

**MISCELLANEOUS WATER AND POWER BILLS**

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

**S. 934**                      **S. 2696**  
**S. 1577**                    **S. 2773**  
**S. 1882**                    **H.R. 2990**  
**S. 2556**

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JULY 31, 2002



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## MISCELLANEOUS WATER AND POWER BILLS

WEDNESDAY, JULY 31, 2002

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

The subcommittee met, pursuant to notice, at 2:33 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Byron L. Dorgan presiding.

### OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Welcome to the hearing of the Subcommittee on Water and Power. The subcommittee will receive testimony on several pending bills relating to various water resources and matters in the West. I look forward to learning more about these bills which address topics ranging from rural water supply to specific water projects.

The bills that we will hear about today are S. 934, to require the Secretary of the Interior to construct the Rocky Boy's North Central Mountain Regional Water System in the State of Montana, and for other purposes; S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District of the State of Idaho; S. 1882, to amend the Small Reclamation Projects Act of 1956, and for other purposes; S. 1577 and H.R. 2990, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000, to authorize additional projects under that Act, and for other purposes; S. 2696, to clear title to certain real property in New Mexico associated with the Middle Rio Grande project, and for other purposes; and S. 2773, to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting hydrogeologic characterization, mapping, modeling and monitoring program for the High Plains Aquifer, and for other purposes.

I am pleased to see my colleagues here today to discuss these important bills, and I especially appreciate Commissioner Keys and Director Charles Groat being here to testify on behalf of the administration. In addition, I know that several of the witnesses have traveled long distances in order to provide testimony to us, and we very much appreciate your willingness to be here as well.

We will now turn to my colleagues to see if they have opening statements. I would like to request that when we hear witnesses today, you will summarize your statements to no more than 5 minutes, and all the prepared written statements will be made a part

of the permanent record. Let me call on my colleague, Senator Craig.

[The prepared statements of Senators Hagel and Smith follow:]

PREPARED STATEMENT OF HON. CHUCK HAGEL, U.S. SENATOR FROM NEBRASKA

I thank the Chairman for holding this hearing to examine several bills related to water projects. At a time when the country is facing its worst national drought in decades, the importance of the country's water resources becomes even more apparent.

One of the bills being reviewed today, S. 2773, would direct the U.S. Geological Service to conduct a mapping, modeling and monitoring program for the High Plains Aquifer, also known as the Ogallala Aquifer. Of the eight states that have some portion of their land over the aquifer, Nebraska has the most—approximately 64,400 square miles, about 83 percent of the state.

Mr. Chairman, I do not disagree that we need better science on the High Plains Aquifer and its water levels. The aquifer is a major source of irrigation and drinking water, and it is an essential resource to all who live in this region of the country.

Despite the need for more information, however, we must have the cooperation and support of the states affected, as well as their water resource agencies. A previous version of this legislation was opposed by Nebraska's Department of Natural Resources. The department believed the legislation would have permitted the federal government to unduly influence state programs and state law.

Most of the opposed language from the previous version of this legislation does not appear in S. 2773. However, this bill still needs improvement.

One of my concerns with the legislation is the potential costs to the states, especially at a time when many states—including Nebraska—are experiencing severe budget shortfalls. Also, under this bill, one lone state could put forth recommendations that would affect many other states, without consent of the affected states. Finally, this bill—while written with good intentions—could eventually lead to the erosion of state sovereignty in regard to water laws, allowing the federal government to intervene in state groundwater use.

The Western States Water Council—representing the governors of eighteen states—has suggested sensible language changes to S. 2773. These changes would improve the bill, and make S. 2773 more acceptable to Nebraska. I have provided these recommendations to both the majority and minority staffs, and I encourage the members of this subcommittee to review them.

I look forward to working with the authors of S. 2773 to improve this bill, and help enact sensible legislation that will enable us better understand and use wisely our groundwater resources.

Thank you.

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

Mr. Chairman, I appreciate your convening this legislative hearing today on various water-related bills pending before the Subcommittee today. Several of these bills are site-specific in nature, and I'm sure they are very important to solving local water supply or water quality issues. I would like to welcome the Commissioner of Reclamation, John Keys, and the Director of the U.S. Geological Survey, Dr. Charles Groat, as well as all the other witnesses who will provide testimony today.

One of the bills to be heard today is S. 1882, a bill which I introduced to amend and update the Small Reclamation Projects Act of 1956. The underlying Act established Reclamation's small loan program, and was used successfully for decades by eligible water districts for smaller projects.

During the last Administration, a decision was made not to accept any more loan applications for this program, despite the remaining funds of over \$200 million under the current authorization ceiling.

This effort to update the program is a recognition that the funding needs for many irrigation districts and other eligible entities have changed in recent years. As a result of threatened and endangered species, as well as higher environmental standards, water users are being called on to modify their conveyance and distribution systems, to screen diversions, and to mitigate for certain project impacts.

Generally speaking, these are not the types of projects that are attractive to commercial lenders. The small loan program, as updated by this bill, can provide an important funding source for the types of investments we are requiring water users to make.

I would like to submit for the record letters of support for S. 1882 that I have received from the National Water Resources Association and the Association of California Water Agencies.

I look forward to hearing from the witnesses here today.

**STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR  
FROM IDAHO**

Senator CRAIG. Well, Mr. Chairman, first of all, thank you for holding this hearing. As the session draws toward an end we have several pieces of legislation that with hearing and markup can become law this year. The one that I am speaking to is S. 2556. That's an important piece of legislation for Idaho and especially southeastern Idaho.

Jeff Raybould, from that area, is serving as chairman of the board of directors of the Fremont-Madison Irrigation District, and is here to speak to that legislation.

I'm also joined by my colleague Mike Crapo. Both he and I have worked on this issue here on the Senate side, recognizing how important it is that when these Bureau of Reclamation projects have been paid out, that we honor the commitment initially made in the law years ago that they would then be turned over to the managing entity, in this instance the Fremont-Madison Irrigation District, and that's what this legislation does.

Our colleagues in the House, Mike Simpson and Butch Otter have already moved this legislation. What we're dealing with is identical legislation, so if we are successful here in the Senate, then this can become law this year. We have been able to transfer title now to, this will be the third district in our State, as I say, responding to the intent of the original law. At the same time, working with these districts to assure that the integrity of the project, its environmental sensitivity and all that goes with an efficiently run irrigation district to supply quality water, at the same time recognizing its responsibility to the region is insured within the passage of this legislation.

Now this kind of an approach is not without critics and so when Mr. Raybould comes before us today to offer testimony, I will ask him some questions relating to this particular project and what it means to the upper valley area of southeastern Idaho.

Again, Mr. Chairman, thank you very much. Reclamation projects are important to the West and in a time of drought, we learn that lesson all over again. And I know your State and mine, but yours especially is experiencing very short water years this year, as is true of other States in the upper midwest. Again, thank you very much.

Senator DORGAN. Senator Craig, thank you very much. We have Senator Crapo with us today, as well as Senator Baucus, and if the two of you would wish to make statements at the start of the hearing, we would be happy to receive those statements. Why don't you please take seats at the witness table. Senator Baucus, we will recognize you first, followed by Senator Crapo. Your entire statements will be made part of the record and you may summarize.

**STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR  
FROM MONTANA**

Senator BAUCUS. Thank you very much, Mr. Chairman and Senator Craig. I am here to testify on behalf of S. 934, a bill introduced along with my colleague, Senator Burns. This legislation authorizes the North Central Regional Water System construction project and addresses the lack of water, lack of quality water supply for the Chippewa Cree tribe and six additional counties in Montana: Chouteau, Hill, Liberty, Pondera, Teton, and Toole Counties.

I also would like to extend a very warm welcome to those Montanans who have traveled great distances. Of those, some of them here that you have referred to, Mr. Chairman, have come great distances, and I would like them all to stand when I mention their names.

Dan Keil, who is chairman of the North Central Montana Regional Water Authority. Stay standing. Bruce Sunchild, and Dan Belcourt with the Rocky Boy, and also Dave Jones, who is the co-chair of the North Central Montana Regional Water Authority. These folks, and I know all of them, I have known all of them a long time. These folks are very committed. And they've got a problem and it's up to us to help solve it. Thank you guys, very much.

Here's the problem. The problem is that as you know, Mr. Chairman, we're in the part of the country west of the 100th Meridian where it doesn't rain. You know, there is about 40 inches of annual precipitation back here in Washington, D.C. It gets pretty muggy sometimes in the summers, as we all know. But in our part of the country, particularly western North Dakota, you and I have discussed this, Mr. Chairman, along with eastern Montana, it is just dry. It is part of our country that just does not get very much rainfall. That's number one.

And number two, our State per capita income is down at the bottom of the barrel statewide. You can guess what it's like in eastern Montana, like I'm sure it is in western North Dakota. Sixty years ago Montana ranked 10th in the Nation in per capita income. We're now 47th. So we are struggling, there is not a lot of water, it doesn't rain very much, we are in a drought situation, we are low income, and we just need some help here.

And I might say that all of us here are working for everybody in Idaho, in North Dakota and Montana—I had six of them stand up, but we all have people in our own States that we could have stand up, but it's up to us to find a solution.

Just picture this. What was it like during the 1930's when there was no water, you know, drought? You had to go carry water great distances, trying to find drinking water. There just wasn't any. And even before that, the west was developed, there was just no running water, no drinking water.

Now of course we have some areas of our State, or of all of our States, that have water supplies. But when drought conditions occur, it is just so much worse than it otherwise has been in the past. In addition to that, there are systems in Montana, water systems, which are on EPA's short list, that is, if they don't get their act together, EPA is going to start citing them for contamination reasons or pollution reasons, and that's just because there is so little water and it's over subscribed, and we just need to get water

systems to these locations, particularly Rocky Boy and also the surrounding private communities, which leads me to another point.

This is a joint partnership, this is not just water systems for the Rocky Boy and is the case in other parts of Montana for systems for the tribes. This is joint. This is people on and off reservation working together, because they all need water and they all need water desperately, really desperately. And to make this a little more poignant, there's a source, it's called Tiber Dam, it's close by. And so the idea is to take water from Tiber and put it into the system. It's a joint system strongly supported by members and non-members, by the surrounding community.

The only problem, of course, is really twofold. One I might say, I have highest respect for the Bureau of Reclamation, but all agencies get a little bit stuck in their ways. I don't fault them because everybody who works for the Federal Government, 99 percent are trying to do a good job, they are trying to do what's right. I'm not one of these people that bashes Federal employees, I just don't go in for that, because I know they try hard.

But I also know, because we all know it from experience, that all organizations, public and private, sometimes get a little bit hide bound and you've got to light a little fire under their feet to get them going, and that's what we have to do here with the BOR but in a cooperative way, a tone of working together with both the tribe and the non-tribal members, and the same approach should be taken here with BOR, and of course it's finding the resources to get this project underway.

I strongly encourage your committee, with all due deference and respect, Mr. Chairman, to work with me and with Senator Burns, and with Congressman Rehberg over in the House, to figure out a way where we can skin this cat. Let's get started here. Let's get this project going, because it is so desperately needed. And if we could get it going, at least the authorization by this year, it would make a great deal of difference to an awful lot of folks and has been said in other contexts, it would be a good down payment. Thank you, Mr. Chairman.

Senator DORGAN. Senator Baucus, thank you very much. Well said.

Senator Crapo.

**STATEMENT OF HON. MIKE CRAPO, U.S. SENATOR  
FROM IDAHO**

Senator CRAPO. Thank you, Mr. Chairman and Senator Craig and Senator Burns, Senator Baucus and members of the committee. I appreciate the opportunity to testify before you today on S. 2556, the Fremont-Madison Conveyance Act. I want to particularly express my appreciation to Senator Craig, my colleague from Idaho. He and I as cosponsors of this legislation, have worked on it a long time, and hopefully we are at the point where we have worked through all of the wrinkles and we are at a stage where we can proceed now expeditiously to facilitate this title transfer.

I also want to express my appreciation to Mr. Jeff Raybould, who is the president of the board of directors of Fremont-Madison Irrigation District, who will be testifying today on a later panel. Jeff will be providing a fuller account of the history of FMID's oper-

ations and the development of this conveyance proposal, so I will keep my remarks here brief.

S. 2556 would require the Secretary of the Interior to convey title to portions of the district, namely the Cross Cut Diversion Dam, the Cross Cut Canal, and the Teton Exchange Wells. These are currently under the ownership of the Bureau of Reclamation.

The district has managed these facilities since their creation in 1938, and by all accounts has done an excellent job of maintaining and operating the facilities. FMID also has a strong record of working within the community to manage the facilities in a manner that reflects and complements the unique ecological surroundings in which they reside.

Over the past few years, representatives of the district have worked with local citizens, agriculture interests, the Bureau of Reclamation, and conservation groups to create a transfer agreement that would be acceptable to all interested parties, and we do have some further discussion to have which I'm sure Senator Craig will engage in today to clarify the issues, but I commend all of the parties for their work on such a delicate and complex process, and I look forward to continuing work with them as this legislation proceeds through the legislative process.

Mr. Chairman, this measure is critically important to the people of eastern Idaho and reflects the spirit pioneered by this committee in partnership with the Bureau of Reclamation to advance previous title transfer proposals. I commend your leadership in calling this hearing and offer my services to the committee as it works forward to enact this provision. Thank you very much, Mr. Chairman.

Senator DORGAN. Senator Crapo, thank you too for your consideration today and your contributions. Do you have any questions, Senator Craig, or Senator Burns?

Senator BURNS. No, I have no questions.

Senator CRAIG. Where is Rocky Boy on the map?

Senator BAUCUS. North central Montana.

Senator DORGAN. Closest town that I might recognize?

Senator BAUCUS. Havre.

Senator CRAIG. Okay, thank you. I appreciate it.

Senator BAUCUS. I note that the entire Idaho Senate delegation is here, which shows the importance of that project, and the entire Montana Senate delegation is here, showing the importance of this Montana project.

Senator DORGAN. Well, I know how hard both delegations have worked on these issues, and your participation at our committee hearing today is much appreciated. We understand that you have other things to do, so we will let you go and we will be hearing from your constituents in a bit, but thank you for your contribution.

Senator BAUCUS. And we will let you get this passed. Thank you.

Senator Dorgan. Thank you very much. Next we call the Honorable John Keys, Commissioner of the Bureau of Reclamation; the Honorable Charles G. Groat, Director, U.S. Geological Survey. As they come forward and take their seats, let me call on Senator Burns.

Would you have an opening statement, Senator Burns?

**STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR  
FROM MONTANA**

Senator BURNS. Mr. Chairman, thank you very much for holding this hearing today. We appreciate that very much, and I will put my full statement in the record to shorten the time. We want to hear from the witnesses.

We want to thank the delegation that came in from Montana, both the folks who represent the water district up there, the newly formed water authority, and of course those folks, this means a lot for the folks on the reservation and we hope that this gets funded and gets done right away, and I appreciate you having this hearing and thank you very much.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

First, I would like to thank the Chairman of this Subcommittee, Senator Dorgan, for holding this hearing. This project has been a long time in the making, and I am happy to be here today.

I would like to welcome our witnesses from Montana, Dan Keil and Bruce Sunchild, Sr., who have been two of the most actively involved members of the coalition that has built this proposal. Dan Keil is speaking on behalf of the North Central Montana Regional Water Authority, and Bruce Sunchild is speaking on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation. Additionally, I would like to thank BOR Commissioner John Keyes for being here today and for his attentiveness to this and other Montana issues.

The Rocky Boy's/North Central Water Project will bring a safe, reliable water supply to about 19,000 people spread across 10,700 square miles in 8 Montana counties. That's a lot of space, without much water. Groundwater in north central Montana is very sparse, and many of these communities are heavily burdened with poor water quality, unreliable sources, and changing federal drinking water regulations. Several of these communities are currently are under threat of administrative action by the Montana DEQ for non-compliance to Safe Drinking Water Standards. Without upgrades, these communities will be without water.

This has been a long and complicated process, but through it all, the cooperation of the members has been very impressive. The Chippewa-Cree tribe, the State of Montana, and the United States negotiated agreed a water compact in the 106th Congress and we passed Public Law 106-163 which identified a 10,000 acre-foot water right at Lake Elwell, or Tiber Dam, and provided \$15 million for upgrades to the tribal municipal water system. I was glad to be a part of that process and sponsored the legislation. Now it is time to connect those two pieces.

At the same time, the Rocky Boy's water compact was being negotiated, a group of communities in the region were determining how to best meet their community water needs at a reasonable cost, and the North Central Regional Water Authority was created. The Tribe and the North Central Authority worked together very well and have produced an effective solution that will help strengthen the region's water supply picture.

The State of Montana has played a large role in this process as well and has been very supportive of this process. The Montana Legislature created a mechanism to fund the State share of regional rural water projects in 1999. The Treasure State Regional Water Fund has now grown to over \$8 million and will continue to receive \$4 million a year until 2016. Earnings for this fund will be used as state matching funds for federal dollars.

The State, local, and federal involvement in this project has been extensive and has produced a very good result. I support this project and am glad to be part of it. I look forward to hearing the testimony of the witnesses.

Senator DORGAN. Commissioner Keys, thank you so much for being with us, and we will include your statement in its entirety in the record. Why don't you proceed to summarize.

Mr. KEYS. Mr. Chairman, I am testifying on five bills today; is there any certain order that you would prefer me to take them, chronologically or whichever?

Senator DORGAN. Well, does any part of your testimony have greater merit than other parts?

Mr. KEYS. No, sir, they're all very important.

[Laughter.]

Senator DORGAN. Well then, why don't you proceed at your will.

**STATEMENT OF JOHN W. KEYS III, COMMISSIONER, BUREAU  
OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. KEYS. Yes, sir. Mr. Chairman, I would ask that all of the statements be included in the record.

The first one is S. 934, which would require the Secretary of the Interior to construct the Rocky Boy North Central Montana Regional Water System in north central Montana. The administration supports the goal of assuring a safe and reliable water supply for the Rocky Boy Reservation and other communities in north central Montana. We recognize that this area is historically water short, and with water quality and water infrastructure concerns, and we understand that some of the communities are facing safe drinking water standard violations.

However, we cannot support S. 934 as introduced. We have several concerns that I will try to outline for you. First, section 2(a)(2) states that the United States has a trust responsibility to insure that adequate and safe water supplies are available to meet the needs of the reservation. Such provision would cause large problems with respect to Federal liability. It would make the United States responsible for providing domestic water systems on the reservation, something that has not been envisioned before now.

Second, the proposed bill would provide an inequitable cost share requirement for parties to the construction. It would call for perpetual Federal financial and management obligations for both construction and operation and maintenance of the system, and it would be in conflict with the 1944 Flood Control Act in allowing the use of project use power from the Pick Sloan Missouri basin program for non-irrigation purposes.

Third, S. 934 contains provisions that would replicate activities already required and underway under the Settlement Act, Public Law 106-163. Section 203 of that Settlement Act authorized a regional feasibility study for north central Montana. That study is underway to evaluate water and related resources in north central Montana. It's a comprehensive study that is looking at water supply and needs by the agricultural, municipal, rural, and industrial water users. The appraisal level scoping document is scheduled for completion in October of this year with the final planning report due in 2004.

Section 202 of the Settlement Act authorized a municipal, rural and industrial feasibility study to evaluate alternatives for water supply for the Rocky Boy reservation. The tribe released a draft report of this study in July 2001. We are currently working with the tribe to complete that study.

And fourth, several other provisions of S. 934 are also inconsistent with the Settlement Act. They involve the water source for the tribal and non-tribal communities, financial arrangements for the non-tribal obligations, and other provisions of Reclamation law.

And finally, we're concerned about the strain on Reclamation's budget that S. 934 would cause. It would authorize another \$180 million to be spent on the project. Many times over the last 15 years Reclamation has been put in the awkward position of opposing projects that try to solve untenable situations, yet millions of Americans still live without safe drinking water. Congress has authorized us to develop nearly a dozen single purpose, MR&I projects from rural communities throughout the Western United States.

These projects will cost more than \$2 billion to build, and most were developed from feasibility studies with little or no input from Reclamation. In other words, we just pass the money through from Reclamation to the developers. While each is different in its terms, many share common problem areas, inequitable Federal cost share provisions and responsibility, and the responsibility for operation and maintenance.

We need to work together, the administration, Congress, the States, the tribes, and the water users, to identify these elements and try to put together a program that would take care of those situations.

Now certainly we appreciate the help from Mr. Burns and Mr. Baucus in trying to address these. The administration believes that S. 934 is premature at this time. I would certainly like to reiterate Interior's support for implementing the Rocky Boy Water Rights Settlement Act, and our support for finding a way to meet domestic water needs in north central Montana.

Mr. Chairman, S. 1557 would amend Public Law 106-576 by authorizing 15 additional projects in the Lower Rio Grande Valley of west Texas. It would also increase the authorization for report preparation to \$8 million, institute a 50 percent cap on Federal report preparation costs and increase the authorization for project funding to \$47 million.

The Department appreciates and supports efforts by the irrigation districts in the Lower Rio Grande Basin to improve and encourage water efficiency and to responsibly manage water supplies in the border region during the severe drought that exists in that area now. Under Public Law 106-576 Reclamation has worked successfully and cooperatively with local entities in the basin, the Texas Water Development Board and the Texas Agricultural Extension Service to develop the necessary criterion to administer the law and determine project feasibilities and eligibilities for Federal funding. We continue to work with the districts to complete the studies for the first four authorized projects. So far, so good. We are also working cooperatively on field tests to try to control several noxious plants in the canals of the area, hydrilla and water hyacinth.

Mr. Chairman, our concern with S. 1557 is that it authorized 15 new projects without first having feasibility studies completed for them and their not have been having been reviewed by Reclamation for adequacy. We are very concerned about the effects of the water shortage in Texas and certainly in the Rio Grande Valley, and we would commit to maintain the work that we're doing with them now to complete those studies that are underway, to complete

the construction of those four authorized projects, and then do some studies on those others to be authorized at some future time.

Mr. Chairman, S. 1882, an amendment to the Small Reclamation Projects Act of 1956, would authorize \$1.3 billion for three new programs, revise and expand the grant and loan program of Reclamation, create a Small Reclamation Water Resources Management Partnership Program, and establish a 10-year loan guarantee program.

Our Department recognizes the reality of aging Federal and non-Federal water infrastructures that will need rehabilitation during the next several decades. We understand the many other future needs for ecosystem restoration, new water supplies, and improvements for the quality of our rivers and streams.

The Department supports these efforts and has programs that work in many of these areas. We are also most interested in workable effective ways to protect our water supplies, water quality, and aquatic habitats. However, the programs that would be authorized by S. 1882 would strain Reclamation's financial and administrative resources. If enacted, it would even make it difficult to meet many of our existing obligations. Therefore, the Department cannot support S. 1882.

We have several specifics. It would be a very costly program, requiring new and significant funding resources that would compete with other departmental funding priorities. It would greatly expand Reclamation's authority and jurisdiction to include projects not only in the 17 Western States and Hawaii, but would also include those in Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and islands of the Pacific Territory. This large expansion would tax Reclamation's budget and work force much beyond its current limits.

Establishment of a loan guarantee program in Reclamation also has many concerns. It would take quite a while to get up and running and it would require additional expertise and staffing. New principles and standards would have to be developed for the program and compliance with the Federal Financial Management Act of 1996 would have to be insured. It would also put us in the role of a commercial loan officer, a role that our inspector general has been critical of in the past.

Mr. Chairman, there is a great deal of public interest in the small loan program. We field inquiries on that program regularly. The Department supports effort to provide technical assistance to the water users. However, the combined financial and administrative burdens imposed by S. 1882 are such that we cannot support this approach. We would certainly welcome the opportunity to work with you and the committee to find an alternate way to do that, or maybe dust off one of the old programs that we already have authority to use in doing that.

Mr. Chairman, S. 2556, the Fremont-Madison Conveyance Act, would transfer title to the Cross Cut Diversion Dam and Canal, the Teton Exchange Wells and the Idaho Department of Water Resources permit number 22-7022, for those wells to the Fremont-Madison Irrigation District in eastern Idaho.

The Cross Cut Diversion Dam and Canal are paid-out facilities with their irrigation assessments completed in 1979. The legisla-

tion provides for the payment for the Teton Exchange Wells and permit, currently valued at \$277,961.

The Bureau of Reclamation has worked closely with the Fremont-Madison Irrigation District over the past few years to settle the issues involved with the title transfer for the facilities and the permit. We are very close to agreement on this bill. While there are still a couple of issues to solve, the Department could support S. 2556 with a couple of technical modifications.

First, section 3(a) of S. 2556 requires the district to pay the administrative costs of the title transfer and related activities, including the cost of any NEPA review. It also limits the district's contributions toward these administrative costs to \$40,000. In September 2001, Reclamation and the district signed a memorandum of agreement which called for each party to pay 50 percent of costs associated with applicable procedural requirements. The MOA also calls for the district to pay for applicable surveys, title searches, facility inspections and development of a quit claim deed and other legal documents. Section 3(a) is not clear on which of these activities are subject to the \$40,000 limitation. We believe the MOU signed by both of us should be honored and that the limitation be eliminated from the bill.

Section 2(a) of S. 2556 requires that the title transfer be completed no later than the termination date of the MOA, in other words, September 13, 2003. Section 2(d)(1) states that the transfer should be done as soon as practicable. We would appreciate clarification, preferably using the language "as soon as practicable."

Mr. Chairman, we have worked closely with the district in trying to get this title transfer done. We think it's a good title transfer and certainly are willing to work with you on the few details so that we can get on and get this done. Certainly Mr. Raybould and Dale Swenson, their manager there, have been great people to work with and we certainly appreciate the support of Mr. Craig and Mr. Crapo in getting this one done.

Mr. Chairman, S. 2696 would clear title to certain real property associated with the Middle Rio Grande project in New Mexico. The Department is not adverse to transferring the San Gabriel and Tingley Beach property parcels to another entity. However, there is a current ongoing lawsuit before the U.S. Court for the District of New Mexico over the disputed ownership of these parcels.

We believe the most prudent course of action is to allow the Court to give its decision on the disputed lands before instituting a legislative remedy. Therefore, the Department cannot support S. 2696 at this time.

With respect to the city of Albuquerque's request to make improvements on the property, Reclamation has issued a license to the city that allows the use of those lands as proposed in its improvement plans.

Mr. Chairman, while there is disagreement with the Middle Rio Grande Conservancy District on the title to these lands, the district is a good and valuable partner on this project. They have retired their debts to the United States. While we believe that it is best to wait on the Court's decision to settle this matter, we are open to working with all of the parties to find an acceptable solution.

That concludes the formal statements and I would certainly stand for any questions you might have.  
[The prepared statements of Mr. Keys follow:]

PREPARED STATEMENTS OF JOHN W. KEYS III, COMMISSIONER OF RECLAMATION,  
DEPARTMENT OF THE INTERIOR

S. 934

My name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I appreciate the opportunity to provide the Administration's views on S. 934, legislation to require the Secretary of the Interior to construct the Rocky Boy's/North Central Montana Regional Water System, in the State of Montana.

The Administration supports the goal of assuring a safe and reliable water supply for both the reservation and the non-reservation communities in north-central Montana. We recognize that north-central Montana is an historically water-short basin, with water quality and water infrastructure concerns. We understand some of these communities may be facing Safe Drinking Water standard violations. However, the Administration cannot support S. 934, as introduced, because it imposes new responsibilities to provide domestic water both to the Rocky Boy's Reservation, inconsistent with the recent settlement, and to non-Indian communities under provisions that are inconsistent with Administration policy.

In considering S. 934, it is necessary to revisit briefly Public Law 106-163, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act (Settlement Act). The purposes of the Settlement Act are to achieve a "fair, equitable and final settlement of all claims to water rights in the State of Montana for the Chippewa Cree Tribe." The Department has been strong in its support of the Settlement Act and its implementation; Reclamation is authorized to fund \$29 million and the Bureau of Indian Affairs is authorized to fund \$21 million for a total settlement of \$50 million. These monies are for multiple economic and water development activities on the reservation, and include \$15 million for municipal, rural and industrial water needs of the Tribe.

We have numerous concerns with S. 934: first, the "Finding" of section 2(a)(2)—which states that the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the needs of the Reservation. As written, S. 934 indicates that Congress intends to make the United States responsible for providing domestic water systems on the Reservation, including potential liability for money damages if such duty is not met. This commitment could have serious adverse legal consequences with respect to Federal liability.

The Administration also has concerns about (1) the strain on Reclamation's current budget; (2) the inequitable cost share requirement; (3) the potentially perpetual Federal financial and management obligation for both construction and for operating and maintaining the system; and (4) the proposed use of project use power from the Pick Sloan Missouri Basin Program (PSMBP) for non-irrigation purposes. I will submit separately a more detailed analysis of these and related technical issues.

