman, the water budget that was developed for the White Mountain Apache Tribe, we started with the claim that was filed by the United States quite some time ago, which was almost 180,000 acre-feet. That was based on various current and potential uses by the Tribe.

We then looked at studies done by the Tribe on uses and concluded that their total diversions would be more appropriate at I believe the number is around 99,000 acre-feet. In fact, they will only deplete something in excess of 50,000 acre-feet from the watershed.

The water that comes from the headwaters of the Salt River flows in those rivers naturally, so really the Tribe is not charging for the water. It is a matter of quantifying the rights between the downstream users and the White Mountain Apache Tribe. So there is no charge currently for water that flows into the dams that the Salt River Project operates if that is answering your question.

Mrs. NAPOLITANO. Is there an expected future charge though?

Mr. SULLIVAN. Pardon me?

Mrs. NAPOLITANO. Is there an expected future charge?

Mr. SULLIVAN. There is no expected future charge. It is a matter of defining among the parties how much water will be used by the White Mountain Apache Tribe for basically forever.

Mrs. NAPOLITANO. OK. In testimony, Chairman Lupe, you state the Secretary of the Interior's 1950 and early '60s intentionally destroyed thousands of cottonwood and juniper trees as well as other riparian vegetation for the benefit of the downstream users in the Phoenix metropolitan area. What impact have these actions caused on the White Mountain Apache Tribe?

Mr. LUPE. I did not understand your question, ma'am. I am sorry.

Mrs. NAPOLITANO. Well, apparently according to what we were reading is the thousands of cottonwood and junipers and other riparian vegetation was intentionally destroyed for the benefit of downstream users in the Phoenix metropolitan area. What impact did these actions back in the '50s and '60s have on your tribe?

Mr. LUPE. The impact up to this time has been tremendous in terms of the area of my reservation on the west end. We had tremendous economic loss from one of the biggest forest fires that we ever had on the reservation and in the State of Arizona.

Mrs. NAPOLITANO. I am sorry. We can barely hear you, sir. Would you pull the mic up please? I am having a hearing problem.

Mr. LUPE. I am referring to the forest fire that was one of the biggest in the State of Arizona. It took more than half of our economy, which is forestland itself. And that really devastated the economy on our reservation. And also, it affected all of our water development and other development.

So at the present time, we are struggling now to get to the power that we had before. And this is part of the water settlement that we are initiating, so that we can get back some of the plentiful living that we had on the reservation is now not there.

Maybe the trial attorney who is here with me can answer some of that, also, Bob Browkley.

Mr. BROWKLEY. Thank you. My name is Robert Browkley, Madame Chairwoman.

During the 1950s and sixties, there was a deliberate policy of the United States, which is well documented in our liability paper we just touched on the many thousands of our tribal documents, documented that there was a policy to increase water runoff to Phoenix Valley by defoliating the reservation.

So what the Bureau of Indian Affairs did, together with a committee from Phoenix, acting with the Department of the Interior, was to kill thousands of cottonwoods, because one cottonwood will take 300 gallons of water a day. So they killed thousands of cottonwoods by girdling them with chainsaws, poisoning them. And they did this on all of the major tributaries that feed into the Salt River.

This went over the—they put stream gauges in there to measure the success of the runoff. And in conjunction with this program, there also was the beginning of a proscribed burning program, which was to reduce or to replicate wildfires to reduce the threat of forest fires. But another purpose that emerged from the proscribed burning was to increase water runoff by burning off the duff, and having the water not saturate, but run off.

A third thing they did was they doubled the annual allowable cut of the forest from about 55 million board feet to 110 million board feet. The primary purpose was to increase water runoff to Phoenix.

Now, the devastation to the Tribe is well documented in terms of the erosion, the cost of riparian restoration, some estimated, we have done some already through a permanent fund when the Tribe filed a claim for damages up to 1946. They set aside 20 percent of the money in a permanent fund to kind of restore these riparian areas.

It is in the hundreds of millions of dollars to restore the riparian areas from the erosion, the channeling of the rivers by bulldozers to increase water runoff, to restore the thermal barriers to fish habitat caused by the defoliation, the invasion of salt cedar and other species caused by the eradication of the juniper and the cottonwood trees.

Our experts have estimated that the cost of restoration could be a million dollars for half a mile of stream. So, the long-term damage continues—and runoff.

Now, the interesting thing about this experiment, which lasted for about a decade, is that the runoff and the erosion and the washing away of millions of tons of topsoil canceled out any immediate benefit from the runoff, so it was abandoned. But the environmental damage due to the fact the sedimentation that washed down to Roseville Dam in part contributed to having to raise Roseville Dam by 36 feet in order to accommodate the sedimentation that washed out on the reservation.