Several provisions in S. 934 are inconsistent with the Settlement Act and Reclamation policy. For example, the Settlement Act recognized a Tribal right to a 10,000 acre-feet per year permanent allocation from Reclamation's Tiber Reservoir (Lake Elwell), without cost to the Tribe. Thus, under the Settlement Act, costs incurred by the Federal Government for the design and construction of the reservoir are not passed on to the Tribe, nor is an annual operations and maintenance charge assessed, which is otherwise standard procedure under Reclamation Law (via water service and repayment contracts). S. 934 is not clear what the water source would be for the pipeline. Any authorization should provide that the tribal supply will be the 10,000 acre-feet Tiber allocation already held by the Tribe. If future supplies for the non-tribal communities are to come from Tiber water, the beneficiaries should pay their proportionate capital costs for the reservoir and the pipeline, as well as operation and maintenance costs. Across the 17 western states, current municipal & industrial (M&I) beneficiaries at Reclamation reservoirs pay these costs, and with interest.

Two other examples of how S. 934 is inconsistent with the Settlement Act pertain to the extent of federal financial responsibility. Section 201(d) of the Settlement Act states explicitly that "The United States shall have no responsibility or obligation to provide any facility for the transport of water allocated by this section to the Rocky Boy's Reservation or to any other location. Except for the contribution set forth in section 105(a)(3), the cost of developing and delivering the water allocated by this title or any other supplemental water to the Rocky Boy's Reservation *shall not be borne by the United States*" (emphasis added). In contrast, S. 934 places the

total cost of the tribal portion of the system on the United States, including the upsizing necessary to serve the North Central Montana Water Authority.

With regard to the Rocky Boy's Reservation needs, the Settlement Act authorizes \$15 million for the planning, design, construction, operation, maintenance, and replacement of a future water supply system for the Reservation. Sec. 105(a)(3) of the Act states that these funds are "*for the total federal contribution*" (emphasis added) to such a system. In contrast, S. 934 would authorize the Secretary of the Interior to assist the Chippewa Cree Tribe on the Rocky Boy's Indian Reservation to plan, design, construct, operate, maintain, and replace the Rocky Boy's Rural Water System. In addition, it would authorize federal assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the non-core rural water system off the reservation. The bill would authorize appropriations of at least \$120 million for the core system on the Rocky Boy's Indian Reservation (not including the Federal obligation for operations, maintenance and replacement (OM&R)). Further, S. 934 would authorize at least \$60 million for the non-core system that provides water deliveries to areas that are not on the reservation.

Finally, S. 934 contains provisions that replicate activities already required—and underway—under the Settlement Act. Section 203 of the Settlement Act authorizes a regional feasibility study for North Central Montana. Since the rural water project proposed by S. 934 is a smaller portion of the region encompassed by the study, we believe that consideration of S. 934 is premature until the regional feasibility study is final. Further, other Indian water rights settlements in the basin are being negotiated. Until those settlements are concluded, it is not clear what the relative demands and needs of the basin will be. The regional feasibility study to be conducted under section 203 of the Settlement Act will produce a comprehensive analysis of the region's water needs, and will provide Congress with an informed context as it considers legislation on further rural water development in north-central Montana.

Also, Section 202 of the Settlement Act authorized a municipal, rural, and industrial study requiring that multiple alternatives be brought forward at the feasibility level, so all parties to the settlement could make informed decisions. To implement section 202 of the Act, the Tribe released a draft feasibility study in July 2001, and Reclamation is working with the Tribe to complete the study. Reclamation emphasizes that the intent of Section 202—a thorough evaluation of the feasibility of multiple alternatives—must first be met, so decision makers can make informed decisions.

Previous efforts to address the water needs of rural communities have taken a piecemeal approach, without a programmatic basis. This has resulted in a number of common problems. The authorized Federal cost-shares have been inequitable, and the authorized Federal obligations for facility operations and maintenance are unsustainable. Additionally, expectations on the part of communities with authorized projects become frustrated because of delays due to inadequate available resources. I suggest a more comprehensive approach. We need to work together—the Administration, the Congress, the States, and the stakeholders—to provide safe drinking water for rural America. We need to identify the appropriate Federal and non-Federal roles in providing this water, to evaluate the appropriate role to be played by the numerous Federal and non-Federal agencies involved with developing municipal, residential, and industrial water in rural and small-town America. This is a priority for me and this Administration. I look forward to working with the Committee and Subcommittee to formulate a programmatic approach to rural water issues.

In conclusion, Mr. Chairman, the Administration believes that S. 934 is premature. However, I would like to reiterate the Department's support for implementing the Rocky Boy's Water Rights Settlement Act as well as our support for finding a way to meet the domestic water supply needs of north-central Montana. As such, we would like to work with Senator Burns and the rest of the Montana delegation, the Committee, the Tribe, and the project sponsors to work through these difficult issues in a manner that addresses the needs of Montana and the interests and concerns of the Department.

S. 1577/ H.R. 2990

My name is John Keys and I am the Commissioner of the Bureau of Reclamation. I am pleased to present the Department's views on S. 1577 and H. R. 2990, which amend P.L. 106-576, the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 and to discuss water issues in the Lower Rio Grande Valley. Given that both bills are nearly identical, my comments will apply to both measures.

S. 1577 and H.R. 2990 aim to provide areas in Texas that are facing a drought, with some important water saving measures. The Department lauds efforts to improve and encourage water efficiency, and to responsibly manage water supplies in the border region. The Administration, the Department of the Interior and the Bureau of Reclamation (Reclamation) share the concern of the Committee, the State of Texas, and the water users over the severe water shortages that exist in this area. The Administration supports the goals to amplify and make more efficient use of the current water supply. The Administration is committed to working with the Committee to effectively address these water supply concerns.

These bills would amend P.L. 106-576 by authorizing 15 additional projects in West Texas and in the Lower Rio Grande Valley of Texas. S. 1577 and H.R. 2990 would increase the authorization for report preparation to \$8,000,000, institute a 50% cap on federal report preparation costs, and increase the authorization for project funding to \$47,000,000.

The Department of the Interior testified in general support (with some suggested revisions) of the legislation that became P.L. 106-576. These measures appear to maintain the intent of the existing law while authorizing additional projects and increasing the funding ceilings. However, given the numerous other demands on Reclamation's budget and the number of already authorized but unfunded projects, we have concerns about adding additional projects to Reclamation's workload at this time. We also have concerns over the lack of Administration review in the process for projects in this bill. The Administration does not support authorizing projects that have not undergone Administration review. It is important to note that appropriations will be needed in order to implement the original Act and any new authorizations.

#### *Reclamation Background in the Lower Rio Grande*

The Department's involvement with the Lower Rio Grande irrigation districts dates back almost 50 years when Reclamation began cooperative efforts to modernize facilities and improve water use efficiency. Beginning in 1954, investigations identified the need for rehabilitation of existing distribution systems and construction of main drain outlets for the La Feria and Mercedes Districts. Public Laws 85-370 and 86-357 authorized the rehabilitation projects for La Feria and Mercedes districts respectively. Rehabilitation of the diversion, distribution, and drainage systems were accomplished through contracts among the local entities and Reclamation. Both the La Feria and Mercedes districts have paid out their repayment obligation associated with their projects and Reclamation is currently in the process of returning title to the La Feria lands conveyed to the United States as part of their contractual obligation. In addition, Reclamation entered into contracts with numerous irrigation districts in Harlingen, Hidalgo and Cameron counties pursuant to the Small Reclamation Projects Act of 1956. All contracts are now paid out, with Donna Irrigation District being the most recent to fulfill its repayment obligation in 2001.

Through the years, Reclamation has also prepared technical reports covering water conservation and basin studies to identify specific problems and needs of the area. For example, in September of 2000, Reclamation sponsored a Water Conservation Field Services workshop in Weslaco, Texas to present current information and technology updates to local irrigation districts regarding water measurements, management, and conservation.

#### *P.L. 106-576*

In December 2000, the Lower Rio Grande Valley Water Resources Conservation and Improvement Act was signed into law and became P.L. 106-576.

This legislation was an effort to provide some important water saving measures to an area of Texas that had suffered from drought. Briefly, the law directed the Secretary, acting through the Commissioner of Reclamation, to undertake a program, in cooperation with the State of Texas, water users and other non-Federal entities, to investigate and identify conservation and efficiency improvement opportunities. This was to include review of studies or planning reports prepared outside of Reclamation and the evaluation of alternatives such as lining irrigation canals and increasing the use of pipelines and other water delivery facilities.

Within six months of enactment, the Secretary was to develop and publish a set of criteria to determine which projects would qualify and have the highest priority for financing. P.L. 106-576 provided certain minimum criteria and required the Secretary to make a determination of whether the project meets the criteria within a year of submittal of a request. The law also outlined the report, plan and cost-sharing requirements a project sponsor would need to fulfill to secure federal funding. The law authorized four projects and \$10,000,000 for their construction if they later met these criteria and project requirements. The federal cost share was capped at

50% of any construction, with up to 40% to be contributed by the State. The remainder of the non-federal share was authorized to include in-kind contributions of goods and services, including funds previously spent on feasibility and engineering studies.

Since enactment of the bill, Reclamation has been working successfully and cooperatively with local entities in the Lower Rio Grande, the Texas Water Development Board, and the Texas Agricultural Extension Service of Texas A&M University on its implementation. As noted, a requirement of P.L. 106-576 was issuance of criteria by which Reclamation would administer the law and determine project eligibility for federal funding. Reclamation prepared and shared criteria with state, local and other federal entities. The criteria were finalized in late June 2001, within the six month time frame provided in P.L. 106-576.

Reclamation also has worked closely with those districts involved in the four authorized projects and with the Texas Water Development Board to address funding necessary to begin planning, designing, and reviewing the project plans and reports. Funding for Reclamation to begin preparation of a project plan and report has been advanced from one district. Three other districts are funding similar work by consultants. To date, three projects have been submitted to Reclamation. The authorized projects in the original bill have not been appropriated Federal funds.

Reclamation will continue its efforts to implement the Lower Rio Grande Water Resources Conservation and Improvement Act of 2000 to help make the most efficient use possible of the available supply. Reclamation is also working with several entities in the Valley to field test various methods of controlling water hyacinth and hydrilla. These noxious plant species are spreading rapidly and are increasingly clogging irrigation district canals and intakes to pumping plants—all of which greatly restrict the flow of water both within the irrigation systems and in the Rio Grande as well.

The Department's activities in the Lower Rio Grande Valley are important components of government service in the area, but they are only one part. We applaud the many efforts taken by universities, state and local governments, and other federal agencies. We pledge to continue the Department's coordination and cooperation as we all work together to conserve the water resources that are in such short supply.

*S. 1577/H.R. 2990*

**Project Authorization:** Under P.L. 106-576, projects would include on-farm activities to enhance water conservation, such as water application metering, concrete lining of canals and other irrigation system management improvements. The proposed legislation would continue these activities and also enable the Secretary to use cooperative agreements to work with the State of Texas, non-Federal entities, and institutions of higher education, to develop educational programs and establish on-farm training programs for state-of-the-art water application and conservation techniques. We are concerned that this bill, like the earlier bill, authorizes projects without first undergoing the Administration review required by Executive Order 12322.

**Project Eligibility Requirements:** In 2000, the Commissioner of Reclamation testified on the legislation that became P.L. 106-576, stating that funding and eligibility decisions should be made on the basis of the relative costs associated with water conservation opportunities. The amendments presented in S. 1577 and H.R. 2990 adopt the criteria established by Reclamation under the 2000 legislation. The Department supports this approach, as it provides more certainty to applicants by ratifying Reclamation's standards in law.

One aspect of improving efficiency is ensuring that the improvements made provide the highest return. Reclamation's guidelines will assist in that. However, given that the authorization level is proposed to increase to \$47 million, it also may be appropriate to analyze the projects (or sets of projects) in the context of the established Principles and Guidelines. A simplified approach to the analysis could possibly be used, such as a recent model for this area prepared by Texas A&M University as a potential tool for evaluating projects in the Lower Rio Grande Valley.

**Funding and Cost Sharing:** The cost sharing provisions adopted in P.L. 106-576 establish a 50 percent federal maximum for construction costs. These bills would amend Section 4 (b) of P.L. 106-576 to stipulate that the 50 percent federal maximum be applied to total project costs (e.g. studies, designs, reviews, approvals, construction) rather than just construction. This change would simplify the application of cost sharing provisions between the federal and non-federal contributions for completing a project. The \$47 million amount for construction is subject to further review when project reports are developed.

*Conclusion*

Mr. Chairman, we are very concerned about the effects of the water shortage in the Lower Rio Grande Valley and we recognize the importance of improving the efficiency of water use and delivery in this part of the country, especially in light of the current drought conditions. Reclamation would be happy to work with Senator Hutchison and the Committee to continue to address the water supply problems.

S. 1882

My name is John Keys and I am the Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to appear before this Subcommittee to provide the Department's views on S. 1882.

S. 1882 would amend the Small Reclamation Projects Act (SRPA) to authorize \$1.3 billion for three new programs: a revised and expanded grant and loan program within the Bureau of Reclamation; a Small Reclamation Water Resources Management Partnership Program; and a 10-year loan guarantee program.

The Department recognizes the realities of an aging federal and nonfederal water infrastructure that will need rehabilitation during the next several decades, and understands the many other future needs involving ecosystem restoration efforts, new water supplies for increasing demands, and improvements in the quality of our rivers and streams. The Department supports ongoing environmental restoration programs, as well as water reclamation and reuse and has programs that contribute to these areas. The Department is also interested in workable, effective ways to protect water quality and quantity, including aquatic habitats. However, the programs authorized by this bill would strain Reclamation's financial and administrative resources, and if enacted would make it even more difficult to meet our many other obligations. Therefore, the Department cannot support S. 1882.

I note that the provisions in S. 1882 are nearly identical to those approved by the House Resources Committee on November 11, 2001. As you are aware, last July Secretary Norton testified before the House Subcommittee on Water and Power on H. R. 1985, Small Reclamation Water Resources Project Act of 2001. The Secretary expressed a number of concerns with the SRPA provisions of H.R. 1985: Those concerns remain true for S. 1882.

First, it would be a very costly program, requiring new and significant funding resources to implement. It also would compete with other Departmental priorities for funding.

Second, the bill would greatly expand Reclamation's authority and jurisdiction to include not only projects in the 17 Western states and Hawaii, but also those located in the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Territory of the Pacific Islands. Given the number of other demands on Reclamation's budget and the number of already authorized but unfunded projects, we have concerns about adding any additional projects to Reclamation's current workload.

Finally, establishment of a "Loan Guarantee" Program would require much lead time, and also require additional staffing. The program would need to be developed in a manner that meets the principles and standards set forth in OMB Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," and the requirements of the Federal Financial Management Improvement Act of 1996. It also would put Reclamation in the role of a commercial loan officer for developers of projects, a role Interior's Inspector General criticized in a 1991 audit report.

Although the SRPA Program is currently inactive and has not accepted new loans since 1993, there continues to be public interest in the program, with staff occasionally receiving inquiries about possible loan/grant funding for non-Federal small projects. The Department supports efforts to provide technical assistance to non-Federal water user entities in constructing and rehabilitating their water resource projects and in carrying out restoration efforts. However, the combined financial and administrative burdens imposed by this bill are such that we cannot support this approach. Therefore, the Department cannot support S. 1882. The Department welcomes the opportunity to work with Subcommittee members to find workable solutions to address Reclamation's aging water infrastructure and restoration needs

S. 2556

Mr. Chairman, my name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on S. 2556, the Fremont-Madison Conveyance Act, which directs the Secretary of the Interior to transfer title of certain Federal owned facilities, lands and permits to the Fremont-Madison Irrigation District (District).

The facilities under consideration for transfer in S. 2556—the Cross Cut Diversion Dam and Canal, the Teton Exchange Wells and the Idaho Department of Water Resources permit number 22-7022—are associated with the Upper Snake River Division, Minidoka Project and the Lower Teton Division, Teton Basin Project, respectively, and are located near Rexburg in eastern Idaho. The facilities under consideration for transfer are used exclusively for irrigation purposes and have always been operated and maintained by the District. While the Cross Cut Diversion Dam and Canal are paid-out by the District, the legislation provides for a payment for the Teton Exchange Wells, which are currently valued at \$277,961, based upon the outstanding balance to be repaid by the District.

Mr. Chairman, over the last few years, we have been working very closely with the District and numerous other local organizations including the Henry's Fork Foundation, a local conservation and sportsmen's organization, to work through the issues on the title transfer for the features, lands and water rights associated with this project. Over the last year, we have made great progress in narrowing the scope of the transfer to meet the District's needs, protect the interests of the other stakeholders, and ensure that the transfer does not negatively impact downstream contractors of the integrated Snake River system. While I believe that we are very close to agreement on this legislation, S. 2556, as drafted, creates some problems and concerns, which I will address in my statement. However, with the technical modifications outlined below, the Department could support S. 2556.

#### *Background*

Individuals, organizations, Federal, States and local agencies interested in the Henry's Fork of the Snake River have a very impressive history of collaboration and cooperation through the Henry's Fork Watershed Council (Council)—a grassroots community forum whose goal is to encourage management of the Henry's Fork Basin in a socially, economic and environmentally sustainable manner. When the District first raised the idea of title transfer, the Council dedicated its March, 1999, meeting to this issue. This included presentations by the District and Reclamation and fostered open discussions with any and all groups or individuals who had comments or concerns.

Subsequently, the District and the Henry's Fork Foundation, along with the Land and Water Fund of the Rockies engaged in a series of negotiations to develop a mutually acceptable proposal. While that process did not result in a concrete proposal, it did lead to some consensus on the facilities to be transferred that are included in this legislation. It also led to the removal of the Grassy Lake and Island Park dams from the transfer proposal about which many local organizations had serious concerns.

Accordingly, in September, 2001, Reclamation and the District signed a memorandum of agreement (Contract No. 1425-01-10-3310) (MOA) which expires on September 13, 2003, and is referenced in S. 2556. This agreement lists the facilities to be transferred, delineates the respective responsibilities to complete activities necessary for the title transfer such as arrangements for the sharing of costs, valuation of the facilities to be transferred, and responsibilities associated with compliance with Federal and State laws.

We have, however, identified some concerns and technical issues which I would like to raise for the Committee's consideration:

#### *Cost Share Requirements*

First, Section 3(a) of S. 2556 requires the District to pay the administrative costs of the conveyance and related activities, including the costs of any review required under NEPA, but limits their contribution to no more than \$40,000. This language is both unclear as to what is or is not included as "costs," nor is it in accordance with the MOA that FMID should pay the 50% of costs associated with applicable procedural requirements of the NEPA, ESA, and other applicable state and federal laws required.

We agree that it is appropriate to share the costs of compliance with Federal laws, as was agreed upon in the MOA. We also believe that the recipients of title transfer should cover those costs that are associated with the real estate transaction resulting from the title transfer. In this vein, the MOA states that the District would pay for applicable activities such as surveys, title searches, facility inspections, and development of a quit claim deed or other legal documents necessary for completing the transfer. Unfortunately, S. 2556, as drafted, is unclear on this point.

To address these ambiguities, we suggest that S. 2556 reference the MOA's treatment of costs or reiterate the manner in which the distribution of costs were addressed in the MOA. Given the amount of work that went into developing the MOA, its applicability under S. 2556 for implementation of the transfer, and the fact that

it has been agreed upon and signed by representatives of both Reclamation and the District, referencing the MOA on these issues would provide an equitable, clear and consistent resolution to our concern.

*Conveyance Deadline and Report*

Section 2(a) of S. 2556 requires that the title transfer be completed no later than the termination date of the MOA (September 13, 2003). However, Section 2 states that the transfer be completed "as soon as practicable after the date of enactment and in accordance with all applicable law." These provisions appear inconsistent as Section 2(a) designates a required date certain for completion, while Section 2(d) (1) states that it be completed "as soon as practicable,"

Further, Section 2(d) (2) requires that the Secretary submit a report to Congress within one year of the date of enactment if the transfer has not been completed in that time frame. This provision seems somewhat arbitrary and could potentially delay the transfer from the September 13, target date while the report is being prepared.

To address our concerns with inconsistent deadlines and reporting requirements, I suggest that the legislation be modified to require that the transfer be completed "as soon as practicable after the date of enactment" and the reporting requirement in S. 2556 be modified to require a report to Congress be completed only if the title has not been transferred by September 13, 2003 the expiration date of MOA referenced in the legislation. In this manner, the requirements are made clear and consistent, and no report to Congress would be necessary if the facilities are transferred by the MOA's expiration date.

*Conclusion*

In conclusion, Mr. Chairman, I believe we have worked closely with the District and a great deal of progress has been made. I would like to take this opportunity to compliment District Board Chairman Jeff Raybould and their Executive Director, Dale Swenson, for their diligence and commitment in working with us and the other interested entities of eastern Idaho on the issues surrounding this transfer. I would also like to thank Senator Craig and Senator Crapo and their staffs for their cooperation. With the technical modifications mentioned above, I believe the Department could support passage of this legislation.

S. 2696

My name is John Keys and I am the Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to be here today to present the views of the Department regarding S. 2696, which would clear title to real property in New Mexico associated with the Middle Rio Grande Project and for other purposes.

The Department has some concerns with S. 2696, primarily that the dispute over ownership of the San Gabriel and Tingley Beach parcels is currently embodied in a pending lawsuit before the United States District Court for the District of New Mexico. Aside from the lawsuit, the Department also has concerns about the method in which this legislation attempts to transfer the property. The Department is not adverse to transferring ownership to another entity, but all parties must agree on the venue and all applicable federal laws must be met in the process. The Department believes the prudent course of action is to allow the legal system to render its decision regarding the disputed lands before instituting a legislative remedy. Therefore, the Department cannot support S. 2696 at this time.

With respect to the City Of Albuquerque's desires to make improvements on this property, Reclamation has provided a license to the City which allows the use of those lands as proposed in the City's improvement plans.

The Middle Rio Grande Conservancy District (District) was created by the Conservancy Act of 1923 to improve the economy of the Middle Valley by lowering the water table and providing flood protection and water for irrigation. In the 1940's, the District requested that Reclamation take over the operation of the District and retire its outstanding bonds. In September 1951, the District and Reclamation entered into a 50-year repayment contract in the amount of \$15,708,567. A key component of the contract is Article 29, which states:

Title to all works constructed by the United States under this contract and to all such works as are conveyed to the United States by the provision hereof, shall as provided in Article 26, be and continue to be vested in the name of the United States until otherwise provided for by Congress, notwithstanding the transfer hereafter of any such works to the District for operation and maintenance.

Furthermore, the District acknowledged the need and desire to seek reconveyance after their debt was repaid when it testified in 1998 before a committee of the New Mexico Legislature.

Section 5 of the bill states that "nothing in this act shall be construed to affect or otherwise interfere with any position set forth by any party in the lawsuit." It is unclear to the Department how the passage of this legislation could not affect the lawsuit given that the ownership of the two parcels referenced in the bill is part of the lawsuit itself.

Despite this disagreement, the District has been a good partner on this project and has retired its debt to the United States. While we believe that it is best to wait on the court's decision to settle this matter, we are always open to working with all interested parties to find acceptable solutions.

Mr. Chairman, that concludes my remarks and I would be happy to respond to any questions the committee may have.

Senator DORGAN. Commissioner, thank you very much for your statement. Next we will hear from the Honorable Dr. Charles G. Groat, Director of the U.S. Geological Survey.

Dr. Groat.

**STATEMENT OF CHARLES G. GROAT, DIRECTOR,  
U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR**

Dr. GROAT. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to provide the views of the Department of the Interior on S. 2773, High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act. The administration agrees with the committee concerning the importance of ground-water monitoring and coordination of monitoring efforts among Federal, State and local entities. We especially appreciate the bipartisan efforts to sponsor the bill and also appreciate the value that the bill places on sound science as a guiding principle for management decisions.

Before expressing support for the bill and its goals, I do want to mention two or three concerns that the administration has with the bill. First, that we be sure we have explored all possible existing programs as alternative means for accomplishing the goals of the bill, such as the National Cooperative Geological Mapping Act and our water partnership program. We also want to make the committee aware that the USGS and the Department of the Interior in the process of restructuring and reprioritizing our strategic plans and the programs that are adopted by new legislation or by new actions will be subject to prioritization within that process.

And also, we just point out that this program is not included in our 2003 President's budget and so, should it pass, it would be subject to use of available resources during that period.

Also, a couple of concerns conveyed by the Department of Justice that I want to convey to you, and that is the feeling that sections 3 and 4 may unconstitutionally require the States to take certain actions, and whether this language needs review, I would just submit to the committee staff and ask them to consider that.

The resource challenge addressed by this bill is certainly a critical one. Irrigation water pumped from the aquifer has made the High Plains one of the Nation's most important agricultural areas. However, the benefits have been mitigated to some degree by the major declines in ground-water levels and the fact that water levels at increased pumping lists, they also decrease well yield and put a strain on the resource, raising concerns about the sustainability

of irrigated agriculture in many parts of the High Plains, particularly those in the southern and central parts of the High Plains where as much as 50 percent of the aquifer has been dewatered in some of those areas.

The bill directs the Secretary of the Interior acting through the U.S. Geological Survey in cooperation with, and this is an important aspect, State geological surveys and the water management agencies in the High Plain Aquifer States, to establish and carry out a program of characterization, mapping, modeling and monitoring of the High Plains Aquifer. And here again, as I started out by saying, this underpins the value of science in providing an understanding that can lead to wise management.

This would be accomplished through mapping activities, analysis of rates at which the ground water is being withdrawn and recharged, and changes in water storage in the aquifer. And we would insure that data collected under this program is consistent with Federal Geographic Data Committee standards so that it is uniform across the whole aquifer system.

The role identified for the Department of the Interior in the bill is consistent with the USGS's role in conducting extensive geological mapping and ground-water investigations in the Nation, and in this bill as in these other programs, in cooperation with State and local partners. Furthermore, the USGS has been active in programs in the High Plains Aquifer system for some time. We have offices in each of the States underlying by the High Planes Aquifer system. These offices have a long history of ground-water monitoring and assessment activities within the aquifer.

In fact, in the early 1970's, the USGS carried out the first comprehensive quantitative study of the High Plains Aquifer through the Regional Aquifer System program. With our partners in the cooperative water program, we continue to provide ground-water models and evaluate present and future state of the aquifer in some parts of the High Plains, although, and this is the critical point that the legislation addresses, the overall assessment of the aquifer is now over two decades old.

And frankly, Mr. Chairman, that's not good enough. This program this legislation defines would modernize this assessment and would provide the necessary new information that's needed for improved understanding. More in-depth studies are required to determine the relevant importance of all the factors that affect the aquifer as well as its physical makeup, and improve the estimates of recharge, which is critical to projecting future water levels and their response to agricultural practices.

We recognize in doing this the need to insure that any of our monitoring activities should complement and be coordinated with State activities.

One suggestion we would have, Mr. Chairman, that is in order to insure cooperation between the USGS and the non-Federal community, we suggest that language similar to that currently contained in the National Cooperative Geological Cooperative Mapping Act be inserted into section 3 of this legislation, specifically, and I quote: "That the Federal share of cost of activities under the State component for any fiscal year shall not exceed 50 percent." This

conforms to matching requirements we have in other parts of the legislation.

In summary, a reliable source of ground water is an essential element of the economy of the communities of the High Plains. The goals of this bill are commendable. It contains provisions that are well within the scope of the expertise of the USGS and its State partners, and emphasizes a high level of coordination between the Department of the Interior and the States addressing an issue of significant economic concern both to the High Plains and to the nation.

Thank you, Mr. Chairman. I would be happy to answer any questions.

[The prepared statement of Dr. Groat follows:]

PREPARED STATEMENT OF CHARLES G. GROAT, DIRECTOR,  
U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, thank you for the opportunity to provide the views of the Department of the Interior (DOI) on S. 2773, the "High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling, and Monitoring Act." The Administration agrees with the Committee concerning the importance of ground-water monitoring and coordination of monitoring efforts among Federal, State, and local entities. We especially appreciate the bi-partisan efforts of the sponsors of the bill to address this important issue and the emphasis within the bill on the need for reliance on sound science.

However, the Administration has a few concerns with this bill. The goals of this bill can be achieved without legislation, through better coordination of existing Federal and State programs. Further, the USGS and DOI are in the process of revising their strategic plan; while important, the proposed program would have to be taken into account among all DOI priorities as the strategic plan develops. The total costs of the proposed program are uncertain. Funding for this program is not included in the fiscal year 2003 President's budget, and would be subject to available resources.

Irrigation water pumped from the aquifer has made the High Plains one of the Nation's most important agricultural areas. The intense use of ground water has caused major declines in ground-water levels. Water-level declines increase pumping lifts, decrease well yields, limit development of the ground-water resource, and raise concerns about the long-term sustainability of irrigated agriculture in many areas of the High Plains. The changes are particularly evident in the central and southern parts of the High Plains, where more than 50 percent of the aquifer has been dewatered in some areas.

The bill directs the Secretary of the Interior, acting through the United States Geological Survey (USGS), and in cooperation with the State geological surveys and the water management agencies of the High Plains Aquifer States, to establish and carry out a program of characterization, mapping, modeling, and monitoring of the High Plains Aquifer. This would be accomplished through mapping of the configuration of the High Plains Aquifer, and analyses of the rates at which ground water is being withdrawn and recharged, changes in water storage in the aquifer, and the factors controlling the rate of flow of water within the aquifer. Effective coordination of the data collection and monitoring efforts requires that any data collected under the program be consistent with Federal Geographic Data Committee data standards and that metadata be published on the National Spatial Data Infrastructure Clearinghouse.

The role identified for DOI in this bill is consistent with USGS's leadership role in monitoring, interpretation, research, and assessment of the earth and biological resources of the Nation. As the Nation's largest water, earth, and biological science, and civilian mapping agency, USGS conducts the most extensive geologic mapping and ground-water investigations in the Nation in conjunction with our State and local partners. Furthermore, the USGS has been active in a number of programs and investigations that involve the High Plains Aquifer, specifically.

The USGS has offices in each of the eight States underlain by the High Plains Aquifer (Texas, Oklahoma, Kansas, Nebraska, South Dakota, Wyoming, Colorado, and New Mexico). These offices have a long history of ground-water monitoring and assessment activities within the aquifer. Existing USGS programs that are highly relevant to High Plains Aquifer issues include the Ground-Water Resources Program, National Cooperative Geologic Mapping Program, National Water-Quality As-

assessment (NAWQA) Program, National Streamflow Information Program, Water Resources Research Act Program, and the Cooperative Water Program.

The USGS carried out the first comprehensive quantitative study of the High Plains Aquifer in the late 1970's through the Regional Aquifer-System Analysis (RASA) Program. With our partners in the Cooperative Water Program, we continue to provide ground-water models to evaluate the present and future state of the aquifer in some parts of the High Plains, although an overall assessment of the aquifer is now over two decades old.

In response to the water-level declines, a ground-water monitoring program was begun across the High Plains in 1988 to assess annual water-level changes in the aquifer, an effort requiring collaboration among numerous Federal, State, and local water-resource agencies. Water levels continue to decrease in many areas of the aquifer, but the monitoring has indicated an overall reduced rate of decline of the water table during the past two decades. This change is attributed to improved irrigation and cultivation practices, decreases in irrigated acreage, and above normal precipitation during this period. More in-depth studies are required to determine the relative importance of these different factors and to improve estimates of recharge rates, which is crucial to projecting future water levels and their response to changing agricultural practices.

We recognize the need to ensure that any USGS monitoring activities should complement State monitoring activities. In order to ensure cooperation between USGS and the non-federal community, we suggest that language similar to that currently contained in the National Cooperative Mapping Act be inserted in Section 3 (2)(d)(2) of S. 2773. Specifically, "The Federal share of the cost of activities under the State component for any fiscal year shall not exceed 50 percent" (43 U.S.C. Chapter 2, Section 31 c.).

We have been advised by the Department of Justice, that Sections 3 and 4 unconstitutionally require that States take certain actions. We recommend that the Committee examine these provisions to address the constitutional flaws.

In summary, a reliable source of ground water is an essential element of the economy of the communities on the High Plains. The goals of the bill are commendable, it contains provisions that are well within the scope and expertise of the USGS, and it emphasizes a high level of coordination between the Department of the Interior and the States in addressing an issue of significant economic concern to the Nation. However, the Administration has concerns with the bill and any new funding would remain subject to available resources.

Thank you, Mr. Chairman, for the opportunity to present this testimony. I will be pleased to answer questions you and other members of the Committee might have.

Senator DORGAN. Dr. Groat, thank you very much.

Senator Bingaman, do you have an opening statement?

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

The CHAIRMAN. Mr. Chairman, let me just say briefly, there are two bills that are part of your hearing today that are very important to us in my State, and that I very much appreciate you allowing to be part of this hearing.

S. 2696, the Albuquerque Biological Park Title Clarification Act, which was put in at the request of the city of Albuquerque and the mayor of Albuquerque, and he is here to testify on that in one of the later panels.

And then S. 2773, that we have just been hearing testimony on, that we think is also very important, helping to deal with the problems in the High Plains Aquifer.

So thank you very much for having the hearing on these two bills in particular, and I look forward to asking some questions.

Senator DORGAN. Senator Craig.

Senator CRAIG. John, or Dr. Keys, you mentioned some concerns as it relates to definition as reimbursables as it relates to the MOA, and some other concerns about ambiguity in the language.

We will be happy to work with you and the Department to make sure that this is well clarified before we move it out.

Mr. KEYS. Mr. Chairman, Mr. Craig, it's very easy to take care of. We have been working with the House side and have reached agreement with them, and we certainly think that that can be accomplished.

Senator CRAIG. We will take a look at that work then. Thank you.

Senator DORGAN. Senator Burns, do you have any questions of this panel?

Senator BURNS. I have no questions other than with Secretary Keys, we're looking forward to working with you and we can work out, I think, our differences up there too, John, and we look forward to working with you on that.

Mr. KEYS. Mr. Chairman, Senator Burns, we look forward to doing that.

Senator BURNS. That will be great.

Senator DORGAN. Senator Bingaman.

The CHAIRMAN. Thank you very much, Mr. Chairman. Let me ask first about S. 2696, ask Mr. Keys a couple questions about this. I'm somewhat confused about the position the Government is taking here, because my impression is that the impetus for this legislation was a suggestion from the Bureau of Reclamation that the city get legislation like this enacted. That was the way it was explained to me. The mayor, of course, is here to testify and he can clarify that. Let me just ask you ahead of time.

I think his impression is that the city was asked to urge the delegation to pursue this legislation and did, and now the Bureau of Reclamation says they oppose the legislation, and that's a little confusing.

Mr. KEYS. Mr. Chairman, Senator Bingaman, before the lawsuit was filed, the United States with Reclamation representing it felt that we had title to those lands in question, and certainly we were willing to enter into arrangements with the city of Albuquerque to transfer those lands to them, and that was at the time the request was made for the legislation.

In the meantime, there was a disagreement from the Middle Rio Grande Conservancy District that they owned the lands. They felt that since they had paid out their agricultural allocation of the project costs that they owned those lands. Certainly we don't agree with that, and certainly they didn't agree with that, so they filed a lawsuit.

What we're saying is we need to let that lawsuit run its course before the legislation is passed. I'm not sure what would happen if the legislation went forward and the land was transferred without that lawsuit being decided. Not being an attorney, I don't know what mess that would make.

The CHAIRMAN. Let me just tell you my own view on it. It's been a while since I filed suit to quiet title, but I think the idea of this legislation is to, as to these particular parcels, these two parcels, to make it very clear as to what the ownership is, and that would not affect the remainder of the litigation, the Middle Rio Grande Conservancy District's lawsuit and the Bureau of Reclamation dispute about that, that would continue as to everything else. But as

to these parcels, it would clarify that in fact the city does own this land since the city paid for it. Am I confused on that?

Mr. KEYS. Mr. Chairman, Senator Bingaman, the question at hand is whether the Bureau of Reclamation or the Middle Rio Grande Conservancy District owns the lands. If they indeed are Reclamation lands then we would work with your committee for the title transfer to those lands to the city. If MRGCD owns the lands then I think they will probably charge the city for them.

The CHAIRMAN. But now as I understand it, the Middle Rio Grande Conservancy District is not the one complaining about this litigation—I mean about this proposed legislation. They are not disputing the right of the city to go ahead and have ownership of these two parcels. The Bureau of Reclamation was willing to quit claim its interests to the city for a dollar, that was before all the litigation started.

Mr. KEYS. Yes.

The CHAIRMAN. And what we are saying is let us just enact legislation to accomplish the extinguishment of the Federal Government's interests so that the city can own it.

Mr. KEYS. Mr. Chairman, Senator Bingaman, how about if I get one of our attorneys to come up and talk with you so that they can explain how they felt that it would confuse the issue if legislation is passed?

The CHAIRMAN. Yes, I wish you would do that. Why don't you, if you could get your legal team to tell us how this is a problem for us to pass this, because quite frankly, this litigation may continue for a while, most litigation does, and we believe it's important to clear up the title to this property and we thought we could do that without any great controversy, and then of course we found that you are in opposition to this, which is a problem.

Mr. KEYS. I would be glad to do that.

The CHAIRMAN. We would appreciate that very much.

Director Groat, let me ask you, I appreciate your comments about the importance of this effort to better map and understand the problem with the High Plains Aquifer, and that of course is the purpose of the legislation. You indicate in your testimony that you have some suggestions related to the legislation, you mentioned some concerns. I just say to you that we are anxious to work with you to resolve those. We think this is important bipartisan legislation. Would you agree to work with us over the next few weeks so that when we come back into session in September we will be able to dispose of this?

Dr. GROAT. Senator, we agree that this is important legislation and feel that the details that need to be worked out are minor, and look forward to doing that.

The CHAIRMAN. Thank you very much. Thank you, Mr. Chairman.

Senator DORGAN. Senator Smith, we have heard from the two witnesses and are about to excuse them. If you have any statement you wish to make before we do that, or questions, I would be happy to let you do that.

Senator SMITH. Thank you, Mr. Chairman.

I understand that contrary to my hopes in the statement, that the administration is opposing S. 1882, and that's been the testi-

mony today, and I just hope they will work with us to get it so that you can support it, so we can move it. These small loan programs are pretty important to some small districts.

Mr. KEYS. Mr. Chairman, Senator Smith, we are more than happy to do that.

Senator SMITH. Thank you. And I wonder, Mr. Keys, if you can give me any update on Klamath Falls from your perspective. Is water flowing, are things okay?

Mr. KEYS. Mr. Chairman, Mr. Smith, the water is flowing. It is still 105 degrees and everything is on fire out there right now. We expect the water to flow to the end of the season and we expect a full delivery. Tomorrow is a cutback day on releases from Upper Klamath Lake, and certainly we have people in government-to-government consultation today with the tribes there on that cutback, so everything is on schedule to this date.

Senator SMITH. Thank you.

Senator DORGAN. Commissioner and Director, thank you very much for being here today. We will excuse you and thank you for your testimony.

The second panel that we will call will be Dan Keil, chairman, North Central Montana Regional Water Authority; Bruce Sunchild, Sr., vice chairman, Chippewa Cree Tribe, Box Elder, Montana; Jeff Raybould, chairman, Board of Directors, Fremont-Madison Irrigation District, St. Anthony, Idaho; Peter Carlson, attorney, Will & Carlson, Inc., Washington, D.C. If those witness would come forward and take their positions at the table, we would appreciate it.

As I indicated previously, the entire statement of the witnesses will be made a part of the permanent record and we would ask the witnesses for the purpose of this subcommittee to summarize. Mr. Keil, am I pronouncing your name correctly?

Mr. KEIL. Yes, sir.

Senator DORGAN. Dan Keil, chairman, North Central Montana Regional Water Authority. Why don't you begin?

**STATEMENT OF DAN KEIL, CHAIRMAN, NORTH CENTRAL  
MONTANA REGIONAL WATER AUTHORITY, CONRAD, MT**

Mr. KEIL. Thank you, Mr. Chairman. For the record, my name is Dan Keil. I'm a farmer from north central Montana and am serving as chairman of the North Central Montana Regional Water Authority. I want to thank you for the opportunity to testify today in support of authorizing the Rocky Boys/North Central Regional Water System, S. 934. I would like to thank Senator Burns and Senator Baucus for their remarks and their strong support of this project.

I also would like to thank the State of Montana. They are not here to testify, but they submitted a statement in support of this. The Governor is in strong support, this governor and the previous governor both, of this project. We have been working on it for a considerable length of time.

I also have in addition to that, the chairman of the Hill County Water District, which is one of the participating systems.

This project, as you can see from the map and the map that's attached to the testimony,\* is about 8 percent of the total area of the State of Montana that's being served by this, and that's a pretty good sized area. It's basically a combination of rural water systems that are there, the communities that are there, and it would be a wholesale water supply system to those communities to solve some of the problems that they are experiencing now.

This is an area that is short of ground water, basically there is none. What little bit there is is concentrated in a couple areas, and the rest of the people that are in that area like my water system, parts of that, when we put that thing in 25 years ago, were hauling water 25, 30 miles one way. Surface water supplies are also limited and suffer from water quality problems.

This is a joint project, as Senator Baucus stated, between the Chippewa Cree Tribe and the residents off of the adjoining communities. This North Central Montana Regional Water Authority includes 16 rural water districts and 2 water user associations. Most of these systems are small, with limited customer base. It is increasingly difficult for these systems to satisfy the regulatory requirements imposed by the Federal Government through the Safe Drinking Water Act.

I was here in 1996 testifying in front of the EPW Committee about the amendments that were being proposed at that time to the Safe Drinking Water Act, and those were solving one problem, but they also created more problems. I have been involved in drinking water system work for 30 years.

When my little area out there, we got together and obtained a drinking water system from the Federal Government that was established to supply an anti-ballistic missile base. In 1972, President Nixon went to Russia and signed the first SALT agreement, and that's what—that project was closed down, and we formed a water district off of that to serve portions of five counties. I was chairman of that system for quite a while, I also served on the National Rural Water Association board.

The Department of Environmental Quality, which implements the Safe Drinking Water Act in Montana, has declared three of the rural water districts to be out of compliance with this act. At least 12 other systems are expected to have difficulty meeting future requirements. One system has been ordered to obtain authorization this year or seek another source of water to supply their customers. A number of the systems are under boil orders at this time.

Due to the small customer base of the districts, they cannot individually afford to construct their own treatment plants or develop alternative sources of water. A regional water system is the only feasible approach to meeting north central Montana's need for clean drinking water.

The reoccurring drought is another problem. We have had that for 5 years, we are approaching the sixth year, but it did rain finally in that area, so—that didn't serve, because it's such a big area, not all of them got it, but it has relieved some of the restrictions. The main streets of our small towns are dying and without a reliable source of safe drinking water, there is little to attract

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\*The map has been retained in subcommittee files.

new businesses. The small communities and rural areas of north central Montana and the reservation are struggling to meet the needs of their people and satisfy the requirements of the Safe Drinking Water Act, but cannot do it on their own.

The proposed rural water system takes advantage of available storage at the Bureau of Reclamation's Lake Elwell. The Rocky Boy will utilize their allotment out of that lake and the non-reservation users will contract with the Bureau of Reclamation for additional water. A single water treatment plant will be built to provide safe water to the existing rural water districts and the reservation. This single treatment plant will allow the users to take advantage of the economies of scale in meeting current and future requirements of the Safe Drinking Water Act.

The water authority is prepared to contribute a non-Federal cost share of 25 percent, which is equivalent to that required for other rural water systems such as Washone and Lewis and Clark. In addition, the water authority has already invested millions of dollars in existing water delivery systems which will continue to be used to deliver water from the rural water systems core pipeline to the ultimate water users. While not recognized in the bill as part of the non-Federal cost share, the use of existing delivery systems significantly reduces the overall cost of the project.

The water authority is also responsible for all off-reservation operation and maintenance costs. While we are willing to do our part, we simply do not have the resources to meet the requirements of the Safe Drinking Water Act and provide good clean drinking water to our system.

We ask you for your support in helping us to make safe drinking water a reality in our State. Thank you for the opportunity to come and appear.

[The prepared statement of Mr. Keil follows:]

PREPARED STATEMENT OF DAN KEIL, CHAIRMAN, NORTH CENTRAL MONTANA REGIONAL WATER AUTHORITY, CONRAD, MT

Mr. Chairman and members of the subcommittee, my name is Dan Keil. I am Chairman of the North Central Montana Regional Water Authority. Thank you for the opportunity to testify before the subcommittee in support of authorizing the Rocky Boys/North Central Montana Regional Water System. I would also like to thank Senator Max Baucus and Senator Conrad Burns for their strong and continuing support for this project.

The Rocky Boys/North Central Montana Regional Water System will provide a safe and dependable municipal, rural and industrial water supply for the Rocky Boy's Reservation and the public water supply systems that comprise the North Central Montana Regional Water Authority. Speaking on behalf of the off-Reservation portion of the project, I can assure you that the communities in north central Montana strongly support both the on-Reservation and off-Reservation components of the project.

#### NEED FOR THE WATER SYSTEM

The Rocky Boys Reservation and north central Montana are plagued by problems with water quality and supply. The off-Reservation public water supply systems are unable to meet the requirements of the Safe Drinking Water Act. According to the Montana Department of Environmental Quality (DEQ), three of the public water supply systems which would be served by the proposed regional system are out of compliance with the federal Act. Of these three, DEQ has issued an administrative order to one system requiring an alternative source of water and expects to bring enforcement actions against the other two systems in the very near future.

The Montana DEQ prioritized the existing water systems according to their expected difficulty in meeting future regulatory requirements based upon current EPA

proposals and the 1996 amendments to the Safe Drinking Water Act. As can be seen from the attached table, almost all of the existing systems are either out of compliance or will have difficulty meeting future regulatory requirements unless they upgrade their systems.

Many of the systems treat their water with chlorine which in turn may cause problems with elevated levels of disinfection by-products. Other systems have problems with bacterial contamination and elevated levels of total dissolved solids, iron, manganese, lead, copper, sulfate and sodium. Boil orders either have been issued in the past or are presently in effect for a number of the systems.

Many area residents are not served by any public water system. Due to the limited availability and poor quality of groundwater, these residents must often haul their own water. The available water supply fails to meet water quality standards and poses real health risks to the area's population.

Water quality problems are exacerbated by water supply issues. Because of the general lack of good quality groundwater, most of the area's larger public water systems use surface water supplies, including the Milk River. As recognized in the North Central Montana Regional Water System Planning/Environmental Report dated May 2000, the availability of direct flow supplies from the Milk River is limited by the loss of active storage due to the rapid rate of sedimentation, unused Canadian treaty rights and unquantified Indian reserved water rights. Public water systems relying on the Milk River have had to implement strict water rationing requirements.

The water availability problems have been aggravated by drought. In 2000 and 2001, the U.S. Department of Agriculture classified all 56 Montana counties under drought disaster status. A number of the counties which will be served by the proposed regional water system have received a drought disaster classification for the last five years. As of June 13, 2002, the National Oceanic and Atmospheric Administration predicted the drought in Montana is likely to persist with some areas experiencing short-term improvements. In recognition of the continuing drought, the U.S. Department of Agriculture has already granted Montana drought disaster status for 2002.

The poverty rate for all eight counties which will be served by the regional water system exceeds the national average. According to the U.S. Census Bureau, 19.8 percent of the people in Hill County and 17.4 percent in Toole County live in poverty. These are two of the counties which will be served by the regional water system. The Montana Department of Labor & Industry reports the unemployment rate on the Rocky Boys Reservation at 27 percent. According to the department, unemployment on the Rocky Boys Reservation is more than twice that on other Montana reservations and is the highest in the state. These statistics only reflect those persons actively looking for work and do not reflect the true situation on the Reservation where many have become discouraged and given up hope of finding a job. In 1999, this committee's report on the Rocky Boys Reservation's Indian reserved water rights settlement estimated unemployment on the Reservation at nearly 70 percent. A reliable source of safe drinking water is necessary to improve the low standard of living on the Reservation and in the surrounding area.

A dependable supply of water is also essential to ongoing efforts to attract new businesses to the area in order to provide for future economic growth. In addition to long term benefits, the regional water project will provide an immediate economic boost for north central Montana and the Rocky Boys Reservation. Assuming labor costs for the project at 25 percent of the total construction budget, the project will generate approximately \$38.75 million in wages via 1,242 construction man years. These construction dollars will provide a much needed stimulus to the regional economy.

The North Central Montana Regional Water Authority, along with the Rocky Boys Reservation, the State of Montana, and the Bureau of Reclamation, has studied possible alternatives to supply water to the region. The option of updating existing public water supply systems to comply with the Safe Drinking Water Act was rejected due to the high cost. Another option, using Missouri River water, was rejected because it would introduce arsenic from the Missouri into the Milk River basin, thereby degrading the water quality of the receiving streams. Obtaining additional water from the Milk River was also studied but rejected due to the limited physical and legal availability of water. The use of additional groundwater sources was also investigated. This option was not feasible because there is very little groundwater physically available, and the groundwater that is available is of poor quality or is under the influence of surface water which according to the Safe Drinking Water Act requires treatment. Of all the alternatives reviewed, the proposed regional water project is the only one which provides a dependable water supply while offering the lowest capital project and life-cycle costs.

## THE PROJECT

Water for the Rocky Boys/North Central Montana Regional Water System will be diverted from Lake Elwell, a Bureau of Reclamation reservoir on the Marias River, which is located approximately 40 miles west of the Rocky Boys Reservation. As part of the Rocky Boys reserved water rights settlement, the Chippewa Cree Tribe was allocated 10,000 acre-feet per year from storage in Lake Elwell. The off-Reservation portion of the regional water system will contract with the Bureau of Reclamation for purchase of stored water from Lake Elwell. There is sufficient storage available in the reservoir to provide a reliable supply for the project while satisfying recreational and fishery needs.

Studies conducted over the last decade, in cooperation with the Bureau of Reclamation, the State of Montana and the Tribe, have all identified Lake Elwell and the Marias River as the appropriate source of water for the system. Of the other possible water sources, water availability in the Milk River is severely limited, the Missouri River has elevated arsenic levels which cause water quality concerns, and adequate groundwater simply does not exist. Lake Elwell is the most practical source of water for the project.

A water treatment plant, using conventional filtration, will be located near the intake on Lake Elwell. The water will be treated to meet both the primary and secondary requirements of the Safe Drinking Water Act standards. A core pipeline will convey water from the treatment plant to the Rocky Boys Reservation. A series of transmission pipelines will also provide water to smaller distribution lines belonging to the area's off-Reservation public water supply systems. The regional water system will take advantage of the infrastructure of these existing systems. When completed, the regional water system will provide a safe and dependable water supply for a projected 30,000 people in 2045. Water will be provided to all or parts of eight counties including 10,700 square miles in north central Montana.

Without the proposed centralized water treatment plant, most of the participating systems would be required to build new or to significantly upgrade existing conventional water treatment plants. Due to the low population densities and limited income potential in north central Montana, individual communities, both on and off the Reservation, cannot afford their own treatment plants. The existing public water supply systems are also concerned about additional upgrades which may be necessary in the future to satisfy changing federal and state regulation. A central treatment plant will allow these existing systems to economically meet both the current and any future requirements of the Act.

The project will receive power from the Pick Sloan Missouri Basin Program. All of the other MR&I regional water systems recently authorized by Congress in the Upper Missouri River Basin have benefitted from Pick Sloan power. The North Central Montana project should be treated similarly, particularly since Montana produces approximately 22 percent of the Pick Sloan power but consumes only 6.5 percent.

The estimated total project cost is \$200 million, the Rocky Boys Reservation portion of which is \$120 million. The bill proposes the federal share of the off-Reservation construction to be 75 percent. The North Central Montana Regional Water Authority has worked with the State of Montana to secure funding for the non-federal share of the capital costs. A portion of the approximate \$20 million non-federal share of the project has already been set aside. The Authority will also be responsible for the cost of operating, maintaining and repairing the off-Reservation portion of the project.

In testimony before the House subcommittee, the Bureau of Reclamation expressed concern about the impact of the project on its budget and suggested a programmatic approach involving a number of federal and non-federal agencies in the funding of regional water systems. The Authority is willing to work with the Bureau to address its funding concerns. The bill has been drafted to include a cost share requirement similar to recent MR&I projects authorized by Congress. We recognize that other federal agencies have a role in ensuring safe drinking water. We also recognize that our North Central Montana communities need this project authorized now. We have a member system which is subject to an administrative order and schedule for water quality compliance, and cannot afford further delay. We ask Congress to authorize this project while we work with the Administration on an equitable funding approach.

The north central Montana communities and the Tribe have been working together on the project development since 1992, having formed an Ad Hoc Committee in 1993. Off-Reservation and Tribal communities worked with the 1999 Montana Legislature to enact legislation allowing establishment of regional water authorities and creating a state regional water system fund. This type of cooperation is needed

to benefit all Montanans. Recognizing the area's need, the State of Montana, local entities and the Tribe agreed to seek federal authorization for the project. This joint commitment is evidenced in the reserved water rights compact negotiated between the Chippewa Cree Tribe, the State of Montana, and the federal government.

Sixteen rural water districts, two water users associations, and several Hutterite colonies originally expressed an interest in the project and paid preliminary fees to demonstrate their earnestness. I have attached to my testimony a list of the participating off-Reservation entities. In addition, more than 145 households not presently served by a water system have expressed interest in receiving water. All of the public water systems on the attached list are members of the North Central Montana Regional Water Authority.

The people of north central Montana and the Rocky Boys Reservation presently do not have a reliable source of water. The proposed regional water system will provide water to an area historically afflicted by water supply and quality problems. We ask this subcommittee's support in passing this important legislation to protect the social and economic future of our region.

Thank you again for the opportunity to testify in support of the Rocky Boys/North Central Montana Regional Water System. I would be pleased to answer any questions.

Senator DORGAN. Mr. Keil, thank you very much for being here. Next we will hear from Bruce Sunchild, Sr., vice chairman, Chippewa Cree Tribe, in Box Elder, Montana.

Mr. Sunchild, you may proceed.

**STATEMENT OF BRUCE SUNCHILD SR., VICE CHAIRMAN,  
CHIPPEWA CREE TRIBE, BOX ELDER, MT**

Mr. SUNCHILD. Mr. Chairman, members of the subcommittee, my name is Bruce Sunchild, Sr. I am the vice chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation and co-chair of the Rocky Boy's North Central Montana Regional Water System coordinating committee. I have a written statement that I have submitted for the record and I will now summarize my remarks.

I would like to thank the honorable chairman of the subcommittee and members of the Subcommittee on Water and Power for scheduling this hearing. I would also like to thank our Senators, Montana Senators Conrad Burns and Max Baucus for introducing this important legislation and for their strong and continued support for this project.

The Chippewa Cree Tribe and North Central Regional Water Authority are jointly seeking enactment of S. 934, Federal legislation authorizing the Rocky Boy's North Central Montana Regional Water System. This water system will provide a safe and reliable municipal rural industrial water supply for the Rocky Boy's Reservation and our neighboring off-reservation communities.

Mr. Chairman, the Rocky Boy's Reservation is a place of tremendous unemployment where 39 percent of the people live below the poverty level. The basic level of infrastructure that most Americans take for granted are lacking on this reservation. One of those areas where we are lacking is that we don't have a good water supply system for municipal, rural or industrial purposes. Unless we can attract businesses to our reservation, we will never create the jobs necessary to establish a sustainable economy.

We certainly cannot do so without an adequate water supply. Presently we don't even have sufficient water for drinking purposes, not to mention sufficient water to attract businesses or to allow our agricultural community to grow. Study after study has identified this as a fundamental issue we must address to have a

permanent viable homeland. Ground water is the primary source of domestic water within the Rocky Boy's Reservation.

In addition to our limited water supply, we lack an adequate water delivery infrastructure system. Of the various sources of ground water on the reservation, only the shallow alluvial bedrock aquifers have limited potential for development. The other ground water sources either exceed the criteria set by the Safe Drinking Water Act, are too expensive to develop, or high concentrations of chloride sodium sulfate, which makes the water undesirable for domestic use.

Wells generally have a low yield, producing 10 gallons per minute or less water. Historically these private wells are used for a period of time and then abandoned due to the decrease in yields. As yields decrease, the water quality also decreases. There are very few alternatives for providing water on Rocky Boy's Reservation. Studies have shown there are simply no reliable sources of surface ground water on the reservation to serve the needs of the reservation. These studies conducted by the tribe, the Bureau of Indian Affairs, and the Indian Health Service, have all concluded that there is a need for a reservation-wide domestic water system.

The water rights of the Chippewa Cree as described in Public Law 106-163, the Chippewa Cree Water Supply Enhancement Act of 1999 ratified the compact entered into by the tribe and the State of Montana. As part of the settlement, the tribe received an allocation of 10,000 acre-feet per year of stored water from the Bureau of Reclamation in Lake Elwell, also referred to as Tiber Dam.

The settlement also provided for an appropriation of \$15 million as recognition of a need for a new tribal municipal water system and to begin development of the future water supply system for the reservation.

The proposed project as authorized by S. 934 is an innovative collaborative solution to the need of both the tribe and the north central part of Montana for an MR&I system. Discussion of the proposed project began during the compact negotiations between the tribe and the State of Montana. It was recognized as a unique opportunity for the tribe and off-reservation neighbors to cooperate for the benefit of both communities. In many areas in this country, competing use of water could create litigation between on- and off-reservation water users. To be cooperating in this manner as we have is unusual and something that we are all proud of.

Water will be diverted from the lake into a common water quality treatment plant. The water will be treated to meet all criteria of the Safe Drinking Water Act. This centralized treatment plant will eliminate the need for each community to build its own treatment plant. It will also simplify the process of upgrading the plant to meet changing requirements of the Safe Drinking Water Act. Because all the water will be treated to standards, reservation residents will uniformly have access to safe drinking water.