So that is just one claim that the Tribe would be waiving in its water right settlement, in addition to relinquishing 85,000 acre-feet a year which the United States had put in as a claim in 1985.

So Salt River project estimates that the value of that water is about \$6,000 an acre-foot. So take \$6,000 times 85,000 acre-feet annually, and there is a stupendous benefit. Not only did the United States did not have to defend that claim, but the benefit to the Salt River Valley is immeasurable.

And in exchange, the Tribes, we have waived certain claims in exchange for and in consideration for the water right we retained,

the vested property rights that we retained to the use of water. We would like to have money to develop those water rights, since we are giving up so much. And since 1912, it has been the official policy of the United States to suppress any development of the reservation. So that was just, route water development is for the retooled sawmill—

Mrs. NAPOLITANO. We have to move forward.

Mr. BROWKLEY. OK.

Mrs. NAPOLITANO. You have answered the question.

Mr. BROWKLEY. OK, thank you.

Mrs. NAPOLITANO. Thank you. And I guess to Mr. Sullivan, the settlement provides a water supply certainty for how many people?

Mr. SULLIVAN. The service area that we supply route water to probably has a population of around 4 million people.

Mrs. NAPOLITANO. Thank you.

Mr. MCCLINTOCK. Thank you, Madame Chairwoman.

I want to focus in on the 99,000 acre-feet of water. Who currently owns that water?

Mr. SULLIVAN. Well, I will take a shot at answering that question.

Currently in the State of Arizona, we are undergoing litigation over who actually has rights to waters in the Gila River Watershed. And the Salt River is a tributary of the Gila River.

So, for the last 35-plus years, we have been in litigation over the water rights in the Salt River Valley.

The United States filed a claim as a part of that adjudication for, I believe it was just shy of 180,000 acre-feet, on behalf of the White Mountain Apache Tribe. In looking at—

Mr. MCCLINTOCK. Those are claims. Who currently owns it?

Mr. SULLIVAN. Ownership in the State of Arizona of surface water rights, it is currently owned by the people of Arizona.

Mr. MCCLINTOCK. OK. So the people of Arizona—

Mr. SULLIVAN. The water rights, however, are claimed by the Salt River Valley water users.

Mr. MCCLINTOCK. Claims are different. Claims have to be adjudicated, I understand that.

Mr. SULLIVAN. Right.

Mr. MCCLINTOCK. But right now that water is owned by the people of Arizona.

Mr. SULLIVAN. And is currently being used by—

Mr. MCCLINTOCK. Now, you are transferring, in this settlement you are transferring 99,000 acre-feet per year to the residents of the White Mountain Apache Tribe, correct?

Mr. SULLIVAN. Under this settlement, where the diversions of the Tribe will be 99,000, they actually will only deplete about 52,000. The remainder will come back to the river.

Mr. MCCLINTOCK. Well, but they will be selling that, will they not?

Mr. SULLIVAN. No. Net use by the Tribe will be 52,000 acre-feet.

Mr. MCCLINTOCK. But the entitlement is 99,000.

Mr. SULLIVAN. Pardon me?

Mr. MCCLINTOCK. The entitlement is 99,000.

Mr. SULLIVAN. The entitlement to divert out of the river.

Mr. MCCLINTOCK. Right. So again, you are transferring water rights to 99,000 acre-feet from the people of Arizona to the residents of the White Mountain Apache Tribe.

Mr. SULLIVAN. Correct.

Mr. MCCLINTOCK. Now, again, pull out a pocket calculator. That comes to a mind-numbing figure of 2.1 million gallons per resident per year.

Mr. SULLIVAN. Correct. That includes uses beyond just domestic use. That includes agricultural use by the Tribe. They do have agricultural use currently, and have development plans for additional agricultural use. It includes use for their recreational projects. It includes a reservation for some industrial use. They operate a timber system, two sawmills on the reservation.

So there are a number of other uses beyond the—

Mr. MCCLINTOCK. Well, I am going to have to go back and read the Winters decision. But it seems to me that goes far beyond anything contemplated in the Winters decision. Particularly when, by your own testimony, you are telling me the Tribe can't even use that 99,000 acre-feet currently.

Mr. SULLIVAN. Well, we believe that they will, over time, be able to—

Mr. MCCLINTOCK. Well, given enough time, I am sure they can figure out other ways of using it; but it is a stunning figure.