A core pipeline will convey the water from the treatment plant to Rocky Boy's Reservation. Smaller distribution lines will then convey the water to various communities and users on the reservation. The tribe proposes to use the \$15 million settlement money to upgrade our existing water delivery systems to receive the imported water.

This project will dramatically enhance the health and quality of life and economic development potential for our reservation and region. This project—

The CHAIRMAN [presiding]. You can just continue to ignore those buzzers.

Senator BURNS. That's for somebody else.

The CHAIRMAN. We ring those to be sure everyone is awake.

[Laughter.]

Mr. SUNCHILD. I appreciate that. This project will allow the Chippewa Cree Tribe members to realize the goal of self-determination and will provide for the first time ever a safe reliable source of drinking water on the reservation, but it will also be the cornerstone of the tribe's current and future economic development plans.

Mr. Chairman, over the course of the last quarter century the Federal Government has strongly urged tribes to settle their water rights and claims so as to quantify the extent of the tribal rights and to create certainty for off-reservation residents. While we did that, we settled on our water rights and the United States ratified that settlement through Public Law 106-163. However, the settlement of water rights only benefits a tribe if there is a method of putting that water to some beneficial use.

The agreement with the West bypassed Indian Country, Mr. Chairman. Additionally, for the last century as States and local governments established water systems, they often forgot about Indian Country, at best. At worst, they endeavored to divert the water system before it reached the reservation. Now that Congress has the opportunity to do the right thing and assist both Chippewa Cree and a dozen non-Indian communities in north central Montana who cannot presently comply with established drinking water standards.

H.R. 1946 created an opportunity to accumulate and negotiate our water rights into a proverbial win-win situation. I must conclude by saying we are concerned by the comments made about this legislation by the BOR at a hearing in April before the House Resources Committee. The problem we have with BOR's previous testimony which may be presented again today is that they seem to be saying that once we settle our water rights claim, it had enacted the Public Law with the Settlement Act, that they should have nothing more to do with the tribes in our region, or surrounding neighborhoods in north central Montana.

The fact is, the powers within the Federal Government decided that the legal liability they may have for not previously protecting our water was such that \$15 million for the water settlement was acceptable, but that a more expensive pipeline and water treatment facility would not be justified based on the strength of our claim. There are speculative estimations led by attorneys concerned with this that costs relate to the damages. They have no connection to what it actually costs to deliver water.

Clearly the fact that the United States agreed in the Settlement Act to reserve 10,000 acre-feet of water for the Chippewa Cree Tribe in the Federal reservoir 50 miles away implied that there would have been a method of delivering the water to the reservation. We would not have agreed to have this water reserved for the tribe if there was not a method of getting it to the reservation. At

this time, at the time of the settlement, it was agreed that issues of delivering water would have to be undertaken through a subsequent act of Congress. We are now at that point in time where we need the subsequent act of Congress.

We are not contending that the United States is legally liable if it does not pay for the water in Tiber to be delivered to the reservation. We are contending that there are moral and common sense reasons why this should happen. The Settlement Act clearly anticipated that we would be returning to this body at a future point in time. It was also sensible to include the surrounding non-Indian communities who are unable to comply with the Safe Drinking Water Act, who are desperately in need of a supply of water.

Mr. Chairman, my written testimony describes the numerous studies that have examined how to get us that 10,000 acre-feet of water from Tiber. I will not summarize those studies at this hearing. It is safe to say that those studies conclude the pipeline system authorized by this legislation is the most viable and preferred alternative. I have a copy here of a study that was submitted, so I will leave that here for the record.

We urge the enactment of S. 934. Again, we appreciate our friends Max Baucus, Conrad Burns for introducing the bill, and hope that you will now quickly mark it up and move it to the floor of the Senate. Thank you again for the opportunity to testify in support of this important and necessary project. I will be pleased to answer any questions.

[The prepared statement of Mr. Sunchild follows:]

PREPARED STATEMENT OF BRUCE SUNCHILD, SR., VICE CHAIRMAN,  
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION, BOX ELDER, MT

Mr. Chairman and members of the Subcommittee, my name is Bruce Sunchild, Sr. I am the Vice-Chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation and Co-Chairman of the Rocky Boy's North Central Montana Regional Water System Coordinating Committee. I would like to thank the Honorable Chairman Byron Dorgan and the members of the Subcommittee on Water and Power for scheduling this hearing. I would also like to thank our Montana Senators, Conrad Burns and Max Baucus, for introducing this important legislation and for their strong and continuing support for this project.

The Chippewa Cree Tribe and the North Central Regional Water Authority are jointly seeking the enactment of S. 934, federal legislation authorizing the Rocky Boy's/North Central Montana Regional Water System. The water system will provide a safe and reliable municipal, rural, and industrial water supply for the Rocky Boy's Reservation and our neighboring off-reservation communities.

NEED FOR THE WATER SYSTEM

This project is essential to our Tribes' goal of establishing a self-sustaining homeland. The Rocky Boy's Reservation, located in north central Montana, consists of more than 120,000 acres, which are home to approximately 3,500 Tribal members who reside on the reservation. We have a rapid population growth rate that exceeds 3% annually. Unemployment on the Rocky Boy's Reservation is extraordinarily high and approximately 39% of Rocky Boy's young, rapidly growing population lives below the poverty level. A dependable source of high quality water is needed to enable Tribal members and other Reservation residents to achieve an adequate standard of living.

The Chippewa Cree Tribe has made important strides in economic development over the past ten years in the areas of production of cattle, grain, timber and tourism. Nonetheless, studies have demonstrated that the reservation cannot sustain its current rate of growth, much less provide for economic growth, without additional supplies of water for drinking, agricultural and municipal and industrial purposes. Proposed expansions of our tribal college and other enterprises also cannot proceed until new, firm water supplies are located. The Indian Health Service has concluded

that an imported water supply is the only viable option for supplying long-term Tribal Municipal, Residential, and Industrial (MR&I) needs.

A safe and reliable water supply is a cornerstone of economic development. The assurance of an adequate supply of high quality municipal, rural and industrial water will enable the Tribe to pursue current and future economic development. It will also allow current and future Reservation residents to enjoy a higher quality of life through improved health conditions, more employment opportunities, and an overall increased level of economic development.

THE ROCKY BOY'S/NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM  
IS THE BEST ALTERNATIVE

Groundwater is the primary source of domestic water within the Rocky Boy's Reservation. In addition to our limited water supply, we lack an adequate water delivery infrastructure system. Of the various sources of groundwater on the Reservation, only the shallow alluvial and bedrock aquifers have limited potential for development. The other groundwater sources either exceed the criteria set by the Safe Drinking Water Act, are too expensive to develop or have high concentrations of chloride, sodium, and sulfate which make the water undesirable for domestic use.

Although the quality of the water in the shallow alluvial aquifer is generally acceptable, the quantity is inadequate. Wells in this aquifer generally have low yields, producing 10 gallon per minute or less of water. Historically, these private wells are used for a period of time and then abandoned due to decreasing yields. As yields decrease, the water quality also often decreases. Furthermore, these wells are frequently connected hydrologically to the major water courses where the potential for pollution is significant. Recently, drought relief monies were obtained to build new wells for the current municipal system. However, lack of recharge to the shallow bedrock aquifers on the Reservation severely limits water yield.

There is simply not enough good quality groundwater to meet the Tribe's current needs, much less our future needs. Surface water sources are also limited in quantity, cannot provide a reliable source of water and are allocated to irrigation. As a result, many Tribal members have to haul water for their domestic use.

There are very few alternatives for providing water to the Rocky Boy's Reservation. Studies have shown there are simply no reliable surface and groundwater on-reservation sources to serve the needs of the Reservation. These studies, conducted by the Tribe, the Bureau of Indian Affairs, and the Indian Health Service, have all concluded that there is a need for a Reservation-wide domestic water supply system.

TRIBAL WATER RIGHT

The water right of the Chippewa Cree Tribe, as described in Public Law 106-163, the "Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999," ratified the Water Compact entered into by the Tribe and the State of Montana. As part of the water settlement, the Tribe received an allocation of 10,000 acre-feet per year of stored water from the Bureau of Reclamation in Lake Elwell, also referred to as Tiber Reservoir. The settlement also provided for an appropriation of \$15 million as recognition of the need for a new Tribal municipal water system and to begin development of a future water supply system for the Reservation.

THE PROJECT

The proposed project is an innovative and collaborative solution to the need of both the Tribe and the north central part of Montana for an MR&I system. Discussion of the proposed project began during the compact negotiations between the Tribe and the State of Montana. It was recognized as a unique opportunity for the Tribe and its off-reservation neighbors to cooperate to the benefit of both communities. In many areas of this country, competing uses of water would create litigation between on and off-reservation waters users. To be cooperating in the manner we have is unusual and something that we are all proud of.

Lake Elwell is a Bureau of Reclamation facility located 50 miles west of the Rocky Boy's Reservation. The availability of thousands of acre feet of unallocated water in Tiber Reservoir provides the opportunity to meet the water needs of the Tribe and neighboring north central regional communities. P.L. 106-163 allocated 10,000 acre-feet per year of water from the lake to the Tribe.

Water will be diverted from the lake into a common water quality treatment plant. The water will be treated to meet all of the criteria of the Safe Drinking Water Act. This centralized treatment plant will eliminate the need for each community to build its own treatment plant. It will also simplify the process of upgrading the plant to meet changing requirements of the Safe Drinking Water Act. Be-

cause all of the water will be treated to standards, Reservation residents will uniformly have access to safe drinking water.

A core pipeline will convey water from the treatment plant to the Rocky Boy's Reservation. Smaller distribution lines will then convey the water to the various communities and users on the Reservation. The Tribe proposes to use our \$15M in settlement monies to upgrade our existing water delivery system to receive the imported water.

The estimated total cost of the project is \$200 million. The tribal portion of the project is estimated at \$120 million. All costs of the reservation system, including operation and maintenance, will be a federal responsibility.

This project will dramatically enhance the health, quality of life and economic development potential of our Reservation and region. This project will allow Chippewa Cree Tribal members to realize their goal of self-determination and will provide, for the first time ever, a safe and reliable source of drinking water on the Reservation. It will also be the cornerstone for the Tribe's current and future economic development plans. I urge your support for this project.

#### HISTORICAL PERSPECTIVE

Mr. Chairman, in the landmark 1908 decision where the Winters Doctrine was established, the Supreme Court ruled that when the United States established federal Indian reservations, there had to be sufficient water reserved for the tribes to establish those reservations as permanent tribal homelands. Over the course of the last quarter century, the federal government has also strongly urged tribes to settle their water rights claims so as to quantify the extent of the tribal right and create certainty for off-reservation residents who will almost certainly have a junior water right to the tribe. Well, we did that. We settled our water rights and the United States ratified that settlement in P.L. 106-163. However, the settlement of a water right only benefits a tribe if there is a method of putting that water to some beneficial use. The greening of the west bypassed Indian country, Mr. Chairman. Additionally, for the last century, as state and local governments established water systems, they too often forgot about Indian country—at best. At worst they endeavored to divert our water before it reached the reservations. Now the Congress has an opportunity to do the right thing and to assist both the Chippewa Cree Tribe and the dozens of non-Indian communities in North Central Montana who cannot presently comply with established drinking water standards. H.R. 1946 creates an opportunity to culminate the negotiation of our water rights into a proverbial win-win situation.

#### RESPONDING TO BOR'S CONCERNS

We are concerned by comments made about S. 934 (or more specifically, about H.R. 1946, the House counterpart bill) by the BOR at a hearing in April before the House Resources Committee. The problem we have with the BOR's previous testimony—which may be presented again today—is that they seem to be saying that once we settled our water rights claim and had it enacted into law (P.L. 106-163 or "Settlement Act"), that they should have nothing more to do with our Tribe, our region, or our surrounding neighbors in north central Montana. The fact is that the powers that be within the federal government decided that the legal liability they may have for not previously protecting our water was such that a \$50 million water settlement was acceptable but that a more expensive pipeline and water treatment facility could not be justified based on the strength of our claim. These are speculative estimations made by attorneys concerned with costs related to damages; they have no connection to what it costs to actually deliver water. Clearly, the fact that the United States agreed in the Settlement Act to reserve 10,000 acre feet of water for the Chippewa Cree Tribe in a federal reservoir that is 50 miles away implied that there would have to be a method delivering that water to the reservation. We would not have agreed to have this water reserved for the Tribe if there was not going to be a method of getting it to us. At the time of the Settlement Act, it was agreed that the issue of delivering water would have to be undertaken through a subsequent act of Congress. We are now at that spot in time where we need the subsequent act of Congress. We are not contending that the United States is "legally liable" if it does not pay for the water in Tiber to be delivered to the reservation; we are contending there are moral and common sense reasons why this should happen and the Settlement Act clearly anticipated that we would be returning to this body at a future point in time. It also makes sense to include the surrounding non-Indian communities who are not able to comply with the Safe Drinking Water Act and who are desperately in need of a supply of water.

We are submitting to the Committee the results of a comprehensive study funded by the EPA and the state of Montana that we undertook in conjunction with HKM

Engineering. BOR provided technical oversight to this investigation. This study examined alternatives on a region-wide basis (as opposed to on-reservation only), which is what S. 934 would authorize. This study determined that transporting water from the Tiber Reservoir to serve the Reservation and the 10,700 square mile service area that comprises the North Central Montana Regional Water System—7.3 percent of the total land area of the state of Montana—to be the preferred alternative. This is the regional MR&I system supported by the Tribe and State in the negotiated water rights compact.

The Settlement Act authorized two additional studies to analyze water development alternatives in North Central Montana. One study, involving the Tribe, evaluated options for developing a “Tribal Only” MR&I water system serving the Rocky Boys Reservation. The other investigation, conducted solely by BOR, was a regional feasibility study evaluating alternatives to meet the water needs of North Central Montana.

The Chippewa-Cree Tribe strongly involved the Bureau of Reclamation in the “Tribal Only” MR&I study. This was because this federal agency questioned whether Tiber Reservoir should be the preferred source of water supply for the previously discussed North Central Montana Regional Water System. The Tribe subcontracted \$155,000 of the study back to BOR to evaluate the other potential sources of supply and to complete environmental and economics work tasks. No preferred option to Tiber Reservoir was identified.

The BOR regional feasibility study has not yet been completed but has identified no alternative firm water supply for the Rocky Boys Reservation or the surrounding communities in North Central Montana.

It should also be observed that Article VII of the Chippewa Cree-Montana Water Rights Compact entered into by my Tribe and the State of Montana on April 14, 1997 (Section 85-2-235 of the Montana Code Annotated) which was ratified by the United States via enactment of P.L. 106-163, contains language in Section A(3)(b) and (c) authorizing the Chippewa Cree Tribe to withdraw as a party to the Compact, “if the municipal, rural and industrial water supply system identified as the preferred alternative by the feasibility study to serve the Rocky Boy’s Reservation, or an equivalent water supply system as determined by the Tribe is not authorized or appropriated” [within certain time frames]. We are aware that we were required to waive this right to withdraw via Section 5(a) of the Settlement Act (unless the entire compact should be declared void) but it is important for you to understand that when we negotiated our compact with the state of Montana, it was clearly our understanding that the construction of an MR&I system and the delivery of water to that system were critical components of that agreement.

The BOR’s previous statement expressed concern that a finding provision in H.R. 1946 (Section 2(a)(2)), stating that the U.S. has a trust responsibility to ensure an adequate supply of water to meet the needs of the reservation establishes some sort of newly created liability should they not deliver that water. The BOR doesn’t seem to understand that the federal government, pursuant to its general trust responsibility to the Indian tribes of this country, already has the power to assist tribes in obtaining sufficient water for permanent tribal homelands, and it should do so. The Supreme Court has already made that quite clear and there was no intent in including that point to expand existing law, merely to reiterate it. If the BOR is particularly concerned with this provision, we are not averse to having it stricken from the bill.

Finally, it is disconcerting to the Tribes that the BOR, which has been involved in constructing numerous municipal water systems and was continuously involved in the several studies, is challenging the preferred alternative without any acceptable alternative. Our neighbors and we are asking for the assistance of the United States in dealing with a serious region-wide problem while at the same time putting to beneficial use the 10,000 acre feet of water that has been reserved for us by the federal government in the Tiber Reservoir. We urge the enactment of S. 934.

Again, we appreciate that our friends Max Baucus and Conrad Burns introduced this bill and we hope that you will now quickly mark it up and move it on to the floor of the Senate. Thank you again for the opportunity to testify in support of this important and necessary project. I would be pleased to answer any questions.

The CHAIRMAN. Thank you very much.  
Mr. Raybould, why don’t you go right ahead.

**STATEMENT OF JEFF RAYBOULD, CHAIRMAN, BOARD OF DIRECTORS, FREMONT-MADISON IRRIGATION DISTRICT, ST. ANTHONY, ID**

Mr. RAYBOULD. Thank you, Mr. Chairman, members of the committee. My name is Jeff Raybould. I am the chairman of the Fremont-Madison Irrigation District, and I am here today in support of S. 2556.

Fremont-Madison Irrigation District saw title transfer as an opportunity that we might be able to save a modest amount on our O&M expense, that we could provide additional water to our irrigators in our district, and also work to improve conditions on the river.

Early on, Fremont-Madison decided the best way to go about this was to do this out in the open. Initially our chairman and the BOR area manager went before the Henry's Fork Watershed Council, which is the group of State agencies and private entities and organizations that work together to help better manage the Henry's Fork Watershed, and we laid out our plans to transfer all of our facilities that we have a contract with the Bureau for to the district. We had a lot of open discussion about how this might come about and how it might work in the future with the district having ownership of the facilities.

The Henry's Fork Foundation, a local environmental group, stepped forward and said that they could see opportunities that would be available by the district having title, and wanted to work with us to achieve title of all of our facilities. They brought in Bruce Driver as an advisor. He is from the Land and Water Fund of the Rockies, and he worked with the Henry's Fork Foundation and Fremont-Madison Irrigation to try and devise a memorandum of agreement of how we would operate after title transfer.

This process included regular reports back to the watershed council. We had a special meeting in June 2000 to discuss title transfer with all the participants of the watershed council, and the MOA that was being negotiated with the Henry's Fork Foundation. At the June meeting it became evident that even the Henry's Fork Foundation was going to have trouble supporting title transfer of the reservoirs, Island Park and Grassy Lake. The other organizations too had doubts about whether that would be a good thing to do at this time.

But there wasn't any opposition to the transfer of the Cross Cut Diversion Dam, the Cross Cut Canal, the Teton Wells, and the associated water permits. Based on the feedback that we got working through this process with the watershed council and the Henry's Fork Foundation, we decided to move forward with a limited transfer bill that transfers only the Cross Cut Diversion Dam, the canal, and the wells.

We have begun the process of doing the required NEPA work for this transfer and we continue to have outreach with the local stakeholders. Now the local stakeholders have raised some concerns about whether this would be a good thing to do, whether Fremont-Madison having the existing wells and possibly drilling additional wells might have impacts on the river. We believe that we can mitigate those impacts and that this title transfer should not be held up on the technicality that there potentially could be im-

pact some day. We believe that the State of Idaho has the ability to regulate the water that might be withdrawn from the aquifer and see that no one is injured from any additional development that may occur.

Mr. Chairman, committee members, Fremont-Madison has a long history of working with all the people in the area to do what's best for the river while providing a water supply to our irrigators. We put a lot of time and energy into this watershed council and we believe that we have made improvements to the environment as well as supplied water to our irrigators, and we pledge our continued support to do that, even after this title transfer process is completed, and would hope that this committee could recommend to the full committee that the bill have an opportunity to be looked at by the full Senate and voted on this session.

I appreciate your time today and will be willing to answer any questions that you may have.

[The prepared statement of Mr. Raybould follows:]

PREPARED STATEMENT OF JEFF RAYBOULD, CHAIRMAN, BOARD OF DIRECTORS,  
FREMONT-MADISON IRRIGATION DISTRICT, ST. ANTHONY, ID

Mr. Chairman, Members of the Subcommittee, I am Jeff Raybould, Chairman of the Board of Directors of the Fremont-Madison Irrigation District (FMID) in Idaho. I am here to testify in support of S. 2556.

This legislation would require the Secretary of the Interior to convey certain facilities to our District pursuant to the Memorandum of Agreement with the Bureau of Reclamation. These facilities include: the Cross Cut Diversion Dam, the Cross Cut Canal and the Teton Exchange Wells.

FMID was created under the laws of the State of Idaho in 1935 to enter into a repayment contract with the United States Bureau of Reclamation for the construction of Island Park Dam, Grassy Lake Dam and the Cross Cut Diversion Dam and Canal. The forty year repayment contract was paid out in 1979 by the spaceholders of FMID.

FMID provides a supplemental water supply to approximately 1,500 water users irrigating approximately 200,000 acres associated with the original Island Park and Grassy Lake projects as well as the failed Teton Dam project. Forty canal companies existed prior to the creation of FMID. The canal companies supply the natural flow water (primary water supply) to lands of their stockholders. They also conduct their own operation and maintenance. Most of the lands served by FMID are also lands of the canal companies. The FMID uses these canal companies to deliver storage water.

In 1993, FMID and the Henry's Fork Foundation, a local environmental group, helped form the Henry's Fork Watershed Council which is a grassroots community forum that uses a non-adversarial, consensus-based approach to problem solving and conflict resolution among citizens, scientists, and agencies with varied perspectives.

FMID originally submitted a resolution to the Bureau of Reclamation, requesting transfer of title from Reclamation to FMID of Island Park Dam, Grassy Lake Dam, Cross Cut Dam and Canal and the Teton wells. FMID worked closely with the Henry's Fork Foundation to develop a consensus on how title for all these facilities could be transferred.

In the course of this effort, the Watershed Council held a special meeting in June, 2000 to discuss the transfer of facilities. At this time, there was no opposition expressed to title transfer of the Cross Cut Dam and Canal and the Teton wells from any representative of the Watershed Council, including the Henry's Fork Foundation and the Greater Yellowstone Coalition. As a result of these consultative discussions, FMID has decided at this time to only go forward with seeking title to the Cross Cut Dam and Canal and the Teton wells.

The Cross Cut Dam is located on Henry's Fork of the Snake River which diverts water into the Last Chance and Cross Cut Canals. It is a concrete gravity weir with a structural height of 17 feet and a total length of 457 feet. It was completed in 1938. The Cross Cut Canal begins at the Cross Cut Dam. The canal is approximately 7 miles long with a capacity of 600 cubic feet/second (cfs) at the head.

The canal diverts storage water from the Henry's Fork near Chester and conveys it to the Teton River. In addition to conveying storage water to users on the Teton

River, the canal also conveys natural flow water to some of the lands within the Fall River Irrigation Company system. A portion of the Cross Cut Canal was constructed through the already existing Fall River Canal. FMID has operated and maintained the canal since it was built. FMID and Fall River jointly employ a canal manager to address operation and maintenance needs.

Five Teton Exchange Wells were constructed by the Bureau of Reclamation in the early 1970's as part of the Lower Teton Division. They were designed to provide groundwater in exchange for water storage in Teton Reservoir. Failure of the Teton Dam in June, 1976 made the constructed wells the only supplemental water source available to irrigate the lands affected by the Teton Dam failure.

In 1977, FMID and the Bureau entered into a contract to allow the use of the wells as a backup water supply in drought years. This contract provides for the use of wells, pumps, motors and appurtenant facilities over a 25 year period.

Water from the five wells is pumped into the lower Henry's Fork system to augment supplemental irrigation water supply for FMID in dry years. FMID pays for all operation, maintenance and replacement costs.

FMID has conducted extensive outreach with local entities in response to the proposed title transfer and we will continue to do so as the process moves forward. We would like to address four concerns that have recently been raised by local environmentalists:

(1) First, the only facilities authorized for transfer are the Cross Cut Dam and Canal and the Teton Wells. Island Park and Grassy Lake Dams are not included.

(2) Second, it has been suggested that additional conservation flows be designated for the Henry's Fork. This should not be a condition for title transfer, but we will continue to work with all local stakeholders to address this issue.

(3) Third, the Secretary is required to complete all actions as required under the National Environmental Policy Act. At the request of local environmental groups, the Bureau of Reclamation has already initiated this process. The ultimate level of review will be determined in accordance with this law.

(4) Fourth, it has been suggested that the legislation be delayed so that a comprehensive plan for drought management can be developed. We are committed to working on drought management with all local stakeholders. Legislative consideration of our title transfer proposal should not be delayed. In fact, enactment of this bill would free up resources for us to devote to drought management strategies.

This concludes my remarks. Thank you for allowing me to appear before your subcommittee today. I would be pleased to answer any questions you might have.

The CHAIRMAN. Thank you very much.

Mr. Carlson, why don't you go right ahead?

**STATEMENT OF PETER CARLSON, COORDINATOR,  
SMALL RECLAMATION PROGRAM ACT COALITION**

Mr. CARLSON. Mr. Chairman, members of the subcommittee, my name is Peter Carlson. I am president of the firm of Will & Carlson, Inc., a Washington, D.C. government relations firm specializing in natural resources issues.

I would like to submit a letter of support for this legislation from the Association of California Water Agencies for the record as well.

The CHAIRMAN. We will include that letter in the record.

Mr. CARLSON. Thank you. I also have with me today Roger Shimpaku from California and Tim Clark from Arizona, two of the leading experts on the implementation of small reclamation projects out west.

I am appearing today as the coordinator of the coordinator of The Small Reclamation Coalition, which is made up of the National Urban Agriculture Council, the Western Coalition of Arid States, the Oregon Water Resources Congress, and the Eastern Municipal Water District in Southern California.

At the outset let me state our strong support for S. 1882, the Small Reclamation Water Resources Act of 2001, and express our

appreciation for your holding this hearing, and Senator Gordon Smith for introducing the legislation.

The proposed amendments represent an 8-year effort to restructure the program and provide Western water users with new options for addressing their water related needs. Growth and the aging of the infrastructure out West are the driving forces for this legislation. There is presently not in place an active small reclamation loan program at the Bureau of Reclamation that is accepting proposals for projects. As a result, there is a project gap between the larger reclamation project that is typically before your subcommittee and the smaller programs that reclamation offers such as technical assistance. The Small Reclamation Water Resources Act of 2001 will close that gap.

The amendments contained in S. 1882 address these issues in the following manner: No longer requiring irrigation as a project purpose in the program will allow for the development of projects in the urban-rural crossover setting that are more economically and environmentally sound.

Providing additional definition and expansion of the activities which can be undertaken through the program, especially for rehabilitation and betterment and in the area of water quality improvements will help address aging infrastructure problems as well as developing new opportunities to make better use of existing supplies without the need to create new water supply structures.

Streamlining of the proposal process and the establishment of a definite schedule for the proposal processing will give water users greater program confidence and certainty.

The establishing of a new smaller partnership program under title II of the SRPA amendments and the activities that can be carried out under the program will facilitate problem solving in a manner that gets the work done sooner before more problems develop.

We see this as a \$40 to \$60 million a year program with respect to the Bureau of Reclamation's water and related resources budget. We appreciate the decision to increase the ceiling in the program from \$359 million to \$1.3 billion. This is one of the major changes in S. 1882 from legislation introduced in the past Congresses. S. 1882 calls for \$900 million to be made available to carry out projects under title I of the amendments, \$300 million for title II, and \$100 million for title III.

These numbers are not without foundation. When the program was suspended in 1995, there were notices of intent for projects totaling approximately \$450 million. Approximately \$170 million of this total was for Native American projects. We conducted an electronic survey of 1,000 water users in the West and received responses to our survey from 12 of the 17 States indicating a strong interest in using both title II and title I of the proposed amendments, further justifying the need for a ceiling increase.

We have also received responses to the idea contained in S. 1882 of setting aside up to 20 percent of the proposed ceiling in the program for Indian tribes and economically disadvantaged communities, an approach the water community strongly supports. The continuation of the Bureau of Reclamation small reclamation loan program with the changes made by S. 1882 is the most important

and appropriate course to take at this time. There is strong interest out there and a belief that the small reclamation loan program is the best vehicle to accomplish the work for helping address the rural-urban Indian population and water and environmental needs in the west.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Carlson follows:]

PREPARED STATEMENT OF PETER CARLSON, COORDINATOR,  
SMALL RECLAMATION PROGRAM ACT COALITION

Mr. Chairman, Members of the Subcommittee, my name is Peter Carlson, I am President of the firm Will & Carlson, Inc., a Washington, D.C. governmental relations firm specializing in natural resource issues. I am appearing today as the coordinator of the Small Reclamation Program Act Coalition which is made up of the National Urban Agriculture Council (NUAC), the Western Coalition of Arid States (WESTCAS), the Oregon Water Resources Congress (OWRC) and the Eastern Municipal Water District in Southern California (EMWD).

At the outset, let me state our strong support for S. 1882, the Small Reclamation Water Resources Act of 2001 and express our appreciation for your holding this hearing and Senator Gordon Smith for introducing the legislation. The proposed amendments represent an eight year effort to restructure the program and provide western water users with new options for addressing their water resource related needs.

The Small Reclamation Program Act was last amended in 1986, and the amendments were appropriate for that time. The changes proposed by S. 1882 build on what we, the water users, have learned since that time and will make this an even better program from an environmental, business and socio-economic standpoint.

According to the Western Water Policy Review Commission report from 1998 "Once the outpost of a young nation, today's West is home to nearly one-third of the American population. The region has experienced rapid population growth in recent years: western states grew by about 32 percent in the past 25 years, compared with a 19-percent rate in the rest of the nation. By the year 2025, the West will add another 28 million residents."

A more recent report from the University of Colorado's Center of the America West, of 11 Western states (California, New Mexico, Wyoming, Washington, Idaho, Utah, Arizona, Oregon, Colorado, Montana, Nevada), indicated that the 2000 census counted 61.4 million people in the Western states—a 21 percent increase from 1990. By 2050, 109 million people will live in the Western States, the study estimates.

This Westward growth is why S. 1882, is so vitally important. There is presently not in place an active Small Reclamation Loan Program at the Bureau of Reclamation that is accepting proposals for projects. From our perspective, the proposed amendments would bring a number of important changes to the existing program that would help address the issues related to growth in the West. This decision, amending the Small Reclamation Loan Program, is an important step in investing in the West and putting in place a revitalized program that western water users can use to address the various needs associated with growth, whether they be water supply, water conservation, water quality, environmental or social purposes. There is currently a program gap between the larger Reclamation project that is typically before your Subcommittee and the smaller programs that Reclamation offers, such as technical assistance. The Small Reclamation Water Resources Act of 2001 will close that gap.

The amendments contained in S. 1882 address these issues in the following manner:

1. No longer requiring irrigation as a project purpose in the program will allow for the development of projects in the urban-rural crossover setting that are more economically and environmentally sound. This is precisely the area of greatest need for support in development of small projects.
2. Providing additional definition and expansion of the activities which can be undertaken through the program, especially for rehabilitation and betterment and in the area of water quality improvements. This will help address aging infrastructure problems as well as developing new opportunities to make better use of existing supplies, without the need to create new water supply structures.
3. The streamlining of the proposal process, and the establishment of a definite schedule for proposal processing will give water users greater program con-

fidence and certainty. Proposals will no longer languish in the bowels of the bureaucracy only to then have to wait years for an answer on whether there is a Federal interest in the proposed work.

4. The establishing of a new, smaller partnership program under Title II of the SRPA amendments, and the activities that can be carried out under the program. This will facilitate problem solving in a manner that gets the work done sooner before more problems develop, through the work being carried out by the project sponsor within 18 months and a shortened repayment period.

5. The reduction of the repayment period for Title I projects from 40 years to 25 years will also bring the program in line with current business practices in the private sector and lessen the financial exposure to the Federal government.

6. Connecting the proposed work to organizations that have legal authority and responsibility for such work on their projects, and making sure that work is consistent with applicable State water law will keep the program focused and more accountable.

As part of the discussions with the organizations I represent, which helped in the development of the ideas embodied in S. 1882, some have questioned whether the Bureau's Budget would be able to accommodate this program. Western water user organizations have been working successfully on the Energy and Water Appropriations bill through our "Invest In the West" campaign to increase the allocation for the Bureau of Reclamation's Water and Related Resources program. Given the construction schedules associated with the program and the decision-making process that is built into the legislation, we see this as a \$40 to \$60 million a year program. We believe the Bureau of Reclamation should be able to accommodate such a level, given the changes to the program proposed by these amendments.

We appreciate the decision to increase the cost-ceiling in the program from \$359 million to \$1.3 billion in order to accommodate the interest out in the West for the program. This is one of the major changes in S. 1882 from legislation introduced in past. S. 1882 calls for \$900 million to be made available to carry out projects under Title I of the amendments, \$300 million for Title II and \$100 million for Title III. These numbers are not without foundation.

When the program was suspended in 1995 there were Notices of Intent for projects totaling approximately \$450 million. Approximately \$170 million of this total was for Native American projects. There were another ten projects that were in or about to enter the construction phase, the last three of which are being completed by this years appropriations.

At the end of the 106th Congress we conducted an electronic survey, based on similar legislation in the last Congress, to assess the interest in the programs that would be developed under this legislation. Historically 15 of the 17 Western states have used this program. We received responses to our survey from water users in 12 of the 17 states indicating a strong interest in using both Title I and Title II of the proposed amendments.

Since that time I have also received responses to the idea contained in S. 1882 of setting aside up to 20% of the proposed ceiling in the program for Indian Tribes and economically disadvantaged communities, an approach the water community strongly supports. These amendments also open the program up to Hawaii, Alaska and the Insular areas so their water needs can be addressed as well, an idea that we also support.

Another 1998 recommendation of the Western Water Policy Review Commission was "Given the declining federal budgets, innovative sources of funding and investment, including public and private partnerships, must be found for the management and restoration of western rivers."

Part of the reason for including a section in this bill on guaranteed loans is to explore the initiation of a new loan guarantee section under the Act. The Federal Government has approximately forty guaranteed loan programs listed in the Federal Budget. The Loan Guarantee section of these amendments is to open the door for a new, innovative approach to assist in funding projects. We believe that making available such a new financial tool for the Bureau to explore and make use of (loan guarantees) could benefit the water users in the West by having projects developed in a more timely manner while we all continue to work together to increase the financial resources for the Bureau of Reclamation for other projects in the program. As we stated earlier, we don't envision this program being a heavy financial burden on the Bureau of Reclamation's Water and Related Resources budget, but we are willing to work with the Bureau to explore new ways, such as this proposal, to see if there are financial innovations that work in meeting our needs.

I would like to address the issue of whether the Bureau of Reclamation should or shouldn't be in the loan business. Why is it that almost every Federal agency has a loan program, to assist in carrying out their activities, yet in past comments on the program the Bureau of Reclamation claims "the current loan process (at Reclamation) suffers from a lack of trained credit officers to monitor loans as well as assist in determining economic feasibility, repayment terms, maturity dates, and interest rates . . . . Reclamation would continue to be in the business of developing repayment contracts and engaging in loan collection activities, two tasks for which the private sector is better suited than the Federal Government." The former Administration made great claims about Reinventing Government. Why can't Reclamation learn from the best of what other Federal agencies do with their loan programs and in turn benefit the public from a reinvention in their loan program? This is part of the reason why S. 1882 is so important in terms of the prescriptiveness of the process, decision making time frames and the need to rewrite the guidelines for the new program

Some would like Reclamation just to be in the grant business. We don't believe that would be a good idea. From FY91 to FY99 Reclamation provided approximately 4,600 grants worth about \$750 million. Unless you tie the grants down like S. 1882 would do through the amendments to the program, I believe that a grant only program would be a recipe for waste and abuse. If the Bureau has such experience with grants, which I have been told are more burdensome to administer, and have so few loans, it would seem like they can figure out how to make a loan program work better from an administrative standpoint.

#### CONCLUSION

The continuation of the Bureau of Reclamation's Small Reclamation Loan Program, with the changes made by S. 1882 is the most important and appropriate course to take at this time. Based on the details in the Western Water Policy Review Commission report, our survey and meetings and conversations with water users in the West, there is a strong interest out there for a program that can help address the needs of the West, and a belief that the Small Reclamation Loan Program is the best vehicle to accomplish the work. Investing in the West through the proposed amendments to the program will be the best step forward into the 21st Century for helping the rural, urban, Indian population and the water and environmental resources of the West.

The CHAIRMAN. Thank you very much, and let me call on Senator Craig for his questions at this point.

Senator CRAIG. Mr. Chairman, thank you very much. Gentlemen, thank you all for your testimony.

Jeff, let me address a couple of questions to you, and I think I will mainly focus on something that we are both aware of that I think you have addressed in part, but it's an editorial that appeared in an Idaho newspaper about this legislation. This editorial appeared to be written directly from certain environmental groups talking points more so than from the whole value of what we're attempting to do here, and I believe it contained many inaccuracies such as saying that the Idaho congressional delegation rejects requests from environmentalists to testify on the bill.

As I understand it, there was an environmental group which testified about the bill during the hearing for the House of Representatives had on similar legislation, and my office frankly has never heard from any of those groups that has made request for the committee, or they would be seated there with you today.

Let me quote from the editorial and see if you have a response. It says: "This legislation could be interpreted to in the future include the Island Park and Grassy Lake Reservoirs." Do you read that or is it the understanding of the irrigation districts that the intent of this is to acquire and/or transfer within this legislation that, or set a precedent for that purpose?

Mr. RAYBOULD. Mr. Chairman, Senator Craig, that is not our intent nor is that the way we read that section of the legislation. However, if a clarification can be made, and I believe that they did make a clarification over on the House side by relisting the exact facilities that were to be transferred, we would be amenable to that. That wouldn't be a problem for us at all.

Senator CRAIG. Okay. It says that only five of the 45 wells in the Teton Basin District are now operable and those additional wells—as those additional wells are brought on lines and possibly expanded, some fear they will diminish flows in the Lower Henry's Fork and the Teton River. They also ask how operating more wells will affect people using surface and ground water for irrigation areas. You partially addressed that by the role that the State plays in monitoring and/or the issuance of permits for drilling and water rights within those areas. Would you care to address that any further?

Mr. RAYBOULD. Mr. Chairman, Senator Craig, the opportunity to develop more ground water with the existing State permit is there. However, before we can do that, we're going to have to go to the Idaho Department of Water Resources and secure drilling permits for the number of wells that we want to drill. There will be an opportunity for anyone to come to the Department at that time and protest whether those drilling permits are issued or not, and explain why. And we will have the opportunity to show whether or not we believe there will be injury, if there is any injury to occur, how we would mitigate for that injury, and it's our intention to put forth a mitigation plan that would take care of any potential impacts to ground water or river flows prior to any further development of that permit.

Senator CRAIG. Lastly, Mr. Chairman, it said: "Land never intended to be irrigated in the Fremont-Madison District could be conceivably covered in this legislation." I didn't even understand that comment in general, but your reaction to it?

Mr. RAYBOULD. Mr. Chairman, Senator Craig, that's an inaccurate statement. There has been some confusion over the years about what the exact boundaries of the Fremont-Madison Irrigation District are. A substantial amount of land was annexed into the district on the anticipation of the completion of the construction of the Teton Dam. As you may or may not be aware, that dam failed on June 5, 1976, and was not reconstructed. Those lands were already annexed into the district and have been provided a supplemental water supply by these wells that we're talking about, as well as the existing supply that we have in Island Park and Grassy Lake Reservoirs, and we are not intending to bring any more land into the district, or water any land that the Bureau of Reclamation isn't aware was either part of the original boundaries of the district or this annexation which took place with Teton.

Senator CRAIG. Thank you for those questions. Let me comment in closing for the record, Mr. Chairman, that as I have been a part of transferring irrigation districts to title once they have been paid out, as is the case here, the thing that is most unique about Fremont-Madison is that they have looked very closely at all of these other transfers, looked at their problems, and from the very beginning, they chose a very open public process. By incorporating in

that the Henry's Fork group and allowing full public participation in a very transparent process, so my compliment to them for the way they worked this issue.

We all know the importance of water in the West. They recognize that. They also recognize the role that it plays for things other than irrigation, and I think that's why they moved in such an open and public way to ultimately bring us to this legislation. I want to thank Jeff and his organization for that approach.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Before I call on Senator Burns, let me just ask one question, if I could, Mr. Raybould. We do have this written statement that has been submitted for the record and in fact we have a series of statements here. We have six different statements of written testimony to be submitted, some related to this legislation, some to other bills being considered at this hearing.

This is from the Henry's Fork Foundation and the conclusion is, it says, "The HFF would like to request that the current legislative proposal be delayed while the various stakeholder groups are convened to see if there might be an alternative that meets everyone's needs."

Now you have undoubtedly seen that testimony. Could you respond to that suggestion?

Mr. RAYBOULD. I would be happy to, Mr. Chairman. We have been working on this for over 4 years and we believe that we have come to a point where we have resolved as many of the differences as we can. We don't think there are any significant issues out there left to be dealt with. This is a transfer of a diversion dam, a canal and some wells and we would like to see it proceed.

We know there's other issues out there. We're in a drought. There is not enough water to go around. As I said in my statement, we are committed to work with the Henry's Fork Foundation and all the other stakeholders to work through these issues and do the best job we can with the limited flexibility that we have.

The CHAIRMAN. Thank you very much.

Senator Burns.

Senator BURNS. Thank you very much, Mr. Chairman. I will just—I want to first of all thank Dan Keil, Bruce Sunchild, and the delegation from Montana who've come back to testify on behalf of the legislation to complete the water distribution system up in north central Montana.

You know as we look at this, this is not a new idea and it's not a new project. We're not starting from ground level. We already have projects established there. Right now we are just looking for a system to manufacture more water and distribute it more efficiently. But the State has made the commitment to this project and so have the local communities.

And I want to personally thank Dan Keil for coming back because Dan has been, ever since I've been around, he has been dealing with rural water districts, 30 years experience on it, and Dan knows that you just cannot take on a project like this unless it has strong local support and people who are willing to invest not only their time and talent, but their resources into making it work. So I appreciate that.

But we're just building on a system that is already there, and it is not a new idea, not a novel idea, so we just appreciate your help and support on this. There are some minor things we will have to work out with the BOR and I think we can do that, working together with the communities and the delegation, we can do that now.

As far as getting it passed this year, it looks like the platter may be kind of full when we come back, but who knows. We may see the floodgates open up and all kinds of positive things happen. But Bruce and Dan, I appreciate you making this trip today and this testimony, and we will continue to work with you as this project moves forward.

Thank you, Mr. Chairman, and I appreciate scheduling the hearing, and I think it will be one of those areas we might be ready for a mark when you reconvene the full committee after we come back and after the August break, and we will work pretty hard in August trying to work out the kinks in this thing to where it's acceptable to all parties, and I thank you for that.

The CHAIRMAN. Thank you very much. Let me thank all these witnesses and go ahead and dismiss this panel, and call the final panel, made up of the Honorable Martin Chavez, the mayor of the city of Albuquerque, and Wayne Halbert, who is the manager of the Harlingen Irrigation District.

I failed to recognize also that Dr. Peter Scholle, the director and State geologist for New Mexico, with our New Mexico Institute of Mining and Technology, is also here. Thank you very much for coming. And Dr. Lee Allison is accompanying him. He is with the Kansas Geological Survey, University of Kansas.

Thank you all very much for being here. I think that the testimony is divided on different subjects here. Let me start on the left with Mayor Chavez to talk about his concern, particularly about S. 2696, which I believe is the bill that you are mainly focused on today. Thank you for coming.

**STATEMENT OF MARTIN J. CHAVEZ, MAYOR,  
ALBUQUERQUE, NM**

Mr. CHAVEZ. Thank you very much, Senator. Very briefly, and my written comments I believe are part of the record, and I would like to deviate somewhat on those based on Commissioner Keys' testimony because I am frankly a little bit astonished right now. I know him by reputation to be an outstanding individual but I think there is a real problem somewhere at the staff level of what the facts are as they're getting to the Commissioner.

By way of background of course, Tingley Beach was the place where all of Albuquerque went in the 1940's to swim, to recreate, until everyone started getting sick because it was improperly lined. It was shut down. It is now used primarily for fishing and the goal for the city of Albuquerque and this wonderful piece of property that runs through the heart of the city has been to renovate it, use it once again. It has been the object of considerable capital expenditure by the city of Albuquerque.

In 1997, we acquired it from the Middle Rio Grande Conservancy District for \$3.8 million, a very good currency. At that time the Bureau of Reclamation specifically, on December 15, 1997, approved

the sale by the conservancy to the city of Albuquerque. And then subsequent thereto, we had the silvery minnow litigation, at which time the Bureau of Reclamation reversed its position and said that no, Conservancy doesn't have title, we have title to all of the water works up and down the Rio Grande as pertain to a conservancy district.

We kind of got caught up in that litigation, Senator, and what was disturbing to me—and I think if we can meet and get staff talking to staff properly, and elected officials to elected and appointed officials properly, we can get this worked out—in March—and these parcels have nothing to do with that litigation, they have no impact on the litigation whatsoever. In March of this year, the area manager from the Bureau of Reclamation came to my office and said we agree this has nothing to do with the litigation, go ahead and ask your delegation to introduce legislation to clear the title.

And so we were operating only at the request of the Bureau, or the suggestion of the Bureau of Reclamation, so I'm astonished that they now stand in opposition. I think there is just a disconnect somehow in the process and that's what I want to work with you and the subcommittee to get resolved, but that's where we are at.

There is a contest over title. If the conservancy owes it, they have already conveyed it to us for \$3.8 million. If the Bureau of Reclamation owns it, and my personal legal opinion is that their claim isn't too strong, but even if they do, they have already expressed willingness to convey it to us anyway, so we're left out in the cold wondering if we're going to have to wait 10 years for that litigation to wind its way to the Supreme Court, which it certainly will.

[The prepared statement of Mr. Chavez follows:]

PREPARED STATEMENT OF MARTIN J. CHAVEZ, MAYOR, ALBUQUERQUE, NM

Thank you for inviting me to testify on Senate Bill 2696. The City of Albuquerque is the victim of a fight between the Federal government and the Middle Rio Grande Conservancy District over water. The fight has jeopardized the development of Albuquerque's Rio Grande Biological Park.

In 1997, the City paid the Conservancy District \$3,875,000.00 for Tingley Beach and San Gabriel Park in order to expand the Rio Grande Biological Park. The Federal government now claims that the City does not own the property. (United States District Court for the District of New Mexico Cause No. CIV 99-1320 JP/KBM-ACE, entitled *Rio Grande Silvery Minnow, et al. v. Eluid L. Martinez, et al.*) The Federal government claims that in 1953, in an unrecorded "Grant of Easement", the Conservancy District conveyed fee title to all of its property to the Federal government. If the claim is valid, the Conservancy District did not own Tingley Beach and San Gabriel Park in 1997, and under Reclamation law, title to the property can be conveyed to the City only by an act of Congress.

The City plans to invest \$15,300,000.00 of City funds to improve and develop Tingley Beach and San Gabriel Park for the Rio Grande Biological Park. The City cannot, however, risk the investment of public funds to improve property it may not own. Until the cloud on the City's title to the property has been removed, the City cannot improve Tingley Beach and San Gabriel Park and complete the Rio Grande Biological Park.

Because of their location and characteristics, Tingley Beach and San Gabriel Park are unique properties for the development of the Rio Grande Biological Park. Monetary damages or the purchase of other property will not permit the City to develop the unique, high quality park that it can develop by improving Tingley Beach and San Gabriel Park.

The Conservancy District leased Tingley Beach to the City in 1931 and San Gabriel Park in 1963. The City has been in possession of the property since that time. The Conservancy District has not used the property and there are no reclamation

works on the property. The Bureau of Reclamation recently determined that Tingley Beach and San Gabriel Park is surplus to the reclamation project and that the Bureau of Reclamation does not want the property.

The enactment of Senate Bill 2696 will remove the cloud on the City's title to Tingley Beach and San Gabriel Park and permit the City to complete the development of the Rio Grande Biological Park.

#### RIO GRANDE BIOLOGICAL PARK

The Rio Grande Biological Park lies along the east side of the Rio Grande River north and south of Central Avenue, which is historic Route 66 through Albuquerque. It is an educational, research and recreational treasure, that provides a unique and vital view of New Mexico and our biologically diverse world, not only for the residents and visitors to Albuquerque, but for the State of New Mexico. When completed, the Rio Grande Biological Park will instill in the public a recognition of the need for water conservation, habitat conservation, the interdependence of life and environmental stability that is essential to our future as a community, state and nation; support and enhance environmental education, awareness and stewardship; and provide a recreational, cultural and educational facility and resource that uniquely portrays the cultural, environmental and ecological aspects of the Rio Grande River.

The Rio Grande Biological Park occupies 170 acres and consists of the Rio Grande Zoo, Tingley Aquatic Park, and the Albuquerque Aquarium and Botanic Garden. Tingley Aquatic Park will be constructed on the site of Tingley Beach and the Botanic Garden will be expanded into San Gabriel Park.

Tingley Beach consists of 35.3 acres and is located south of Central Avenue between the Rio Grande Zoo and the Albuquerque Aquarium and Botanic Garden. It was created when Mayor Clyde Tingley, who later became Governor of New Mexico, asked the Middle Rio Grande Conservancy District to lease burrow pits that had been dug to construct a levy to the City for a park and swimming beach.

The Albuquerque Aquarium and Botanic Garden is located north of Central Avenue across from Tingley Beach. San Gabriel Park consists of 42.7 acres and is located northwest of and adjacent to the Botanic Garden. In the late 1950's, the Conservancy District moved the Albuquerque Drain west and isolated a portion of the Rio Grande River channel. The Conservancy District leased this property to the City for park and recreation purposes.

#### TINGLEY AQUATIC PARK

Because it lies between the Rio Grande Zoo and the Albuquerque Aquarium and Botanic Garden, Tingley Aquatic Park is a key transitional and connecting element in the Rio Grande Biological Park system that is accessible by trail, road and eventually by a railroad.

Tingley Aquatic Park will be developed for water-oriented recreational use, education and environmental research and planning. Improvements will consist of five lakes for boating, deep-water fishing, children's fishing and model boating. One lake will be an observation lake. The City will also construct a swimming pool, picnic areas and facilities, and a building for group meetings and gatherings on the property.

As part of this project, the City will remove all non-native plants from the bosque adjacent to Tingley Beach and re-establish and maintain the Rio Grande cottonwood as the dominate canopy species. The City will also create additional wetlands and marshes that were historically abundant in the Rio Grande Valley.

The United States Corps of Engineers has plans to assist the City in the reclamation and construction of the lakes. The Corps of Engineers also plans, in association with the Rio Grande Zoo, to construct a bosque exhibit on property adjacent to Tingley Beach that will illustrate a succession sequence from an oxbow lake, to a cattail marsh, to a saltgrass meadow, to a bosque.

The City's and the Corps of Engineers' projects at Tingley Beach will improve wildlife habitat along the Rio Grande River at Tingley Aquatic Park.

Tingley Aquatic Park is also a part of the Rio Grande Valley State Park which was authorized by the New Mexico Legislature in 1983 to preserve, protect and maintain the natural scenic beauty of the Rio Grande River and its immediate riverine corridor. The City is the operator of the Rio Grande Valley State Park.

#### SAN GABRIEL PARK

The Botanic Garden was created to reflect the region's environmental and cultural heritage. The expansion of the Botanic Garden into San Gabriel Park will carry through with this theme. The improvements will include seventeen gardens, includ-

ing a Japanese Tea Garden, conservatories, a tree nursery, botanic library, herbarium, office and meeting rooms, and support facilities.

The expansion at San Gabriel Park will include ethnobotanic exhibits which will offer the only place in the state to learn about the historic use of plants for fiber, food and medicine. An antique apple orchard will feature apple trees that were brought to the area by Hispanic settlers. The Zuni Waffle Garden will illustrate ancient Anazazi Indian methods for conserving water and will feature ancient plants cultivated by the Anazazi. The City has already constructed the El Jardin de la Curandera exhibit at San Gabriel Park, honoring 400 years of Hispana presence in New Mexico and exploring herbal medicines used within the contexts of the practices of curanderismo.

A Period Farm will illustrate farming techniques and practices during the period from 1920 through 1940 which was the period of Albuquerque's greatest growth and transformation into an urban center.

The Trial Garden will feature new breeds of plants and the Camino de Colores will be a highway of flowers.

An exhibit entitled El Canoncito will provide the backdrop for the Conifer and Mountain Meadows exhibit and will illustrate the varied microclimates found in the mountain environments of New Mexico.

San Gabriel Park is in the cottonwood bosque (riparian forest) of the Rio Grande River and offers an unparalleled opportunity to showcase this distinctive natural environment. The expansion of the Botanic Garden into San Gabriel Park will include a Cottonwood Gallery of the magnificent existing stands of cottonwoods that remain to provide a living example of the native bosque.

The City, in cooperation with the State of New Mexico and the United States Bureau of Reclamation, will construct, at San Gabriel Park, the Rio Grande Silvery Minnow Rearing and Breeding Facility for breeding and conditioning the endangered Rio Grande Silvery Minnow for release into the Rio Grande River. The City recently awarded a contract for the construction of this facility.

#### RIO GRANDE BOSQUE RAILROAD

The master plan for the Rio Grande Biological Park includes the construction of the three-quarter scale Rio Grande Bosque Railroad which will provide a transportation link that covers the four miles of the Rio Grande Biological Park between the Aquarium and Botanic Garden in the north, through Tingley Aquatic Park, to the Rio Grande Zoo in the south. A depot and turnaround will be constructed at San Gabriel Park and a depot will be constructed at Tingley Aquatic Park. The Rio Grande Bosque Railroad will also connect the national Hispanic Cultural Center south of the Rio Grande Zoo with the Rio Grande Biological Park.

The enactment of Senate Bill 2696 will make the City's vision for a unique biological park possible. I urge your support of Senate Bill 2696.

The CHAIRMAN. Before we go to the other witnesses, let me just very quickly break with our usual procedure here and just ask a question or two about this, since I don't think any of the other witnesses are going to testify on this particular bill.

Can you elaborate a little more on what the city's plans are for this biological park and why the delay in getting this title cleared would be a real problem for the city?

Mr. CHAVEZ. Yes, certainly, Senator. We have already spent close to \$4 million on Tingley, acquiring the property. We have title insurance to cover us but I don't want the insurance, I want the property. We are poised to spend approximately \$15 million in the complete renovation, with beautiful paddle areas, swimming areas, remote control boats. It's going to be a gorgeous—it will restore it to what it was if not better than in the 1940's.

But I am reluctant to authorize the expenditure of municipal taxpayer money if we don't have title to the property, and the bureau's offer of a license doesn't give us any relief. What they're offering us is a 25-year license fully revokable at their whim, and that of course is not the basis upon which a prudent mayor would spend millions of dollars.

The CHAIRMAN. Thank you very much. Let me just say, we want to keep working with you and try to resolve this breakdown in communication which apparently exists with the Bureau of Reclamation. But, I thank you very much for testifying, and we will continue to work with you on that. You can remain for the remainder of the hearing or proceed with your next obligation, whatever your choice is.

Mr. CHAVEZ. I do have some other goals for Albuquerque, and I'm going to go try to shake another branch of the Federal money tree across town.

The CHAIRMAN. I knew you had that in mind. So Mr. Halbert, why don't you go ahead with your testimony.

**STATEMENT OF WAYNE HALBERT, GENERAL MANAGER,  
HARLINGEN IRRIGATION DISTRICT, CAMERON COUNTY #1,  
HARLINGEN, TX**

Mr. HALBERT. Thank you, Mr. Chairman, committee members, and staff. Thank you for the opportunity to testify before you today for the communities and water districts along the lower Texas border. My name is Wayne Halbert, general manager of the Harlingen Irrigation District, and I represent irrigation districts that supply irrigation water for a million acres or over a million acres of farmland, and raw water to municipalities for over a million and a half people.

My testimony is in support of S. 1577 and H.R. 2990, which amends the Lower Rio Grande Valley Resources Conservation Improvement Act of 2000.

For the past several years the border region has been deeply involved in integrated resource management studies to determine a direction for our communities to make in water resource management. These studies have given us really stark revelations as to unprecedented predictions and population growth, and needs for the water resources over the next few years.

Rio Grande Valley water districts have partnered with the Bureau of Reclamation on projects since the early 1950's, and many developed projects remain undone due to the lack of funding available to meet the needs of these districts. Districts since those fundings ran out in the 1960's have systematically chipped away at these projects within their budget restraints. However, various changes in the water resource conditions have made this a slow process, unacceptable, has made this slow process unacceptable and has placed the agricultural and municipal supply needs in peril.

Dryer than normal conditions, drought situations, explosive developments in Mexico and the United States along the border with Mexico, Mexico's violation of the terms of the 1944 treaty which many of you have seen in the newspapers. Population explosion in the Rio Grande Valley has escalated massive problems within our water resource situation.

And if our population problems aren't enough, Mexico's along the borders are many times worse, and they draw from the same resource we're talking about. All of these pressures have turned up the heat on water resources on the Rio Grande, and there are many valid reasons and concerns and frustrations over the various

issues that we could think about and talk about that desperately need your help.

But really what we're here for today is to offer you a blueprint for at least some of the solutions to our problems. The comprehensive water recourse plans sought solutions that would provide a balance to the fragile economy and environment of the border region. Our goal was to find enough firm yield water to provide for the municipal, industrial, environmental and agricultural needs of the region and to dovetail those plans into the expected growth needs of the valley.

With 85 percent of the water being used by agriculture, obviously our plans showed that the greatest challenges of conservation and the greatest opportunities of conservation would be in irrigation projects. S. 1577/H.R. 2990 provides the authorization for the Bureau of Reclamation to implement the programs and projects that surfaced as the most cost effective way to provide for the water resource needs of the Texas border region.

Our irrigation systems were built in the early 1900's, 1905, and they are the life blood of the municipalities as well as agriculture. All of the municipalities along the Rio Grande border depend on the irrigation systems to deliver their water to them for treatment. The projects outlined in this legislation would more than double the water available for municipal and industrial use without collapsing the agricultural economy. The agricultural economy is extremely important to our region.