The other question I would raise is the \$116 million in economic development projects that the taxpayers are being asked to fund. Isn't that what investors normally do?

For example, I see one of the uses of this \$116 million is the planning, design, and construction of snow-making infrastructure repairs and expansion at Sunrise Ski Park.

Now, it seems to me that what would normally be done is you would go out and seek private investors, and say we have this great ski park here that we want to design and build; will you invest in it.

Instead you are asking the taxpayers to do so. Do I have that correctly? Am I understanding that correctly?

Mr. BROWKLEY. Madame Chairwoman, may I be heard on this?

Mrs. NAPOLITANO. Certainly, if you have an ability to answer. Yes.

Mr. BROWKLEY. With respect to what Mr. Sullivan said, the water on the reservation that borders, underlies, and traverses the reservation, is not state water.

The Tribe has an aboriginal right to the use of water, so it is not the state giving anything to the Tribe. Under the Winters doctrine, the Tribe has vested property rights to the use of water.

And to answer the Ranking Member's question, no one owns water. What you have is a right to use water. And the big question under the Winters doctrine is, when reservations were established, the Tribes conferred and held back for themselves sufficient water for a permanent homeland purpose. And that is what the U.S. Supreme Court has interpreted and stated as such, and the Arizona Supreme Court followed those line of decisions and said the big question is how much do they get.

We put a team of experts together and now the 185,000 diversion claim, which was actually filed by the United States, arrived at a

figure of 99,000 acre-feet diversion, 52,000 acre-feet maximum depletion.

So the State of Arizona is giving nothing to the Tribe. In fact, the Tribe has a priority bid that goes back thousands of years, way before the State of Arizona even dreamed of being existing.

So the question is, we came up with a use of the water, and it is very clear. We went out 100 years, the same as the State of Arizona, and for the 35,000 acre-feet diversion for agriculture, that is old, historic use, current use, and future use; 8,000 for evaporation. You are charged for evaporation from your lakes. They have 2,000 stock ponds—a 17,000 acre-feet diversion for the Federal hatcheries. And that is not depletion. It just passes through—24,000 acre-feet a year for drinking water, up to 100 years. That is a hundred-thousand-person population that we estimate.

Four-hundred-and-twenty-three acre-feet for livestock. There are 20,000 livestock—8,790 for resort and industrial development, and 5,800 acre-feet a year for mineral development. There is some coal there, and there is an iron mine that might be commercially feasible.

So altogether, that is 99,000 acre-feet diversion. And the Tribe is not using that much now. But when you have a reserved water right, you don't just look at the historic use or the current use; they have a reserved right to how much water they need as a permanent homeland. That is why you go out about 100 years. Beyond 100 years it is speculative.

So this is how we arrived at—we hired experts. We spent \$1 million on a 2500-page water budget, the Salt River project. They vetted it, and they had their experts. That is why the Tribe agreed, after looking at what was economically feasible, we agreed that 99,000 annual diversion, 52,000 acre-feet total depletion. It can never exceed that.

Mr. MCCLINTOCK. All right. May I just ask, what does the Administration think about these claims? What is the Administration's position?

Mr. CONNOR. Well, the Administration filed the claim on behalf of the Tribe as part of its trust responsibility. So recognize that the 180,000 acre-foot figure was a legitimate claim filed as part of the adjudication process there.

As I think I said earlier, with respect to the settlement for 99,000 acre-feet, we are still doing an in-depth analysis of that. But the preliminary analysis by the Federal negotiating team was that it was a legitimate figure in recognition of the claim that had been filed, and in recognition of the negotiated aspects of the agreement and the different sources of water for the various uses.

So, it does appear to be a very legitimate number by which to settle this claim.

Mr. MCCLINTOCK. Does that include the \$116 million in economic development projects for Sunrise Ski Park, among other things?

Mr. CONNOR. The Administration has not endorsed the \$116 million for economic development projects as part of the settlement. I would, that is something that we are still looking at.

Historically, there has been some level of, as part of a tribal trust fund—historically, settlements that establish some level of precedent that there has been a tribal trust fund to help facilitate some

payment of OMB as the Tribe gets its water project up and going, as well as some economic development activities. So we are still looking at that number, and have not endorsed that figure or those projects as part of this settlement.

Mr. MCCLINTOCK. Final question. Would the Tribe agree to a proviso in the bill that would forbid it from reselling the water?

My concern is that there is such a huge amount of water coming in. There is some intention of simply taking that water from the people of Arizona, and then selling it back to them.