A couple of years ago we testified that an undependable water supply could do irreparable damage and would push our local unemployment figures out of sight. We now have a report from Texas A&M that estimates as many as 30,000 jobs have been lost over the past few years directly related just to the Mexico treaty issue alone. The importance of legislation has been accelerated by all of the conditions that we have stated.

We recognize that we may have to live and grow on less water than we have been accustomed to. We continue to lose farms and businesses that have been a part of the Rio Grande Valley heritage for over a hundred years, mostly because water resource demands of the past 7 years have been inadequate.

The cost of water to the general public is on the rise and will continue to do so as the scarcity of the resource manifests itself. This legislation allows us to turn these tragic losses around and provide new life and new hope to the Rio Grande border region. Districts had planned these needed projects for years and anticipated accomplishing them over the next 20 years or so, but the testimony that we have given today has shown you that we do not have that luxury.

Every few acre feet of water not conserved is another family farm gone, another few jobs lost, another business who has had to close their doors. Our future is definitely in your hands, and we appreciate your support for S. 1577/H.R. 2990.

Thank you for your attention.

[The prepared statement of Mr. Halbert follows:]

PREPARED STATEMENT OF WAYNE HALBERT, GENERAL MANAGER,  
HARLINGEN IRRIGATION DISTRICT, CAMERON COUNTY #1, HARLINGEN, TX

Mr. Chairman, Committee Members and staff, thank you for the opportunity to testify before you today on behalf of the communities and water districts along the Texas Border. I am Wayne Halbert, General Manager of the Harlingen Irrigation District and represent irrigation districts that supply irrigation water to over a million acres of farmland and raw water to municipalities for over 1.5 million people. Our testimony is in support of S. 1577, which amends the Lower Rio Grande Valley Resources Conservation and Improvement Act of 2000, to authorize additional projects under that Act, and for other purposes.

For the past several years the Border Region has been deeply involved in Integrated Resource Management studies to determine a direction for our communities to take in water resource management. The State of Texas gave direction to these studies in 1997 with legislation that required even more comprehensive determinations of water resource status. These studies have given us some stark revelations as to unprecedented predictions in population growth and needs for water resources over the next few years. The Rio Grande Valley Irrigation Districts have partnered with the Bureau of Reclamation on projects since the early 1950's. Most of the Districts have utilized BOR loan programs to do conservation projects. Many developed projects remain undone due to a lack of funding available to meet the needs. Districts have systematically chipped away at these projects within their budget restraints.

Various changes in the water resource condition have made this slow progress unacceptable and has placed the agricultural and municipal supply needs in peril. Drier than normal conditions over the past nine years have exhausted water supplies and caused thousands of acres of land to become unproductive and unable to sustain the industry that depends on that production. Explosive developments in Mexico, which share the waters of the Rio Grande, have deprived the United States of a greater amount of the water resource, accelerating the crisis. Admittedly a part of the Mexico issue is drought related but a greater part is a change in Mexico's operations of their system that has deprived the U.S. users of over a year's supply of water and placed Mexico in violation of the terms of the 1944 Water Treaty.

The population explosion in the Rio Grande Valley area is escalated by the massive legal and illegal migration from Mexico for which Congress continues to struggle with solutions even today. As if our population problems are not enough, Mexico's along the border are many times worse and they draw from the same resource.

All of these pressures turn up the heat on the water resources for the Rio Grande. There are many valid concerns and frustrations over various issues that we desperately need congressional help with, but we also want to offer you a blue print for at least some of the solutions.

The comprehensive water resource studies of which copies of these reports have been provided to this committee, an emphasis was made to seek solutions that would provide balance to the fragile economy and environment of the border region. The committees and consultants were charged with the responsibility of finding ways to provide an adequate water supply for the least amount of impact, both financial and physical. Our goal was to find enough firm yield water to provide for the municipal, industrial, environmental and agricultural needs of the region and to dovetail that plan into the expected growth needs of the Valley.

The studies looked at desalination, reverse osmosis, runoff reuse, groundwater recovery, new dam sites, long distance pipelines and any other opportunity that presented any semblance of credible water supply. After several years of study it has become apparent that because agriculture uses 85% of the water available, agriculture must be the target for the major water conservation projects.

S. 1577/H.R. 2990 provides the authorization for the Bureau of Reclamation to implement the programs and projects that surfaced as the most cost effective way to provide for the water resource needs of the Texas Border region. Most of the irrigation systems were built in the early 1900's and many of the delivery systems that are the lifeblood of the municipalities as well as agriculture must be renovated. Improvements to these canals would provide annually one half of a years current municipal needs in saved water. Other conservation projects that include volumetric accounting of the water and new technologies in water delivery could save another 75% of the municipal current annual needs. All of these projects can be accomplished for construction costs of from \$0.02 to \$3.07 per 1000 gallons which projects on a debt service basis from a fraction of a cent to \$0.23 per 1000 gallons of water saved. The projects outlined in this legislation could more than double the water available for municipal and industrial use without collapsing the agricultural economy.

The agricultural economy is extremely important to our region as a large portion of the workforce is dependent on the agriculture industry. The Border aspects of the region only increases this problem and agricultural layoffs create immediate social problems far beyond the normal expectations. We testified a couple of years ago that an undependable water supply could do irreparable damage and would push our local unemployment figures out of sight. We now have a report from Texas A&M that estimates as many as 30,000 jobs have been lost over the past nine years directly related to the water shortage on the Mexico shortfall alone.

The importance of this legislation has only been accelerated by the past several years drought condition and recent information that indicate explosive demands in Mexico on the water resource. We recognize that we may have to live and grow on less water than we have been accustomed to. The latest work by Texas A&M University economist have documented losses approaching one billion dollars over the past five years attributable solely to Mexico's withholding of water from the four county region of the Lower Rio Grande Valley. We continue to lose farms and businesses that have been a part of the Rio Grande Valley heritage for over a hundred years, mostly because water resource demands the past seven years have been inadequate. The greatest impacts of these losses today are to our agricultural community; however, the associated impacts are beginning to take their toll to the Border Region as a whole. The cost of water to the general public is on the rise and will continue to do so as the scarcity of the resource manifests itself. Water shortages to the general populace have been held to a minimum but we are rapidly approaching a crisis in this arena also.

This legislation allows us to turn these tragic losses around and provide new life and new hope to the whole Rio Grande Border Region. The infrastructure that is needed to solve these problems is apparent. Districts have planned these needed projects for years and anticipated accomplishing them over the next twenty or so years. Testimony today has shown you that we do not have that luxury. Every few acre feet of water not conserved is another family farm gone, another few jobs lost, another business who had to close their doors. Our future is in your hands.

We appreciate your support for S. 1577. Thank you for your attention.

The CHAIRMAN. Thank you very much for your testimony.  
Dr. Scholle, why don't you go right ahead.

**STATEMENT OF PETER SCHOLLE, Ph.D., STATE GEOLOGIST AND DIRECTOR, NEW MEXICO BUREAU OF GEOLOGY AND MINERAL RESOURCES, NEW MEXICO INSTITUTE OF TECHNOLOGY, SOCORRO, NM, ACCOMPANIED BY M. LEE ALLISON, Ph.D., STATE GEOLOGIST AND DIRECTOR, KANSAS GEOLOGICAL SURVEY, UNIVERSITY OF KANSAS, LAWRENCE, KS**

Dr. SCHOLLE. Thank you, Mr. Chairman, members of the committee. I am the director of the Bureau of Geology and Mineral Resources and the New Mexico State Geologist, as well as a member of the High Plains Aquifer Coalition. I am appearing today on the coalition's behalf in support of S. 2773.

The coalition is a joint effort between the Geological Surveys of the eight High Plains Aquifer States and the U.S. Geological Survey. The coalition's objective is to improve the geological characterization and understanding of the High Plains Aquifer.

With me is Lee Allison, lead organizer of the coalition and the State geologist and director of the Kansas Geological Survey. We appreciate the invitation to appear before this committee.

In introduction, a reliable source of water is essential to the well-being and livelihoods of the people in the High Plains region where ground water is used for drinking water, ranching, farming and other purposes. However, many areas of the High Plains Aquifer have experienced a dramatic depletion of this resource. The problem we face is that current water removal rates cannot be sustained, and the aquifer is being rapidly depleted.

Let me begin with some facts about the aquifer. It encompasses one of the major agricultural regions in the world, it underlies 174,000 square miles and includes parts of eight States, New Mexico, Texas, Oklahoma, Kansas, Colorado, Nebraska, Wyoming and South Dakota, as you can see from the map. Approximately 2.3 million people live within the High Plains and the aquifer supplies drinking water for 82 percent of them. Agriculture, however, represents the dominant land and water use in the region, with 94 percent of ground water withdrawals from the aquifer for irrigation.

The High Plains Aquifer is the single largest and most productive aquifer in the United States, yielding about 30 percent of the Nation's ground water used for irrigation. During 1955, total water use outside the Platte River Valley in Nebraska, total water use in the High Plains was estimated to be 19.9 billion gallons per day, and outside the Platte River Valley in Nebraska, 92 percent of that need was met by aquifer water.

Although High Plains dry land farming is possible, availability of water on demand from the aquifer has made abundant reliable crop yields a reality. As a result, the region accounts for about 19 percent of total U.S. production of wheat and cotton, 15 percent of our corn, 3 percent of our sorghum. In addition, the region produces nearly 18 percent of U.S. beef and is rapidly becoming a center for hog and dairy industries. Those numbers alone should elevate concern about the health of the aquifer from a regional to a national level.

In terms of the aquifer, the High Plains Aquifer is often discussed as a single entity, but it's really a regional system composed of eight smaller units that are geologically similar and hydrologically connected, that is, water can move from one sub-aquifer to another. The aquifer consists of a heterogeneous mixture of loose clay, silts, sands and gravels deposited over millions of years by ancient river systems. The Ogallala Formation is the principal geologic unit but the aquifer as a whole also includes deposits that are older and younger than the Ogallala.

The saturated thickness of the aquifer can exceed a thousand feet, but typically averages about 200 feet. The depths of the water table ranges from 0 to 500 feet, with an average of about 100 feet. Aquifer water generally flows westward and discharges naturally through streams and springs. Water may also be lost from the aquifer by evapotranspiration or through leakage into underlying rock units. However, pumping from numerous irrigation wells is the number one cause of ground water withdrawal.

Precipitation is the dominant source of water recharge for the aquifer. The relatively low rainfall of the region limits aquifer recharge rates and thus provides a long-term limit on renewable water use. The estimated annual potential recharge from rainfall ranges from as little as a quarter of an inch per year in the southwestern portion of the aquifer, unfortunately in New Mexico, to 6 inches in the northeastern portion.

Withdrawals greatly exceed recharge in many areas since extensive irrigation began in the 1940's. This has resulted in widespread water level declines, especially in southern areas, more than 100 feet in parts of Kansas, New Mexico, Oklahoma and Texas. In some

places irrigation has become impossible or cost prohibitive because of such declines. From 1980 to 1997 the average water level in the aquifer fell 2.7 feet. Current drought conditions can only increase water use and aquifer drawdown rates.

Looking at New Mexico specifically, 72 percent of the aquifer area that had potential water production now has less than 50 feet of saturated thickness. 30 feet is considered the economic minimum for irrigation. In addition, New Mexico's aquifer water levels are continuing to fall at average rates of a foot every four years, despite higher than average rainfall in the 1990's.

The research needs are great. Because the structure for conducting hydrogeologic research on the aquifer differs dramatically among States, both the existing knowledge base and ongoing aquifer research efforts vary substantially from State to State. Much of the past research was limited by State expertise and budget allocations.

To prevent future inconsistencies among State research efforts and to efficiently utilize existing research data, the High Plains Aquifer Coalition was chartered a year ago. During that year the coalition has begun an information exchange and standardization process and is in the early stages of developing a cooperative regional strategic plan for scientific research and collaboration.

Through past research we have learned that the aquifer is heterogeneous, consists of many subregions and small flow units. Past research also helped identify the need to focus future research efforts on geological and hydrological characterizations, mapping, modeling and monitoring of aquifer subunits. Improved knowledge of these areas will refine our understanding of the aquifer, provide better tools and strategies for long-term coordinated aquifer management, and ultimately will lead to the development of improved approaches for enhancing and extending the life of the aquifer.

State water and local water users, managers and regulators increasingly are demanding the types and quality of data needed to develop useful and reasonable water management programs. The resources currently available to State and Federal universities are insufficient to meet these needs. Added Federal funds would expand existing capabilities and enhance the efforts of ongoing local State funding.

The eight coalition State geological surveys and the U.S. Geological Survey are nonregulatory scientific agencies that are impartial. In consultation with State and local water agencies and groups, they have agreed on a need for a comprehensive understanding of the subsurface configuration and hydrogeology of the High Plains aquifer.

Major research questions include rates and controls on recharge, relationships among saturated thickness, geologic character and well yield, relationships among water levels, water use and aquifer lifetime, and impact of climate change. More detailed discussions of specific science plans are included in the written testimony and won't be covered here.

S. 2773 establishes procedures to ensure that the research performed is that most critical to water users and managers. The bill would require that broadly based State advisory groups concur with proposed studies, that peer review ensures that research is of

the highest quality, that funds are awarded on merit, and that there is technical review of both Federal and State activities. These procedures provide an unusually rigorous level of accountability.

In conclusion, this bill will help ensure that the relevant science needed to address aquifer depletion is available so that we will have a better understanding of resources of the High Plains Aquifer. We urge this subcommittee to support S. 2773. This concludes our testimony on behalf of the coalition, but we would be happy to answer questions that you may have.

[The prepared statement of Dr. Scholle follows:]

PREPARED STATEMENT OF PETER A. SCHOLLE, PH.D., STATE GEOLOGIST AND DIRECTOR, NEW MEXICO BUREAU OF GEOLOGY AND MINERAL RESOURCES, NEW MEXICO INSTITUTE OF TECHNOLOGY, SOCORRO, NM

Mr. Chairman and Members of the Committee, my name is Peter Scholle, and I am the Director of the Bureau of Geology and Mineral Resources, the New Mexico State Geologist, and a member of the High Plains Aquifer Coalition. I am appearing today on the Coalition's behalf in support of Senate Bill 2773—The High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act. The Coalition is a joint effort between the geological surveys of the eight High Plains Aquifer states and the U.S. Geological Survey. The Coalition objective is to improve the geological characterization and understanding of the High Plains aquifer. With me is Lee Allison, the lead organizer of the Coalition, and the State Geologist and Director of the Kansas Geological Survey. We appreciate the invitation to appear before this Committee.

#### INTRODUCTION

A reliable source of water is essential to the well-being and livelihoods of people in the High Plains region where ground water is used for drinking water, ranching, farming, and other purposes. Many areas of the High Plains aquifer have experienced a dramatic depletion of this resource. Large-volume pumping from this aquifer has led to steadily declining water levels in the region, and the area faces several critical water-related issues.

Let me begin with some facts about the aquifer. The High Plains aquifer is the most widespread blanket sand and gravel aquifer in the nation. It encompasses one of the major agricultural regions in the world and underlies 174,000 square miles, including parts of eight states New Mexico, Texas, Oklahoma, Kansas, Colorado, Nebraska, Wyoming and South Dakota. (Figure 1)\*

Approximately 2.3 million people live within the High Plains, and the aquifer supplies drinking water for 82 percent of them. Agriculture, however, represents both the dominant land and water use in the region (94 percent of groundwater withdrawals from the aquifer are for irrigation). The High Plains aquifer is the most intensely pumped aquifer in the United States, yielding about 30 percent of the nation's ground water used for irrigation. During 1995, total water use in the High Plains was estimated to be 19.9 billion gallons per day and, with the exception of the Platte River Valley of Nebraska, 92 percent of that need was met by aquifer water.

Although High Plains dry-land farming is possible, availability of "water on demand" from the aquifer has made abundant, reliable crop yields a reality. As a result, the region accounts for about 19 percent of total U.S. production of each wheat and cotton, 15 percent of our corn, and 3 percent of our sorghum. In addition, the region produces nearly 18 percent of U.S. beef and is rapidly becoming a center for hog and dairy industries. Those numbers alone should elevate concern about the sustainability of the aquifer from a regional to a national level.

#### AQUIFER CHARACTERIZATION

Aquifers are underground deposits containing permeable rock or sediments (silts, sands, and gravels) from which water can be pumped in usable quantities. Although the High Plains aquifer often is discussed as a single entity, it is a regional system composed of eight smaller units that are geologically similar and hydrologically connected that is, water can move from one aquifer to the other. The aquifer is unconfined, that is, it is not confined under pressure below impermeable rocks as

\* Figures 1-4 have been retained in subcommittee files.

artesian water is. The aquifer consists of a heterogeneous mixture of loose clays, silts, sands, and gravels that formed over millions of years by ancient river systems. The Ogallala Formation is the principal geologic unit, but the aquifer as a whole also includes deposits that are older and younger than the Ogallala. In some locations, the Ogallala Formation crops out at the surface, forming a naturally cemented rock layer called mortar beds.

Aquifer characteristics are determined in large part by geology. The High Plains aquifer is composed mainly of silt, sand, gravel, and clay-rock debris that washed off the face of the Rocky Mountains and other more local sources over the past several million years. The aquifer varies greatly from place to place: thick in some places, thin in others; permeable (able to transmit water easily) in some places, less so in others. Where the deposits are thick and permeable, water is easily removed and the aquifer can support large volumes of pumping for long periods. In most areas, this water is of good quality.

Beneath the High Plains aquifer is much older, consolidated bedrock, usually limestone, sandstone, or shale. In some places this bedrock holds enough water to be called an aquifer, and it may be connected to the overlying aquifer. Some layers of the underlying bedrock contain saltwater; where these are directly connected to the High Plains aquifer, they pose a threat to water quality.

#### WATER RESOURCES IN THE HIGH PLAINS AQUIFER

Usable water in the High Plains aquifer is in the pore spaces between particles of sand and gravel. This water (called ground water) accumulated slowly—in some of the deeper parts of the aquifer, over tens of thousands of years. In the subsurface, water in the aquifer generally moves slowly from west to east, usually at the rate of tens of feet per year.

Water volumes and use are measured in various ways. One measure is an acre-foot, or the amount of water necessary to cover an acre of ground (a parcel about the size of a football field) with a foot of water. An acre-foot equals 325,851 gallons of water.

Another measure of ground water is saturated thickness. The saturated thickness of the High Plains aquifer is the vertical distance between the water table and the base of the aquifer. Saturated thickness is commonly measured in feet but “feet of saturated thickness” is not the same as feet of actual water. Only about 10 to 25 percent of the aquifer volume is pore space that can yield extractable water. Therefore, in an aquifer with 17 percent pore space, removing 1 acre-foot of water causes the water table to drop by about 6 feet. The saturated thickness of the aquifer can exceed 1,000 feet, but averages about 200 feet. Depth to water table ranges from 0 to 500 feet, with an average of about 100 feet. Much greater saturated thicknesses were common before the onset of large-scale irrigation.

Groundwater can also be measured in terms of its availability: how much water can be removed by a well over short periods. Large volumes of water can be pumped rapidly (1,000 gallons or more per minute) from the High Plains aquifer in many locations. This contrasts with many areas in the region, where wells generally produce smaller amounts (less than 100 gallons per minute). By way of comparison, a good household well produces 5 to 10 gallons per minute, although many household wells produce less.

Recharge is the natural movement of water into an aquifer, usually from precipitation. Areas of increase can also be the result of increased recharge to the aquifer by one or more of the following factors: greater than normal precipitation; decreased withdrawals; or downward leakage of surface-water irrigation and water from unlined canals and reservoirs. The relatively low rainfall of the region limits aquifer recharge rates and thus provides a long-term limit on sustainable water use. The estimated average annual potential recharge from rainfall ranges from as little as 1/4 of an inch per year in the southwestern portion of the aquifer area to 6 inches in the northeastern portion. Where the aquifer is closer to the earth's surface, where soils are sandier, and precipitation amounts greater, recharge can be significant, as much as 4 to 6 inches per year.

Withdrawals greatly exceeded recharge in many areas since intensive irrigation began in the 1940's. This has resulted in widespread water-level declines, especially in southern areas—more than 100 feet in parts of Kansas, New Mexico, Oklahoma and Texas. In some places, irrigation has become impossible or cost prohibitive because of such declines. From 1980 to 1997, the average water level in the aquifer fell 2.7 feet. (Figure 2 )

Aquifer water generally flows eastward and discharges naturally to streams and springs. Water may also be lost from the aquifer by evapotranspiration or through leakage into underlying rock units. However, pumping from the numerous irrigation

wells is the number one cause of groundwater withdrawal. Decreases in saturated thickness of 10 percent or more result in a decrease in well yields and an increase in pumping costs because the pumps must lift the water from greater depths (Figures 3 & 4).

#### WATER-LEVEL DECLINES IN THE AQUIFER

Large-scale irrigation began in the High Plains in the late 1800's, with the use of ditches to divert water from rivers. As technology improved, groundwater became the major irrigation source because surface water (lakes, rivers, and streams) is relatively scarce in the region. With the advent of large-capacity pumps that were capable of drawing several hundred gallons of water per minute, people began to exploit that ground water. Using a technique called flood irrigation, water was pumped through long pipes or ditches along the edges of a field, then out onto rows of crops.

In the 1950's and 1960's, technological developments led to a dramatic increase in large-scale pumping. In particular, center-pivot irrigation systems—large sprinklers that roll across the land on wheels—allowed people to irrigate uneven terrain, thus opening up large new areas for irrigation. These irrigation methods led to the cultivation of crops, such as corn, that could not previously be grown reliably in the area.

For many years, people believed that the High Plains aquifer contained an inexhaustible amount of water. However, large-volume pumping (mostly for irrigation) eventually led to substantial declines in the water table, and people realized that the amount of water in the aquifer was finite and could be exhausted. Much of the Ogallala portion of the High Plains aquifer has declined since predevelopment, with some areas having declines of more than 60 percent.

#### WHEN WILL THE AQUIFER RUN DRY?

Perhaps the most common and important question about the High Plains aquifer is: How much longer can it support large-scale pumping? It's a simple question with a complicated answer. First, the aquifer will probably be able to support small, domestic wells far into the future. With proper planning, most cities and towns should be able to provide for their water needs. Second, the future of agricultural use of the aquifer depends on a variety of factors, including the price of irrigated crops, the price and availability of energy (the deeper the water table, the more energy it takes to pump water), climate, and how the water is managed. Third, it is important to remember that the aquifer is not one consistent, homogeneous unit. Rather, it varies considerably from place to place. In places, the aquifer consists of less than 50 feet of saturated thickness and receives little recharge. In other places, the aquifer is far thicker or receives considerably more recharge.

With those qualifications in mind, researchers have made projections about the aquifer, based on past trends in water-level declines. Obviously, the actual future use of water will be affected by commodity prices, energy prices, climate, and management policies. In addition, relatively little data are available for some parts of the aquifer, and projections are not practical in those areas. Assuming a saturated thickness of 30 feet as the minimum amount necessary to support large-scale pumping, researchers concluded that parts of the aquifer are effectively exhausted in some areas. Other parts of the aquifer are predicted to have a lifespan of less than 25 years, based on past decline trends. However, the biggest share of the aquifer would not be depleted for 50 to 200 years or longer. It is important to remember that these projections are based on past trends, and future changes could alter the actual depletion rate.

#### WHERE DO WE GO FROM HERE?

Individuals, governmental agencies, and private organizations are all attempting to address issues related to the High Plains aquifer. In addition, several new institutions have recently been proposed to deal with issues concerning the aquifer on a regional basis. Irrigators have implemented a number of techniques that have improved the efficiency with which they use water—using low-pressure application methods on center-pivot systems, for example, instead of spraying water high into the air.

Among the more far-reaching proposals for extending the life of the aquifer is the idea of sustainable development. This is the concept of limiting the amount of water taken from the aquifer to no more than the amount of recharge, and perhaps less, depending on the impact on water quality and minimum streamflows. This level of use is the target of the safe-yield management policies currently in effect in some Groundwater Management Districts in the wetter or thicker parts of the High

Plains aquifer. Adoption of a similar policy in other areas of the High Plains aquifer would require a substantial decrease in the amount of water currently used. This would have an impact on the type and amount of crops grown in the area and, in turn, on a variety of economic activities. Because many of the water rights in the High Plains aquifer were established long ago and thus may have priority, the implementation of sustainable-development approaches to water resources has potentially serious legal implications. Other methods for dealing with the High Plains aquifer are being proposed, discussed, and implemented. All are aimed at extending the life of this crucial resource.

#### HIGH PLAINS AQUIFER COALITION

Each state manages its water resources differently. The number of state and local water agencies and their duties vary dramatically among the eight High Plains states. None of the eight state geological surveys deal directly with groundwater management. State geological surveys provide scientific advice to their respective state and local management agencies. Some state surveys focus strictly on the geologic framework in which groundwater exists, others investigate both the geology and the hydrology of groundwater.

Because the structure for conducting hydrogeologic research on the aquifer differs dramatically among states, both the existing knowledge base and ongoing aquifer research efforts vary substantially from state to state. Much of past research was limited by state expertise, budget allocations and cooperation among state agencies. To prevent future inconsistencies among state research efforts and to efficiently utilize existing research data, in June 2000, the geological surveys of the eight states that contain the High Plains aquifer formed the High Plains Aquifer Coalition, in alliance with the U.S. Geological Survey. Coalition members are Kansas Geological Survey, New Mexico Bureau of Geology and Mineral Resources, Nebraska Conservation and Survey Division, Texas Bureau of Economic Geology, Colorado Geological Survey, Oklahoma Geological Survey, South Dakota Geological Survey, Wyoming State Geological Survey, and U.S. Geological Survey.

The purpose of the Coalition is to cooperate in joint investigations and scientific exchanges concerning the earth sciences (including hydrology, geology, geochemistry, geochronology, geophysics, geotechnical and geological engineering and related investigations) on topics of mutual interest. This agreement was specifically undertaken to advance the understanding of the three-dimensional distribution, character, and nature of the sedimentary deposits that comprise the High Plains aquifer in the eight-state Mid-continent region. It recognizes that the distribution, withdrawal, and recharge of groundwater, and the interaction with surface waters is profoundly affected by the geology and the natural environment of the High Plains aquifer in all eight States—New Mexico, Texas, Oklahoma, Colorado, Kansas, Nebraska, South Dakota, and Wyoming—thereby establishing a commonality of interests among the Surveys and citizens of these states.

The Geological Surveys agreed that reaching a fuller understanding of the three-dimensional framework and hydrogeology of the High Plains Aquifer is necessary to provide local and state policymakers with the earth-science information required to make wise decisions regarding urban and agricultural land use, the protection of aquifers and surface waters, and the environmental well being of the citizens of this geologically unique region.

#### RESEARCH NEEDS

Through past research, we have learned that the aquifer consists of many subregions or smaller units. Past research also helped identify the need to focus future efforts on geological and hydrological characterization, mapping, modeling and monitoring of aquifer subunits. The eight state geological surveys and the U.S. Geological Survey, in consultation with state and local water agencies and groups, have agreed on the need for comprehensive understanding of the subsurface configuration and hydrogeology of the High Plains Aquifer. Improved knowledge in these areas will refine our understanding of the aquifer and provide better tools and strategies for long-term, coordinated aquifer management.

The High Plains Aquifer Coalition is in the early stages of developing a cooperative regional strategic plan for scientific research and collaboration that will lead to a more detailed understanding of what research is required in the region. Major research questions in the High Plains aquifer include: rates and controls on recharge, relationships among saturated thickness, geologic character, and well yield, relationship among water levels, water use, and aquifer lifetime, impacts of climate changes, and appropriate scale and precision of data sets for new management approaches.

Topical research areas that we anticipate to be addressed by this legislation include the following:

- Research on the regional geologic framework, particularly the completion of detailed, quadrangle-size (1:24,000 scale) surface and subsurface geologic maps and models in digital format, and the public dissemination of these maps and models, as well as interpretive information derived from them.
- Research on geologic processes relating to deposition of sedimentary sequences—their definition, nature, extent, origin, and bounding surfaces—forming the High Plains aquifer and adjacent aquifers.
- Research on the region's hydrogeology and its fluid systems.
- Research on processes controlling the quantity and quality of water recharging the High Plains aquifer, including the effect of past and future changes in climate and land-use activities on recharge.
- Research on enhancing the recharge of the High Plains aquifer.
- Research on the porosity, permeability, storage capacity, and specific yield of the aquifer.
- Research on the geological and hydrological processes controlling regional differences and temporal changes in water quality.
- Research on the vertical and lateral exchange of groundwater between different formations that make up the High Plains and adjacent aquifers and the effect of such exchange on water quality in the High Plains aquifer.
- Research on the age of groundwater recharging and moving through the aquifer.
- Research on improved techniques for modeling the occurrence, movement, and quality of water in the High Plains aquifer.
- Research on using geophysical techniques, procedures, and models for regional application in mapping subsurface deposits in the Mid-continent region.
- Transfer of technology and information among the Surveys and to both the private and public sectors.