Mr. BROWKLEY. I can answer that question, Congressman. The Tribe is, under this Act, the Tribe is forbidden, and in all Arizona Indian water settlements, a tribe cannot sell this water. It cannot sell their land. All the water is held in trust by the United States. Legal title is held in the United States, fair legal title, beneficial title to the waters for the benefit of the White Mountain Apache Tribe.

So they can't sell it. They are prohibited by law. They couldn't sell their trust land, either.

Now, the only thing that happens is that the Tribe gave it up. They have an 1871 priority date for a 74,000 acre-feet diversion. That is about 27,000 acre-feet depletion, because every time you divert water, you don't deplete equal amounts. A lot of it is returned back to the stream.

After that, after they exhaust that, the only way they can get water is through an exchange. And they have an allocation of 25,000 acre-feet of CAP water, with a 1968 priority date. And they have to share in shortages, just like everybody else, when there is a shortage in the Colorado River.

So, if they want to divert more than 75,000 acre-feet—in other words, another thousand feet above the 74,000—they have to do it through an exchange. They have to give 1,000 acre-feet of water down to Phoenix through CAP, so they can take another thousand acre-feet out of their streams.

And now currently, because eventually there will be depletion, 100 years from now, or 50 or 60 years from now, when the Tribe has fully developed its water rights, there may be depletion of up to 99,000 acre-feet.

Well, 25,000 acre-feet, that will be CAP water. So, currently Valley City said, "We want to lease that from you. We can't buy it from you; you can't buy it, but we can lease it from you temporarily." So, we can bank that water underground, or use it right away, because it is cheaper to do that and use it for their development. They can't develop unless they have a 100-year water supply.

And so we give them a 100-year water supply through the CAP lease.

Mrs. NAPOLITANO. Thank you so very much. I would like to ask a question. You brought up an interesting point about aquifers.

Has one been identified so that you can store water for dry years? Are you working with USGS? Mr. Commissioner, is there anything that you know that might help begin to look at that in the future, so that there is storage, underground storage? Anybody.

Mr. CONNOR. At this point in time, I am happy to check our sources and supplement the record for you with respect to that.

I am not aware, off the top of my head, of opportunities for aquifer recharge and storage that exist now on the reservation, and don't know that that is a part of the settlement.

Mr. BROWKLEY. Is this a question about drought and climate change?

Mr. SULLIVAN. It is really about the ability to store water for drought underground.

In our evaluation of the reservation and its ability to pump groundwater, that ability is very limited. We did not do any evaluation that I know of, unless the Tribe has done some, of the ability to store groundwater, or store surface water for future use in droughts.

Based on what I know, it would be very difficult. But it is certainly something that we should explore with the Bureau of Reclamation in terms of long-term supply. But they have very limited, they are at the edge of the bowl. If you think of an aquifer as a bowl, the reservation is actually at the edge of the bowl. And so it is very difficult for them to find groundwater that they can use.

Mr. BROWKLEY. I think I understand the question now, Madame Chair.

When I was talking about storage, the cities in the Valley Cities, 200 miles to the southwest of us will be storing the CAP water, or using it. Because the CAP water will not be piped out to the reservation, of course. It comes into Phoenix from Lake Havasu, from the western border, the Colorado River.

But in terms of the Tribes storing water, that is really not possible for the Tribes to store any groundwater, because all the groundwater leaches out into the springs and streams. That is why they don't have any.

Mrs. NAPOLITANO. OK.

Mr. BROWKLEY. North of the reservation, the Coconino Aquifer, which is the base flow of the Little Colorado and other streams, that has a huge basin. But unfortunately, on the reservation itself, all the Coconino that is the base flow supplemented by snowfall and precipitation, all of that just discharges into the rivers. So you have no groundwater.

We found one lens, and we have 15 wells there. And as the Chairman testified, those wells are now at 50 percent capacity, and they are failing fast. There is no recharge. So all the water that you see on the reservation—all the groundwater—has already discharged to the streams.

Now, the City of Phoenix and all that, they are storing up to a million acre-feet of CAP water, because they know there will be shortages some day. And so they lease water from all of the other tribes. And the only way a tribe can get CAP water is if you settle your water rights. That is the incentive that the Secretary of the Interior came up with many years ago to encourage Indian tribes to settle. And also to compensate the valley people of non-Indian population for water that they won't get any more, because the Indians are asserting their reserve water rights.

Mrs. NAPOLITANO. Understood. And I guess my point is that because we have climate change, you have longer heat periods, that you are going to have more dry-year cycle, and you are going to

have more evaporation of your canals and your rivers and your dams.