In addition to a possible increase in the density of data for adequate aquifer management the Coalition has identified a preliminary list of other data that would be needed to develop an aquifer management plan. These include:

- Determination of the approach to define aquifer subunits, such as hydrologic boundaries, ground-water divides, hydrological characteristics, aquifer extent, major differences in recharge, or saturated thickness, in conjunction with administrative boundaries.
- Determination of recharge, stream outflow, and ground-water inflow and outflow to give estimates of net sustainable quantities of water to be pumped from areas of different saturated thickness in the High Plains aquifer.
- Estimates of total saturated thickness and how it varies across the aquifer that will be needed for continued pumping.
- Estimates of depth ranges from ground surface to the base of the aquifer.
- Assessment of uncertainties for estimating sustainable yield volumetrics of the aquifer, including practical saturation thickness, water level measures, and depth to bedrock in different areas.
- Determination of methods to reduce the largest uncertainties in calculating the aquifer volume.
- Delineation of critical recharge areas.

#### WHY THE BILL IS IMPORTANT TO THE REGION AND THE NATION

Extending the life of the High Plains aquifer is essential to the economic viability of the region because there are no realistic alternative water sources. Accurate data about aquifer variability and subunit characteristics will allow us to accurately determine current water levels, where and at what rates aquifer water moves, and the variables that impact water recharge rates in aquifer subunits. Knowledge of these factors will allow us to better predict future water levels and ultimately will lead to development of improved approaches for enhancing and extending the life of the aquifer and other factors useful for management purposes.

Federal funds will expand existing capabilities and enhance the effects of ongoing state and local funding. Complementary funding will allow us to build regional databases and understanding of the aquifer. The bill enlists expertise from the U.S. Geological Survey not available at the state level and fosters better coordination with other groups within states and across state boundaries. State and local water users, managers and regulators are increasingly demanding the types and quality of data needed to develop useful and reasonable water management programs. For example, in Kansas, local Groundwater Management Districts are requesting subunit charac-

terization of the aquifer that requires a more sophisticated and regional understanding of the nature of the aquifer. Current resources for state and federal water agencies are insufficient to meet these increasingly demanding needs.

Senate Bill 2773 establishes procedures to ensure that the research carried out is that most critical to water users and managers. The bill would require that broadly based state advisory groups concur with proposed studies; that peer review ensures the research is of the highest quality; that funds are awarded on merit; and that there is technical review of both federal and state activities. These procedures provide an unusually rigorous level of accountability.

In conclusion, this bill is an important first step in a comprehensive program to extend the life of the aquifer. The bill will help ensure that the relevant science needed to address aquifer depletion is available so that we will have a better understanding of the resources of the High Plains aquifer and can ultimately lead to extending the life of the aquifer. We urge this Subcommittee to support Senate Bill 2773 The High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act. This concludes my testimony on behalf of the Coalition. We are submitting additional written testimony for your review. Thank you for your consideration. We would be happy to answer any questions that you may have.

The CHAIRMAN. Thank you very much. Dr. Allison, did you have any comments you wanted to add?

Dr. ALLISON. Mr. Chairman, no. I'm here in support in terms of questions.

The CHAIRMAN. All right. Well, thank you all very much. Dr. Scholle, let me just ask you, it seems as though when I hear your testimony, this is something of a race against time in the sense that the levels that water is being consumed out of this aquifer is substantially greater than the level at which it's being recharged, and do you believe that what we have in this legislation will allow for the research to be done quickly enough that we can get answers to actually change some policies and address the problem? I mean, is this going to be a situation where we're studying the problem after it's too late to do anything about it?

Dr. SCHOLLE. Well, I should first say that the aquifer depletion, as you can see on that map which depicts aquifer depletion areas, aquifer depletion is very inconsistent in different areas. New Mexico actually has some of the most dire problems, as do Texas, Oklahoma and Kansas to the north. In Nebraska, there is actually an increase in water levels in the aquifer, so the problem is highly variable from place to place.

I do believe that the resources that would be put into this program certainly will speed our understanding of the aquifer. I think that substantial understanding will come within the next 5 to 10 years through these studies, and will indeed make an impact on the information available to decision makers.

Just to illustrate the problem, there's probably somewhere between half a million and a million wells in the High Plains aquifer. Of those, we have done long-term monitoring on 5,000 wells. I mean, that's a trivial number of wells in terms of understanding the details. I mean, you see the broad sketches, the broad outline of where increases are extant and where decreases are extant in the aquifer, but the details are far more complex than are depicted on that diagram. 5,000 wells is what we have long-term monitoring on, we are now doing monitoring on about 10,000 wells in total, and it's still a tiny tiny fraction, and that's probably the best known portion of the entire problem.

In terms of aquifer characterization, in terms of geological knowledge, we are far far behind the curve and all I can say is that we

will make our utmost effort to get the data as quickly as possible in response to this bill and in response to the needs.

The CHAIRMAN. All right. Well, thank you very much, and we will take all the testimony that has been submitted here and consider it as we try to move ahead on these various pieces of legislation.

So thank you all very much, and that will conclude our hearing. [Whereupon, at 4:18 p.m., the hearing was adjourned.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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#### STATEMENT OF DAVE JONES, CHAIRMAN, HILL COUNTY WATER DISTRICT AND VICE-CHAIRMAN OF THE NORTH CENTRAL MONTANA REGIONAL WATER AUTHORITY

Mr. Chairman and members of the subcommittee, my name is Dave Jones. I am Chairman of the Hill County Water District and Vice-Chairman of the North Central Montana Regional Water Authority. Thank you for the opportunity to provide this statement in support of Senate Bill 934 authorizing the Rocky Boy's/North Central Montana Regional Water System. I would also like to thank Senator Max Baucus and Senator Conrad Burns for their strong and continuing support for this project.

The Hill County Water District is located in northern Montana, generally between the communities of Chester and Havre. The District was created to provide water service to the communities of Joplin, Inverness, Rudyard, Hingham, Gildford and Kremlin, as well as the outlying rural areas. Hill County Water District has approximately 800 users. The average water bill is roughly \$75.00 per month, based on average water consumption of 7,500 gallons per household per month.

Currently, the Hill County Water District is served by two water supplies. Water from the Fresno Reservoir, located on the Milk River, serves as the primary source and is supplemented by an infiltration gallery along the banks of the Marias River. The Fresno Reservoir supply is not filtered. The Environmental Protection Agency (EPA) rules dictate that all public water supply systems must filter and treat all surface water. Hill County Water District is on EPA's Significant Non-Compliance (SNC) list as they are in violation of the Surface Water Treatment Rule (SWTR) of the Safe Drinking Water Act (SDWA). Hill County Water District received an Administrative Order in 1994 for this violation. The Order was amended in 1998 and again in 2001.

Several years ago, the communities of Kremlin and Gildford combined their schools. The elementary school (K-8) is located within the community of Kremlin. The District administers chlorination to the system at Kremlin. The community does not have adequate chlorination contact time, as required by the SDWA. The community, including the school, has been on a boil order since 1998.

When the District received the first administrative order, an engineering firm was hired to evaluate all available alternatives to the District. The evaluated alternatives included groundwater and construction of a Fresno Reservoir Water Treatment Plant.

Prior to the formation of the Hill County Water District and construction of its current water system, the communities now served by the District either hauled water from nearby communities or were served by shallow or moderately deep wells. The wells generally yielded modest quantities of water that were of very poor quality. The total dissolved solids in some of the early wells were so high that the water could not be used for drinking or irrigation. The sodium was also very high, ranging from 397 ppm to 2,500 ppm. The generally accepted standard for sodium is 270 ppm. Iron and manganese were also persistent water quality problems, as was sulfate.

The engineering firm investigated seven different treatment alternatives for the Fresno supply. Based on the maximum day demand, the water treatment plant would need a total capacity of 1.4 million gallons per day. Several alternatives were eliminated due to the difficulty in treating Milk River water, which supplies Fresno Reservoir. Conventional treatment is a well established technology for treating water from the Milk River. The capital cost to construct a conventional package plant, based on 1993 cost estimates, was \$1.2 million. The District was able to secure \$700,000 combined local funds and state grants. Based on a \$500,000 loan from the State of Montana's Revolving Loan Program, the debt service would be approximately \$46,000 per year. The monthly user rate, just for debt service, would in-

crease by \$5.00 per month. In addition, the existing rate does not include the additional cost for operation and maintenance of a treatment plant. Estimates for these expenses, prepared for the District, range from \$15 to \$20 per month per user. If the District was to construct its own water treatment plant, the cost to the individual user would exceed \$100 per month, making it unaffordable to the District's residents.

DEQ is investigating if the supplemental water source for the District at the Marias River is also under the influence of surface water. If this supplemental water source was determined to be under the influence of surface water, it would also need to be filtered and treated. To construct and maintain two treatment plants would be a substantial financial burden.

HKM Engineering of Billings, Montana, prepared an estimate of each individual system's user rate, once the system joins the Rocky Boy's/North Central Montana Regional Water System. The estimated user rate for the Hill County Water District was \$58.07 per month. Clearly, the Regional Water System would be more affordable.

According to the U.S. Bureau of Reclamation, the storage at Fresno Reservoir during this winter was at 15% of normal. One of the District's intake structures at the Reservoir is exposed. On March 28, 2002, the U.S. Secretary of Agriculture declared the State of Montana a disaster area due to drought. The District is very concerned about the ability to draw water from the Reservoir given the ongoing drought condition.

The Montana Department of Environmental Quality (DEQ) has been very supportive of the regional water system concept because of the obvious advantages offered to small public water systems, such as the Hill County Water District. The DEQ sees that is in the best long-term interest of the Hill County Water District to connect to the Regional System. (See attached letter from Jan Sensibaugh, Director of Montana DEQ, to Dan Keil).

In 2001, the DEQ issued an amended Administrative Order to the District. The most current Order imposes the following deadlines for enforcement actions:

- Deadline for federal project authorization—December 1, 2002
- Deadline for submission of engineering plans—December 14, 2003
- Deadline for beginning construction—June 1, 2004
- Deadline for providing water service—December 31, 2007

My District is under the gun to meet the above compliance schedule. The Board of Directors of Hill County Water District believes that the Rocky Boy's/North Central Montana Regional Water System will resolve many of our most significant water supply problems.

I respectfully request that the committee pass S. 934 authorizing the Rocky Boy's/North Central Montana Regional Water System.

Thank you. It is an honor to provide this statement to the committee.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,  
*Helena, MT, March 30, 2001.*

DAN KEIL,  
*Chairman, North Central Montana Regional Water Authority, Havre, MT.*

Re: Department compliance actions

DEAR MR. KEIL: My thanks to you and the representatives of the North Central Montana Regional Water Authority (Authority) for meeting with department staff in Great Falls on February 22. The information provided to our staff helped to clarify the status of the Rocky Boys/North Central Montana Regional Water System (System).

As you know, the department has an outstanding enforcement action against the Hill County Water District. The order was issued in 1994, amended in 1998, and now must be amended again because the compliance deadlines in the current order have not been met. Additionally, the department may initiate similar actions against other public water suppliers with compliance problems that have expressed interest in connection to the System. These additional compliance actions would be initiated because of inadequate treatment of surface water sources (or groundwater sources that have been directly influenced by surface water).

The department is very supportive of the regional water system concept because of the obvious advantages offered to small public water suppliers. Numerous small water suppliers that are facing important compliance decisions would benefit specifically by connection to this System. It is our intention to promote this solution to the maximum extent allowed within our statutory authority and responsibility.

Our role as a regulatory agency imposes direct responsibility for protecting the public health of those served by public water supplies in Montana. Because we believe that it is in the best long-term interest of your customers to connect to the System, we intend to allow additional time for those water suppliers affected by department compliance actions.

However, considerable time has elapsed since the original enforcement action was taken against Hill County. We believe that it is important that deadlines for important milestones be established to ensure that public exposure to risks from inadequately treated sources be minimized.

In order to address this concern, we intend to impose the following deadlines for public water suppliers affected by department enforcement actions:

- Deadline for funding authorization—December 1, 2002
- Deadline for submission of engineering plans—December 15, 2003
- Deadline for beginning construction—June 1, 2004
- Deadline for providing water service—December 31, 2007

These deadlines would be included in the revised order for the Hill County Water District, and for any other systems placed under similar enforcement actions. At this time, it appears that two additional water suppliers that are interested in connection to your System will be placed under department enforcement actions in the near future.

Until water service is provided to the affected water suppliers from your System, we believe it is very important that those suppliers provide an alternative approved source of water for their customers. It is not reasonable to assume that customers of these supplies will boil their water or otherwise obtain properly treated water until the above deadlines are met. However, we will work with each affected supplier to develop the best, most economical solution to providing safe water on an interim basis.

Congratulations to you and your member systems in the work that has been accomplished to date. If you should have any questions, or if there is something that we can do to help support your efforts, please do not hesitate to contact me.

Sincerely,

JAN P. SENSIBAUGH,  
*Director.*

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STATEMENT OF JOHN TUBBS, CHIEF, RESOURCE DEVELOPMENT BUREAU,  
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Mr. Chairman and members of the committee, for the record my name is John Tubbs. I am Chief of the Resource Development Bureau of the Montana Department of Natural Resources and Conservation. As a representative of the State of Montana, I want to thank you for the opportunity to provide this statement in support of Senate Bill 934 authorizing the "Rocky Boy's/North Central Montana Regional Water System Act of 2001."

Governor Martz has asked me to relay her strong support of the proposed regional water project in North Central Montana. Governor Martz is very interested in seeing this project authorized because of the tremendous need for safe drinking water in this area of Montana and the benefits the regional water system can provide to the water users, the state and the nation. As my testimony will demonstrate, the support of the State of Montana for this project is strong and comes with a significant financial commitment for funding.

The Tribal Government of the Rocky Boy's Reservation has been trying to address a serious need for safe drinking water. In 1999, the Montana Legislature and the Rocky Boy's Tribal Council approved a water compact that, in part, provides 10,000 acre-feet of water out of Tiber reservoir for the Rocky Boy's Reservation. In 2000, Congress authorized the Rocky Boy's compact and in 2001 appropriated settlement funds. A portion of these funds, \$16 million are for on reservation water distribution works. S. 934 will provide authorization for the transmission and treatment of waters from Tiber reservoir to the Rocky Boy's Reservation.

The driving need for a reliable, high quality water supply on the reservation presented the opportunity for a regional water system to serve tribal members and non-tribal communities. Working with local and state representatives, tribal leaders have taken this opportunity to work with their neighbors to achieve a common goal, adequate and safe drinking water for our communities. It is so important to note this positive action of both the tribal and non-tribal communities working together. When the tribal leaders reached out to their neighbors and extended this opportunity and vision, they bridged a gap in relationships that had existed for decades.

The proposed Rocky Boy's/North Central Montana Regional Water System is a shared vision based on a common need.

In the early 1990's, representatives from the tribal and non-tribal governments met to begin the planning for this project. The benefits of a regional water supply were unquestionable, but the size and cost of the proposal led to many questions about economic feasibility. An interagency team was assembled to coordinate a state review of the proposed regional water system. The team is composed of representatives for the Departments of Natural Resources and Conservation, Environmental Quality, and Commerce. This state coordinating committee is still actively evaluating the proposal. Two state grants have been awarded to provide funding for preliminary engineering for the system so everyone can base their support for this project on factual information. In the 1990's, several studies were completed to demonstrate the cost effectiveness of the proposed regional water system and to assure that there were no significant environmental impacts. Published reports as to the feasibility of a regional water system include:

North Central Montana Regional Water System Needs Assessment, Dated May 19, 1997. Prepared by MSE-HKM, Inc.

North Central Montana Regional Water System Environmental Assessment. Prepared by MSE-HKM, Inc.

North Central Montana Regional Water System Feasibility Study, Dated October 9, 1997. Prepared by MSE-HKM, Inc.

North Central Montana Regional Water System Appraisal Level Study, dated June 27, 1997. Prepared by MSE-HKM, Inc.

North Central Montana Regional Water System Planning/Environmental Report, dated May, 2000. Prepared by MSE-HKM, Inc.

Once authorized, further design studies will be conducted and an environmental assessment report published.

What has been determined is that water quality is poor in some areas of the region. with inadequate water quantity is often an issue. Communities and water districts in the region have tried to attack this problem through several methods. Some are chlorinating surface water but do not have filters in place as required under the 1986 Safe Drinking Water Act. As a result. at least three systems are currently out of compliance with federal safe drinking water standards. As many as 13 of the remaining systems are expected to have difficulty meeting future regulatory requirements, based upon current U.S. EPA regulatory proposals, or other requirements of the 1996 amendments to the Safe Drinking Water Act (SDWA). Compliance with the requirements of the Safe Drinking Water Act is difficult because there are 20 individual public water supplies serving the rural communities of the area. In each case, the small number of users served by individual system must bear the full cost of running the drinking water system. By joining together on a regional basis, future compliance costs will be associated with one intake and treatment facility, and they will spread amongst a larger user base. From the state's perspective, a regional system will show that the region has the capacity to operate, manage, and finance future operations.

Insufficient water quantity is an everyday issue to many area residents of the area. Montana is in the fourth year of a severe drought. Though recent June rains have softened the blow of below normal snow pack, North Central Montana communities know severe drought will come again. The proposed source of supply, Tiber Reservoir, will provide both a high quality source of drinking water for the region and a firm supply of water that "drought proofs" the communities in this region. There is no other source in the region that has sufficient quantity and quality to meet the combined needs of all the communities in this region.

What would a regional system cost in comparison to the alternatives that these community water supplies may have? The total estimated cost of the regional system is approximately \$200 million. The State of Montana, as a condition of support, asked for an alternative analysis of the costs to communities and individuals of providing safe drinking water without a regional system. Based on engineering estimates, the cost of maintaining and operating 20 individual water systems within the region is about 10 percent lower than the \$200 million cost of constructing the regional system. However, the benefits of a regional system greatly exceed the 10 percent increase in total cost for the regional project. First, the quality of water provided from the regional system will be a great improvement to many of the individual systems. If you have bad groundwater to start with, treatment doesn't improve its quality; it only makes it safe to drink. Second, maintaining the individual systems does not address the benefits of providing a reliable water supply that protects the communities against future drought.

From a regulatory aspect a regional water system has significant benefits. At the present time, there are 20 different regulated systems within the region that wish to be a part of the authority. Meeting regulatory requirements of the Safe Drinking Water Act must be demonstrated by each system. When a rule changes, all those systems must react to the change. Also, because many of the systems are for small municipalities or county water districts, some with fewer than 200 connections, there is a reduced capacity on the part of smaller systems to maintain and operate a water supply, not to mention the problems that long-established communities are having. That means that the Montana Department of Environmental Quality must perennially deal with problems of compliance. A regional water system would provide one point of regulation for all of the member systems. If a rule were changed, it would affect only one treatment plant. Due to economies of scale, a regional system can be efficiently operated with a higher level of oversight and management than individual municipal water supply systems. Yielding an expected increased degree of compliance.

The state also supports this regional water system because of its potential to yield strong economic benefits. Unemployment on the Reservation is high. Construction will employ many people that have limited job opportunities. The construction period is estimated to be in excess of a decade. Once constructed, there will be long-term jobs created as the Tribe and the non-tribal water users operate and maintain the facilities. These types of jobs are highly sought after in this area of Montana. Finally, the regional pipeline will provide one of the key resources that enterprising businesses look for when they locate in an area—a safe water supply. This project will not resolve all of the economic problems that North Central Montana faces; however, it will serve as a cornerstone to future success upon which the people in the area can build.

The state supports the Rocky Boy's/North Central Montana Regional Water System because it provides the Rocky Boy's Reservation with a safe and reliable drinking water system. The Rocky Boy's Reservation is the home of the Chippewa Cree Tribe in Montana. Since the establishment of the Rocky Boy's Reservation in 1916, tribal members have been limited to developing poor quality groundwater sources and limited surface water sources for their drinking water systems. The existing systems on the reservation are inadequate today and will not be able to provide safe drinking water for the future. The state of Montana supports every effort to provide the tribal members living on the Rocky Boy's Reservation a reliable, high quality drinking water system. We are all Montanans and all of us must have the opportunity to prosper whether we live on an Indian Reservation or not. It is an absolute; the tribal members of the Rocky Boy's Reservation must have a safe and reliable drinking water system. The regional system will provide the required water supply for the reservation.

Finally, I would like to tell the Committee about the legislation that Montana has passed to support this regional water system proposal. Clearly, considering the price tag of this project, a partnership amongst local, state and federal governments needs to be forged. Montana has made a commitment to this partnership. The Montana State Legislature established a funding mechanism in 1999 specifically to provide state cost share dollars for regional water systems. This fund has now grown to over \$8 million and will continue to receive \$4 million a year until 2016. Earning from this fund will be used to match federal expenditures along with local cost share. The Treasure State Regional Water Fund Legislation enjoyed strong support from the State of Montana. In the Senate, S. 220 received 50 of 50 votes. In the House, S. 220 received 97 of 100 votes for passage.

I respectfully request that the committee, after due consideration, pass S. 934 authorizing the Rocky Boy's/North Central Water System. This is so important to the people in North Central Montana that I ask on behalf of the State of Montana that you give this bill your approval, so that the planning and engineering can proceed on this system.

Thank you. It is an honor to provide this statement to the committee.

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OFFICE OF THE GOVERNOR,  
STATE OF MONTANA,  
Helena, MT, July 30, 2002.

Hon. BYRON L. DORGAN,  
*Chairman, Subcommittee on Water and Power, Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

Re: S. 934—Rocky Boy's/North Central Montana Regional Water System

DEAR CHAIRMAN DORGAN: Montana's Congressional delegation, working with the Chippewa Cree Tribe of the Rocky Boy's Reservation and the North Central Montana Regional Water Authority, has introduced legislation in the U.S. Congress for authorization of the Rocky Boy's/North Central Montana Regional Water System. Development of this rural water project will bring a safe, ample supply of drinking water to the Rocky Boy's Reservation and to the surrounding region of North Central Montana.

The State of Montana has supported the planning and administration of this regional water project with appropriations of nearly \$350,000 to date. For the current biennium, the 2001 Montana Legislature appropriated initial funding of up to \$2.3 million for the state's portion of the non-federal cost share for regional water system construction.

Drinking water supplies on the Reservation, in the surrounding non-tribal communities, and for rural residences are both inadequate and of poor quality. Due, in part, to lack of safe and sufficient water supplies, economic activity in the region has been in a state of decline. The Chippewa Cree Tribe finds this unacceptable—members of their tribe need the opportunity to thrive and succeed, rather than facing a future that promises little more than a subsistence level of existence for the majority. Poor quality, unsafe drinking water is no more desirable in this area than anywhere else. The proposed regional drinking water system is critical to the future of North Central Montana.

As a Senator from a western state, I know that you appreciate the importance in regard to the needs of Montana's Indian Reservations and rural communities. Your subcommittee's support is critical for the success of this project and the long-term viability of North Central Montana economy.

I would appreciate the support of your subcommittee for S. 934, the legislation to authorize this vital project. This regional water supply system will greatly improve the quality of life on the Rocky Boy's Reservation and to North Central Montana.

Sincerely,

JUDY MARTZ,  
*Governor.*

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NATIONAL WATER RESOURCES ASSOCIATION,  
*Arlington, VA, July 29, 2002.*

Hon. GORDON SMITH,  
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR SMITH: On behalf of the Board of Directors and membership of the National Water Resources Association (NWRA), I am writing to voice our support for your legislation, the Small Reclamation Water Resources Act of 2001 (S. 1882).

As water users in Oregon and the 16 other Western States, our members understand the importance of conserving our limited water supplies. S. 1882 would improve and reauthorize the Small Reclamation Project Loan Program that was discontinued during the previous Administration. The legislation provides both loans and grants to assist irrigation districts, municipalities and other water related organizations to develop and implement water conservation, water quality improvements, water management for urban landscapes, drought assistance, fish and wild-life improvements as well as public safety project improvements.

Our members found the previous Small Reclamation Project Loan Program to be very helpful in resolving difficult water supply problems. S. 1882 maintains the utility of the program while adding flexibility to address our current and future water challenges.

Passage of this legislation will greatly aid in the development and expansion of local water programs in California and the other Reclamation states.

Once again, NWRA supports S. 1882 and we look forward to assisting you and your staff in building support for this needed legislation.

Sincerely,

THOMAS F. DONNELLY,  
*Executive Vice President.*

ASSOCIATION OF CALIFORNIA WATER AGENCIES,  
Sacramento, CA, July 29, 2002.

Hon. GORDON SMITH,  
U.S. Senate, Russell Senate Office Building, Washington, DC.

Re: Support of the Small Reclamation Water Resources Act of 2001 (S. 1882)

DEAR SENATOR SMITH: The Association of California Water Agencies (ACWA) supports your Small Reclamation Water Resources Act of 2001 (S. 1882). As you know, ACWA represents over 440 water districts throughout the state who collectively deliver over 90 percent of California's agricultural, residential and industrial water supplies. Passage of this legislation will greatly aid in the development and expansion of local water programs in California and the other Reclamation states.

ACWA supports this legislation because the grants and loans it makes available to agencies allows them to develop projects that promote efficient water use, develop new water supplies, and enhance the environment within their service areas. This program promotes state and local participation in small Reclamation projects that will provide local benefits.

ACWA is pleased to support S. 1882 and appreciates your leadership on Western water issues.

Sincerely,

DAVID L. REYNOLDS,  
Director of Federal Relations.

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IDAHO WATER USERS ASSOCIATION, INC.,  
Boise, ID, August 6, 2002.

Subcommittee on Water and Power, Senate Committee on Resources, Hart Senate Office Building, Washington, DC.

Re: S. 2556—Fremont-Madison Conveyance Act

DEAR MR. CHAIRMAN: This letter is provided on behalf of the Idaho Water Users Association (IWUA) in support of S. 2556, the Fremont-Madison Conveyance Act. IWUA represents more than 300 irrigation districts, canal companies, water districts, public water suppliers, municipalities, hydropower interests, aquaculture companies, agribusinesses and individuals. We are dedicated to the wise and efficient development and use of water resources. IWUA represents over two million acres of irrigated land and is affiliated with both the National Water Resources Association and the Family Farm Alliance. IWUA is proud to count Fremont-Madison Irrigation District among its many members.

IWUA has strongly supported previous title transfer legislation for its members, including Burley Irrigation District and Nampa & Meridian Irrigation District. Of course, both of these bills were approved by Congress and signed by the President. We commend Senator Crapo for introducing S. 2556 and Senator Craig for cosponsoring the bill. We strongly urge your subcommittee to give the legislation favorable consideration.

IWUA adopted the attached resolution at its Annual Conference in January, 2002, expressing support for Fremont-Madison's proposed title transfer. We request that this letter of support and IWUA's resolution be included in the official hearing record as the subcommittee considers the bill. Thank you.

Sincerely,

NORMAN M. SEMANKO,  
Executive Director and General Counsel.

[Attachment]

RESOLUTION NO. 2002-14—FREMONT-MADISON IRRIGATION DISTRICT  
TITLE TRANSFER

WHEREAS, Fremont-Madison Irrigation District (Fremont-Madison) is involved in a process to obtain the transfer of the legal title of portions of certain physical facilities used by Fremont-Madison, namely: the Cross Cut Diversion Dam, the Cross Cut Canal, the five (5) developed wells drilled pursuant to Idaho Water Permit 22-07022 and the assignment of said permit, all of which property rights are presently held by the United States, Bureau of Reclamation (Bureau); and

WHEREAS, Fremont-Madison is also working with the Bureau to complete the administrative process for the title transfer and is drafting a bill to convey the said

facilities to Fremont-Madison for introduction in the Congress of the United States; and

WHEREAS, Fremont-Madison has controlled, managed, operated, and maintained the said facilities with permission and direction from the Bureau at all times since they were constructed.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports Fremont-Madison in their effort to acquire legal title from the United States to the Cross Cut Division Dam, the Cross Cut Canal, the five (5) wells developed under Permit 22-07022, together with the right to further develop wells under Permit 22-07022, but only pursuant to a plan which mitigates for injury of all irrigation water users and which is approved by the Idaho Department of Water Resources.

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THE HENRY FORK FOUNDATION, INC.,  
Ashton, ID, July 29, 2002.

HONORABLE SENATORS,  
*Energy and Natural Resources Committee, Water and Power Subcommittee, U.S. Senate, Washington DC.*

Re: S. 2556—Fremont-Madison Conveyance Act

DEAR HONORABLE SENATORS: The Henry's Fork Foundation (HFF) sends this letter on behalf of our approximately 2,000 members who are dedicated to protecting the Henry's Fork watershed. The HFF mission is to "understand, protect, and restore the unique values of the Henry's Fork River while doing so in the context of mutual respect for others that live and work in the watershed to ensure solutions are sustainable." In the context of both protecting the magnificent Henry's Fork fishery and mutual respect for others who live and work in the watershed, we submit the following comments regarding S. 2556. Because the current version of this bill for the most part mirrors companion legislation—H.R. 4708—in the House of Representatives, many of our comments and suggestions are identical to those the HFF submitted prior to the hearing on that bill.

The HFF has collaborated on difficult resource issues for the past decade with the Fremont-Madison Irrigation District (FMID) and other stakeholders in the Henry's Fork watershed. We were the only conservation group—local, state, regional, or national—willing to sit down and have substantive talks and negotiations regarding earlier title transfer legislation involving Island Park Reservoir and the various ways to protect the fishery resource while still meeting the irrigation community's needs.

With the collaborative nature of our past involvement in title transfer issues in mind, the HFF wants to reiterate once again our position regarding the transfer of title of federal reclamation dams, canals, or any other type of irrigation works in the Henry's Fork watershed. The HFF believes that any type of title transfer legislation should have an environmental component to ensure that the Henry's Fork fishery resource is not only protected but also enhanced.

The HFF also wants to emphasize that we are cognizant of the dry year water issues for the irrigation community in the Henry's Fork watershed. Recent conversations with Dale Swensen and FMID have helped frame these issues. The fact that the irrigation district—based on Minidoka Project storage and operations—has only been allocated 62% and 42% of Island Park Reservoir storage during the last two drought years is illustrative of the need for supplemental irrigation water for FMID users. Further, such dry year realities emphasize the nexus between water storage rights (i.e., who actually owns the water) in the upper Snake River Basin and federal Bureau of Reclamation (BOR) operations during such years. In other words, during a dry year or drought cycle reduced stream flows during the winter months are inexplicably tied to broader system-wide BOR Minidoka Project operations and reservoir carryover, and not FMID rights or operations. These are classic dry year dilemmas that occur as foreseeable events almost every decade for a 2-3 year period.

But fishery needs during drought years and cycles mirror those of the irrigators. The impact of such low flow years on the fishery resource in the Henry's Fork watershed is undeniable. Such impacts have been documented by numerous studies funded and carried out by the HFF and Idaho Department of Fish and Game (IDFG) highlighting the connection between low flows and the loss of spawning and rearing habitat, juvenile mortality, year-class strength, the loss of macrophyte habitat, and overall stream health. There is also the chance—depending on project operations—that Island Park Reservoir will reach such low levels that unnaturally high levels of sediment will be released downstream. These are enormously significant fishery concerns, but there is an economic fall-out as well. An economic study fund-

ed and completed by the HFF and published in the *Intermountain Journal of Sciences* in 2000 estimated the total annual value of the Henry's Fork fishery only between Island Park Dam and Hatchery Ford at \$5,012,509.

So with these dry year irrigation and fishery needs in mind, the HFF provides the following comments regarding a piece of legislation that aims to only provide for one piece of the overall economic well-being and no mention of the ecological health of the Henry's Fork watershed. We have tried to break our concerns with the title transfer legislation into two specific categories. First, the HFF has a number of specific concerns regarding the current proposals and we have outlined those comments below. Second, we have some other policy and resource related concerns specific to the portion of the title transfer legislation pertaining to the Teton Wells. Finally, the HFF would like to reiterate some of the fishery resource needs in the Henry's Fork watershed, and advocate that the Idaho congressional delegation take the lead in getting a number of diverse stakeholders together to design a mutually agreeable and long-term solution to drought year problems in the upper basin.

#### *Specific Comments Regarding S. 2556*

1. The "shall" language contained in Section 3 leaves the Secretary no flexibility regarding the transfer of the federal assets described in the bill based on further environmental or any other type of analysis. This establishes bad precedent, doesn't give the federal government the necessary flexibility to avoid possible impacts to other water user contacts or obligations or the environment, and predetermines a course of action that may not be in the public interest.

2. The HFF does not have any specific comments regarding the language in Section 2 regarding the Teton Exchange Wells. However, see the section below for our comments regarding the extraordinarily important resource issues concerns associated with the future use of the Teton Exchange Wells. In addition, the FMID has stated both in meetings and in public statements that the use of additional wells will be capped at approximately 80,000 acre/feet to provide supplemental water for its users. However, there is no explicit cap of the proposed additional use in the legislation.

3. Nothing in S. 2556 elaborates on the scope of the NEPA process related to title transfer activities. The proposed legislation should be expanded to identify specific issues to be assessed and analyzed in the NEPA process. Such issues include the possible impacts to existing surface and groundwater rights, diminished flows in the Henry's Fork between the point where water is diverted to fill the Cross Cut Canal and where well discharges would enter the river, and other impacts to temperature and other water quality parameters and aquatic habitat in the lower Henry's Fork watershed.

#### *The Teton Exchange Wells*

The Teton Exchange Wells and the current and possible future water use associated with State of Idaho water permit #22-7022 provide the centerpiece for the proposed title transfer legislation. The original permit for these wells envisioned 45 wells totaling 670 cfs of water. However, to date only five wells have been drilled, providing approximately 81 cfs. During last year's drought season, the FMID used these wells to provide approximately 26,000 acre/feet of water to their users. The HFF concerns regarding the use of the Teton Exchange Water echo those of other stakeholders such as IDFG and the Upper Snake River Cutthroats Chapter of Trout Unlimited. From our perspective there are more questions than answers regarding the transfer of these wells.

These concerns include regulatory issues pertaining to the relationship between the future use of additional wells and the current moratorium on new groundwater permits in the Upper Snake River Basin, the conjunctive management of surface and groundwater use in the State of Idaho, and aquifer recharge. Most importantly from a river health standpoint, the use of the additional water could have a deleterious effect on the Henry's Fork River. The location of the new wells, the amount of water pumped from the existing and new wells, the type and location of deliver systems, location of water use, and return flows all have implications for fish and wildlife resources. Finally, there has been very little substantive talk regarding the use of some of the well water as an exchange mechanism to provide water during strategic time periods in the Henry's Fork system from Henry's Lake downstream and benefit fish and wildlife resources.

#### *The Henry's Fork Fishery*

Perhaps the biggest disappointment regarding the current title transfer legislation is that there was no attempt to include broader stakeholder representation to develop a global remedy—i.e., a drought management plan—to meet not only FMID needs but also those of the fishery. Neither the HFF nor the Henry's Fork Water-

shed Council has been part of this process. We have been forced into a corner regarding our stance on the current proposal; that is not where we prefer to be. The HFF made a commitment years ago to work whenever possible with irrigators and others in the watershed to develop innovative solutions to difficult natural resource problems. We remain committed to this type of approach.

At the same time, perhaps the most important resource issue for the HFF's constituency now and for the foreseeable future will be water. We have yet to solidify a long-term drought response plan in the Henry's Fork watershed that adequately protects the fishery and aquatic resources. This void includes the lack of statutory, regulatory, or negotiated mechanisms to guarantee that sediment events are avoided, minimum winter flows established, and late-summer water quality effects remedied. Therefore, in addition to our consistent approach to collaboration in the watershed, the HFF also remains committed to finding creative solutions to the aforementioned water and fishery issues.

#### *Conclusion*

The HFF would like to request that the current legislative proposal be delayed while the various stakeholder groups are convened to see if there might be an alternative that meets everyone's needs. The Idaho congressional delegation could help sponsor and facilitate talks that should include everyone who has a stake in the outcome from Twin Falls upstream. The HFF believes it is the ultimate irony that the federal government spends millions of dollars annually on a hatchery driven anadromous salmon and steelhead fishery in the lower river while some of the world's greatest wild and native trout fisheries—Idaho fisheries—dry up every ten years. The current title transfer approach should be broadened to include a more comprehensive fix to drought year water issues. We believe that legislation can be developed that meets everyone's needs.

The HFF appreciates the opportunity to comment regarding S. 2556 and the important water use and natural resource issues addressed therein. Please don't hesitate to call our office with any questions or concerns.

Sincerely,

SCOTT B. YATES,  
*Interim Executive Director.*

TROUT UNLIMITED,  
*Arlington, VA, July 29, 2002.*

Hon. BYRON L. DORGAN,  
*Chairman, Water and Power Subcommittee, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

Re: S. 3556—Fremont-Madison Conveyance Act

DEAR SENATOR DORGAN: On behalf of Trout Unlimited, I am writing in regards S. 2556, the Fremont-Madison Conveyance Act. I request that you include this letter in the record of the hearing on July 31, 2002 on this bill.

The mission of Trout Unlimited is to conserve, protect and restore North America's trout and salmon fisheries and their watersheds. Trout Unlimited is a private, non-profit organization with 130,000 members in 450 chapters nationwide. There are approximately 2,000 TU members in Idaho, many of whom enjoy the diverse and outstanding fishery resources of the Henry's Fork watershed. I work with TU's Western Water Project, which focuses on water quantity issues around the West. Across the West, even in normal water years, but especially in drought years like this one, rivers are routinely drained dry—a condition that is disastrous for fish, anglers and local economies that depend on water-based recreation.

#### INTRODUCTION

Citing Mark Twain's hoary aphorism about whiskey, water and fighting seems required in every hearing about western water, because there is a measure of truth in it. But in some parts of the West, people have grown up, and gotten beyond the endless opportunities for fighting. Instead, they are working together to solve problems, rather than simply win a round.

In Idaho, a group of stakeholders on the Henry's Fork of the Snake River, acting through the Henry's Fork Watershed Council, have a remarkable history of collaboration and compromise on difficult resource issues extending back for two decades. The Fremont-Madison Irrigation District (FMID) is a leader in the Watershed Council; Trout Unlimited's members and local chapter have been significantly engaged as well.

Trout anglers have greatly appreciated this progress because the Henry's Fork is justifiably famous for its remarkable trout fishing—with large numbers of huge, fat, and smart wild rainbow trout. TU members voted it the best fishing in the country, and ranked it number one in TU's Guide to America's 100 Best Trout Streams. Anglers are not the only beneficiaries of this fabulous fishing. An economic study funded and completed by the Henry's Fork Foundation (HFF) and published in *Intermountain Journal of Sciences* in 2000 estimated the regional economic benefit of only a portion of the Henry's Fork fishery to be in excess of \$5 million per year.

The issues the Watershed Council members have worked through sometimes have been tough. Upstream of the main fishing section of the Henry's Fork, is Island Park Reservoir, a part of the Bureau of Reclamation's Minidoka Project, and a principal water supply for FMID. In 1992, Reclamation drew down Island Park Reservoir—to the point that 50,000 tons of sediment was released, blanketing the river with silt and causing a disaster for aquatic life and the fishery. When the possibility of again drawing down the reservoir and releasing silt loomed last year due to drought conditions the HFF, FMID, Trout Unlimited and Reclamation reached agreements that avoided repeating that problem.

That history of successful collaboration has not yet, however, been extended to transferring title to Bureau of Reclamation facilities. The Henry's Fork Foundation and the Fremont-Madison Irrigation District (FMID) had prolonged, substantive and productive negotiations regarding an earlier title transfer proposal for Island Park Reservoir and the various ways a transfer could serve to protect the fishery resource while still meeting the irrigation community's needs. Trout Unlimited was a strong public and private supporter of those efforts. That the effort foundered is proof of just how complex and potentially contentious this transfer of public resources into the hands of irrigation districts is, both on the Henry's Fork and elsewhere.

#### TRANSFER POLICY APPROACH

Trout Unlimited agrees with the premise that the federal government need not own all of the 600-plus Reclamation projects. However, spinning off parts of the Reclamation system to nonfederal ownership makes policy sense only if the transfers protect and enhance the public benefits associated with the projects. America's taxpayers, people in the East, West, South, and North paid for these projects. Only if a transfer of ownership of these public projects serves to increase the public benefits and to solve the pressing problems in managing the West's water for economic needs as well as environmental, recreational, and aesthetic purposes, should it be accomplished.

The approach we advocate has four main points:

#### *Transfers Should Enhance the Public Benefits of the Project and the Associated River System*

Our fundamental position is that title transfers make sense only if the human and environmental systems associated with the water projects are made better because of transfer. During most of the long history of western water projects, environmental damage was simply taken as a matter of course, with predictable results. One can hardly consider a major water project now without stumbling over an endangered species issue.<sup>1</sup>

We can take Twain's approach and continue a century and a half of fighting—eventually somebody may win; however, history shows that the likely outcome is simply more fighting. Or we can take the modern approach and ensure that an action, in this case transfer of ownership, that benefits one set of interests, water users, also enhances the public benefits of the project and the associated river system.

<sup>1</sup>In the inter-mountain West, 8 trout subspecies are endangered or threatened. Twenty species of Western fishes are now extinct. A hundred more fish species are threatened or endangered—in total, 70% of all native fish species west of the Rocky Mountains are extinct or at risk. Over 300 runs of Pacific salmon and steelhead are at risk of extinction or already gone.

The presence or possible presence of protected threatened and endangered species creates significant complexity in a transfer. ESA Section 7, which applies only to federal actions, prohibits jeopardy to a species. Non-federal entities are not subject to Section 7, but rather to Section 10, which prohibits "take" of the species. Because Section 7 is significantly more stringent, transferring ownership of a project from Reclamation to a water district effectively reduces the level of protection afforded a listed species. Crafting transfer terms that reflect this change in legal status is complex, and requires substantial information, public and agency involvement, and careful balancing.

*Some Federal Water and Power Projects Should Remain Federal*

Projects that play critical roles in watershed and river management for public purposes or are important to interstate, international, or treaty obligations, should remain federal. Some projects are simply too important to be able to adequately condition the transfers. For example, projects such as Hoover Dam/Lake Mead and Glen Canyon Dam/Lake Powell simply should remain federal.

As a corollary to the first principle, where public benefits cannot be ensured and enhanced in a transfer, because adequate terms cannot be crafted or the recipient will not accept the conditions, the project should remain federal.

*Water Users Are Not Entitled to Project Ownership; Transfer Is a New Benefit To Be Negotiated and for Which Consideration Is Appropriate.*

Under the Reclamation laws, water users are in no sense entitled to project ownership when they complete their capital repayment obligations. The law and history are unambiguous on the point. "Paid out" does not mean "paid for."

Under Reclamation law, agricultural water users are obligated to pay only pennies on the dollar of the costs for Reclamation projects.<sup>2</sup> While water districts may argue they are due ownership when they complete payments, there is no legal claim that those payments built equity. In fact, because the projects were almost entirely subsidized with public funds, the argument in favor of enhanced public benefits is much stronger than any argument in favor of water user ownership. If water users are given a new benefit—ownership and complete control of the facilities—the quid pro quo should be enhanced public benefits.

*A Decision To Transfer a Project Should Not Be Made Until the Consequences of Transfer Are Understood and the Terms of Transfer Determined*

Because water projects affect so many interests, the terms of the deal determine whether a transfer is in the public interest. Congress requires that water projects proposed for construction be evaluated, and at least the general outline of the project determined, before considering projects for authorization. Congress should do no less in disposing of projects in which it has already invested the taxpayers' money.

We suggest that Congress require environmental review and facility-specific transfer plans that set the terms and conditions be completed prior to legislative action. As a less attractive alternative, Congress could authorize transfers while also directing the Secretary of the Interior to condition transfers in order to protect and enhance the public benefits. The appropriate time for legislation and the language used in that transfer legislation has been an issue since the topic of granting ownership to water users first arose. When transfers are directed before environmental review has been completed, Congress is deprived of a thorough analysis of the transfer issues and interior's ability to seriously consider the "no action" alternative is eliminated. Similarly, when transfer is directed before the terms of the deal are worked out, Interior's ability effectively to condition the transfer to protect the public interest and enhance public benefits is greatly reduced, if not eliminated.

Please note that conservation organizations are not alone in their concern about terms and prior review. The Western States Water Council whose members are appointed by Western governors arrived at very similar conclusions in twice adopting a position on transfers of federal water and power projects. In 1995, and again in 1998, the WSWC adopted a position on transfers that sets out their concerns with third party impacts, public costs and benefits, the change in applicable laws, and the need for a strong role for states. They urge Congress and the Administration to adopt a process and develop criteria and guidelines for project-by-project review of transfer proposals, with significant state involvement. (See Position No. 209 at <http://www-westgov.org/wswc/transfer.html>). Trout Unlimited agrees with this position.

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HFF and TU appreciate that FMID faces a serious problem with the drought year reliability of its Reclamation water supply because the fishery faces the same problem. The principal reservoir FMID relies upon is Island Park, part of Reclamation's

<sup>2</sup>The economics of water projects make nonsense of the notion that water users have in any sense "bought" the projects. Since 1914, the federal taxpayer has paid for from 40% to more than 90% of irrigation project costs simply due to the no-interest repayment terms. On top of that generous subsidy, irrigation water users have had more than half (53%) of their \$7.1 billion irrigation share of water project costs shifted to hydropower users or simply forgiven. (Information on Allocation and Repayment of Costs of Constructing Water Projects, GAO/RCED 96-109, 1996.)

Minidoka Project, and the subject of the prior title transfer effort. During the last two drought years, FMID has only been allocated 62% and 42% of Island Park Reservoir storage because of the senior rights of other Minidoka Project contractors. Unfortunately, these dry years are all too common, and typically occur two or three years out of every ten. Every water user on the Snake River and the Minidoka project, including the fishery, faces the same set of problems.

The centerpiece of this bill is transfer of a partially developed well field. Teton Exchange Wells and the associated State of Idaho water permit #22-7022. While the permit envisioned 45 wells totaling 670 cfs of water, only five wells have been drilled, providing approximately 81 cfs. FMID has stated its intent to firm its water supply by drilling new wells and making more extensive use of the well field.

Our immediate concern is that additional water extraction from the ground water system will have a deleterious effect on the Henry's Fork River and aquatic resources. The location of the new wells, the amount of water pumped from the existing and new wells, the type and location of delivery systems, location of water use, and return flows all have implications for fish and wildlife resources. We understand that other water users have concerns about possible injury to their rights as well. TU must oppose this legislation because of the uncertain, but likely, impact further development of this well field would have on the Henry's Fork aquatic resources.

Our more fundamental concern is one of missed opportunity. The Henry's Fork needs a drought management plan that addresses the needs of the agricultural community, the angling interests that now are a significant part of the local economy, and the ecological needs of the river. This bill transfers a potential significant source of water, usable in dry years, to one of the many interests on the river. It picks one set of interests as a winner, and ignores the others. A drought management plan could use any new water developed in the well field as a key element in responding to the inevitable periodic dry years. This bill represents an approach to water problems from the last century, one that Mark Twain would recognize. The Henry's Fork needs an approach based on collaboration, communication, and a philosophy of shared pain and shared gain. Additional use of the Teton Exchange Wells may be an integral part of that approach to making an already stressed water system work more effectively and provide greater benefits to all the users.

TU requests that the current legislative proposal be deferred while the various stakeholder groups are convened to see if there might be an alternative that meets everyone's needs. Such talks could be sponsored and facilitated by the Idaho congressional delegation and include those with a stake in the outcome from Twin Falls upstream. The members of the Henry's Fork Watershed Council have demonstrated that they can be effective and work productively if given the opportunity. Missing this opportunity to encourage creating an effective drought management plan would be moving in the wrong direction.

We have the following specific comments on S. 2556:

1. Section 2(3) creates some ambiguity in the facilities to be conveyed. Section 2(3)(a) describes the facilities to be transferred specifically as the Cross Cut Diversion Dam, the Cross Cut Canal, and the Teton Exchange Wells. However, subsection (3)(b) of Section 2 is broader and includes broader language describing the transfer of all United States rights, title, and interest "any canal, lateral, drain, or other component of the water distribution and drainage system that, on the date of enactment of this Act, is operated or maintained by the District to deliver water to and drainage of water from land within the boundaries of the District." We understand that FMID may operate other facilities beyond those specified in Section 2(3)(a). Therefore, we suggest that the facilities to be transferred be identified in Section 2(3)(a) specifically and not generally.

2. Section 2(3)(c), concerning the Teton Exchange Wells, makes clear that FNUD would receive not just the five wells it has been using, but also the permit for 40 additional wells and approximately 589 cfs of additional water. The heart of our concern is the transfer of this permit, and the possible development of some or all of the additional diversions, with attendant effects on aquatic resources.

3. Section 3(a) directs transfer of the facilities by a date certain. Directing transfer limits, and may eliminate the ability of the Secretary to effectively negotiate terms and conditions in response to the eventual NEPA and ESA process, reducing the value of a review process subsequent to legislation. Directing a transfer is appropriate in legislation after the environmental review is complete, and the terms of the transfer have been set through negotiation. Prior to reaching that point, a much better result is likely if the transfer is authorized, but not directed.

4. Section 3(b) specifies the cost to FMID of the transaction and the facilities. We reiterate the common-sense position set out above that "paid out" does not mean "paid for." The asset value to the taxpayer of the transferred facilities has not been

established and should be in the course of a thorough review of the transfer proposal and development of a drought management plan; after determining that value, a reasonable price can be set. Section 3(b)(1)(B) sets an arbitrary cap of \$280,000, to the potential detriment of the federal taxpayer. We also are concerned that Section 3(b)(2)(B) in limiting the transaction costs to FM1D may be setting a cap on any mitigation or environmental enhancement costs that could be required as part of the transfer. Until that assessment is done, the environmental costs cannot be quantified and should not be capped. Further, the \$40,000 cap on administrative payments again sets an arbitrary cap, to the detriment of the federal taxpayer.

5. Section 5 calls for NEPA analysis to be performed after Congress directs transfer. This process seriously limits the scope of NEPA review (by essentially eliminating the no transfer alternative from serious consideration) and greatly limits the ability of the Secretary to require terms and conditions that protect public resources. We suggest that at a minimum the legislation or legislative record make clear that NEPA analysis is to consider thoroughly the effects of development of the Teton Wells.

6. Section 5 is intended to legitimize use of Reclamation water on land not currently eligible for that water. Water spreading is a significant issue around the West that has typically been resolved, as in this case, by legitimizing what amounts to use of water contrary to law. While we do not have information about this particular situation, we note that the effect of this section is to expand the number of acres legally eligible for irrigation in a basin chronically short of water.

#### CONCLUSION

Congress and Reclamation are far from solving the problem of how, when and under what conditions to transfer ownership of federal water projects. In part, this is because each project is different, with different users, beneficiaries, and environmental issues. Therefore, the appropriate terms and conditions for transfer will differ from project-to-project as well. We suggest that the best approach parallels that which Congress follows when authorizing water projects. Congress should require facility specific transfer plans that develop the issues and find solutions before legislation is enacted. Just as with feasibility studies for new projects, results are best when the questions are asked, the public is involved, and the answers are found early in the process. And as recent revelations about the Corps of Engineers practices show, even that process is subject to flaws.

The development that we find most appealing is that in some areas water users and conservation organizations are now actually talking to one another about how to manage rivers for their mutual benefit. The Henry's Fork is home to leaders in this approach, and their efforts should be encouraged. We are very optimistic that common ground can be found in many, if not most cases. The wisest of the Reclamation contractors appreciate their rights and responsibilities as stewards of vital natural resources, just as conservationists appreciate the contributions of water users.

Congress' goal should be to improve the benefits derived from the enormous federal investment in western water resources. To be satisfied with the status quo in a deteriorating and increasingly complicated system is not enough. Congress should only transfer Reclamation projects when it leads to human and environmental systems that are stronger, healthier and more resilient. We oppose S. 2556 because it does not yet meet that test.

Very truly yours,

STEVEN MALLOCH,  
*Trout Unlimited, Inc.*

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TROUT UNLIMITED,  
*Idaho Falls, ID, July 27, 2002.*

*Honorable Senators of the Energy and Natural Resources Committee, and the Water and Power Subcommittee, U.S. Senate, Washington, DC.*

Subject—S. 2556, Fremont-Madison Conveyance Act

HONORABLE SENATORS: The Snake River Cutthroats, an Idaho Falls-based chapter of both Trout Unlimited and the Federation of Fly Fishers, representing over 200 members in eastern Idaho, offer these comments on the bill, S. 2556, "Fremont-Madison Conveyance Act."

The passage of this bill and its companion House bill, H.R. 4708, is opposed by the Snake River Cutthroats by unanimous vote of the Board of Directors. We are very disappointed in the actions of the Fremont-Madison irrigation District in caus-

ing this legislation to be introduced without the partnership of the conservation community and other stakeholders. We ask you to place this bill on hold until language can be crafted by the stakeholders that is supported by both the agricultural and conservation communities, or at a minimum, consideration is given to the needs of the fishery and aquatic resources.

This bill represents a serious failure in leadership, a lost opportunity for the agriculture and conservation community to provide a showcase example of cooperation and partnership. During drought years we both suffer the same problem, inadequate supply of water. However, the remedy is at hand, the Teton Exchange Wells and associated water pumping permit now owned by the people of the United States. This permit, with existing and future wells, exceeds the needs of both parties. Working together, we could be a formidable force for improving the welfare of our agricultural and conservation interests, and their associated contributions to the local economy.

Unfortunately, Fremont-Madison has chosen to grasp for the prize alone, without consultation with the other stakeholders, without discussions within the framework of the Henry's Fork Watershed Council on the language of the bill, or provisions for the health of the watershed, and without regard for the procedures outlined in the "Framework for the Transfer of Title," Bureau of Reclamation. Fremont-Madison proposed paying 5280,000 for wells and water permits conservatively valued at 12 times that. by the Bureau of Reclamation, and in actuality multiples of this. Surely, there must be room for a bit of sharing with the aquatic resources.

The Snake River Cutthroats respectfully make these requests of and comments to the Senate Energy and Natural Resources Committee, and of the Water and Power Subcommittee:

1. Please send this bill, S. 2556, back to its sponsors, or place on hold, with instructions to include all stakeholders including the conservation community, in its formulation, and return with a "do pass" recommendation from the Henry's Fork Watershed Council. Failure to do so will undoubtedly seriously damage the legitimacy of and the climate of cooperation and goodwill, so carefully developed by that council.

2. Fremont-Madison, for their own reasons, is trying to acquire title without following the procedures outlined in "Framework for the Transfer of Title," August 7, 1995, Bureau of Reclamation. This procedure calls for NEPA analysis to be performed before introduction of legislation to title transfer. This approach seriously limits the effectiveness of the NEPA review, and the ability of the Secretary of the Interior to provide mitigation, and to require terms and conditions to protect public resources. We believe that, at a minimum, the bill should first require completion of the NEPA analysis, and agreement to any necessary remediations prior to title transfer.

3. At a minimum, provide in the bill that some portion, (we suggest 20%) of the water from the Teton Exchange Wells and of the associated permit be reserved for the benefit of the fisheries and welfare of the aquatic wildlife.

4. There may be testimony suggesting that water produced from the wells will result in increased flows in the river, thus providing the conservation benefit. Our analysis does not agree with that. It is logical that the maximum summer irrigation flows through the length Henry's Fork river would come if all the water stored in the upper river is flowed to water right holders over 50 to 150 miles downstream. And in drought years these downstream users do acquire rights to that storage water, amounting to over 50% this year. The Teton Exchange wells are located in the lower portion of the District, thus water from storage and natural flows belonging to these downstream water users but diverted by Fremont-Madison in the upper district, and replaced in the lower located wells, will actually decrease flows in that river segment. And it is unexpected that it is economically feasible for Fremont-Madison to fund the estimated \$100,000-200,000 lifting costs to hold additional water in the reservoirs for winter flow supplementation for the fisheries and aquatic resources.

The Snake River Cutthroats appreciate this opportunity to submit comments on S. 2556.

For the Snake River Cutthroats,

JAMES MATHIAS,  
*President.*

WESTERN STATES WATER COUNCIL,  
*Midvale, UT, July 26, 2002.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Hart Senate  
Office Building, Washington, DC.*

DEAR CHAIRMAN BINGAMAN: On behalf of the Western States Water Council, representing the governors of eighteen states, I am writing to express our interest in legislation dealing with the conservation and management of the High Plains Aquifer. As you know, the Council serves as a forum for western states to express their views on water resource issues. Several of our member states have determined to use the Council as a vehicle to address their interests in protecting the High Plains Aquifer and have formed a caucus that is meeting in conjunction with our regular Council meetings to discuss issues of mutual concern.

To date, those discussions have revolved around the continuing need for conservation of High Plains ground water resources and the likely impact of incentive programs enacted as part of the Farm Bill. We have also addressed the need for further legislation and welcome the introduction of S. 2773. Good decisionmaking must be based on sound science and there is a clear need for more information on the extent and nature of the ground water resources of the High Plains aquifer. To this end, we support further mapping, modeling and monitoring and urge expedited action towards enactment of S. 2773 by the 107th Congress, with assurances of close cooperation with state geologists and water resource agencies. Attached are suggested changes to S. 2773 that we believe would further improve the bill.

Provisions of other pending legislation are still being discussed by our High Plains caucus, including those related to education assistance, research, and voluntary incentive based programs. Any federal actions, to be effective, must recognize the primacy of state water law and provide incentives consistent with state policies and programs. We look forward to working with the Congress to enact appropriate federal legislation, and working with the federal agencies to effectively implement legislative directives.

Sincerely,

KARL J. DREHER,  
*Chairman, Western States Water Council.*

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