So, storage underground in aquifers is going to be something that we need to start entertaining and look at to see how they are, and how we can add to them to prepare. It is not something that we like to think is going to be a necessity.

But if we are going to try to prevent drought in some areas, or as you are saying, the Phoenix metropolitan area is gearing for a future drought, I think more communities need to start looking at that as a possible assist in, one more tool, one more idea to be able to utilize in case of continued drought.

Mr. SULLIVAN. I couldn't agree more, Madame Chairwoman. The Phoenix metropolitan area, all of the water municipalities and water districts in the three-county area served by the Central Arizona Project, have been very aggressive in underground storage projects.

There are a number of them within the service area of the Central Arizona project. And I also agree with Bob, there probably are, if any, very limited opportunities on the reservation itself.

The good news for the White Mountain Apache Tribe is they sit at the headwaters. And so the diversions and depletions that the Tribe will make out of the Salt River are a very small percentage of the total flow of the river system, of the Salt River system. And because of that, they will have a very reliable supply over time.

And their consultants looked at percentage cuts due to severe drought or climate change, whatever you want to call it. They did factor that into their evaluation.

Mrs. NAPOLITANO. And one more maybe comment, is that I am looking more and more, or asking whether the communities are looking at utilization of photovoltaic solar panels to run pumps to be able to save on electricity, and thereby saving some of that water.

Mr. Commissioner, do you have any comment on what has been transpiring?

Mr. CONNOR. No. I thank you for the opportunity with respect to your last comments about integrating renewals and water supply systems. I think it is a great idea, one that we need to look into very closely. I think there are opportunities there.

I think, in my experience, from water utilities themselves are already looking at this because of some flexibility in pumping times, et cetera. So I look forward to working with you and your Subcommittee.

Mrs. NAPOLITANO. I really appreciate it. And because the Subcommittee has jurisdiction over the grid energy also, that we, I consider this one of the other areas of conserving that energy by utilization of solar power, leaving more water in the dams and the rivers so that you can generate the electricity.

So if we recycle, we have that ability to expand that water usage of recycling.

So I thank all the panel and Commissioner for staying with us, and for helping us out.

This concludes the Subcommittee's legislative hearing on H.R. 1738, H.R. 2265, H.R. 2442, H.R. 2522, H.R. 2741, H.R. 2950, and H.R. 1065. Our thanks to all of our witnesses for

appearing before the Subcommittee. Your testimony and expertise have been very enlightening and helpful.

Under Committee Rule 4[h], additional material for the record should be submitted within 10 business days after the hearing. And the cooperation of all the witnesses in replying promptly to any questions submitted to you in writing would be greatly appreciated.

And so this Subcommittee is now adjourned.

[Whereupon, at 12:35 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Mr. Gallegly follows:]

**Statement of The Honorable Elton Gallegly, a Representative in Congress  
from the State of California**

I would first like to thank Chairwoman Napolitano and Ranking Member McClintock for calling this legislative hearing today on my legislation H.R. 2252. My legislation would raise the ceiling on the federal share of the cost of completing the Calleguas Municipal Water District Recycling Project.

I believe we all know about the water shortage problems plaguing the state of California. In my district, adequate water supplies have become difficult to develop and maintain. Especially as traditional imported water sources have become increasingly unreliable. Thus, the necessity for my district to develop new sources of water through H.R. 2252.

H.R. 2252 would authorize \$40 million in additional funding for the Bureau of Reclamation to support the completion of the Calleguas Municipal Water District Recycling Project.

To date, the federal government has expended approximately \$18 million for this project, bringing it close to the current \$20 million cap. The additional authorization provided in this bill will allow for the Bureau of Reclamation to continue funding its share of this project.

The main focus of this project is the construction of the salinity management pipeline, also known as a brine line. This pipeline would collect and convey brackish groundwater and recycled water for direct use, stretching local water supplies. This project would transport brine and high quality saline wastewater and brine to either an ocean discharge facility or salt tolerant water users such as sod farms, game preserves or coastal wetlands.

The use of this new water source will reduce the demand for imported water, improve local water resources, and provide a dependable source of water for much of my district.

More specifically, this legislation would allow Calleguas to expand the water delivery capabilities for roughly 600,000 of my constituents. And in the era of droughts and water shortages throughout California, as a resident of Southern California, I believe we need to do all we can to reduce our dependence on imported water.

I look forward to the testimony of Susan Mulligan, the Manager of Engineering for Calleguas and a true expert on this project who can explain in great detail, the specific benefits of what this additional funding from my legislation will accomplish.

Again, thank you Madame Chair for your time and allowing for the consideration of H.R. 2252.

