

H.R. 706 and H.R. 1870

LEGISLATIVE FIELD HEARING

BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS
FIRST SESSION

December 10, 2001 in Las Vegas, Nevada

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**LEGISLATIVE HEARING ON H.R. 706, TO
DIRECT THE SECRETARY OF THE INTERIOR
TO CONVEY CERTAIN PROPERTIES IN THE
VICINITY OF THE ELEPHANT BUTTE RES-
ERVOIR AND THE CABALLO RESERVOIR,
NEW MEXICO; AND H.R. 1870, TO PROVIDE
FOR THE SALE OF CERTAIN REAL PROP-
ERTY WITHIN THE NEWLANDS PROJECT IN
NEVADA, TO THE CITY OF FALLON,
NEVADA.**

**Monday, December 10, 2001
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Las Vegas, Nevada**

The Subcommittee met, pursuant to call, at 11 a.m., the Commission Chambers, Clark County Government Center located at 500 South Grand Central Parkway, Las Vegas, Nevada, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

**STATEMENT OF HON. KEN CALVERT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. CALVERT [presiding]. Hearing will come to order. It is delightful to be here in Las Vegas, Nevada. It is a beautiful facility that they have built here since the last time I had a hearing here.

First, we will have a field hearing on H.R. 706 and H.R. 1870. Many of the early reclamation projects were constructed at a time when there were no local communities and utilities nearby. As the West became more populated and the urbanization of these areas, the Bureau of Reclamation now owns and operates public facilities and land that would be owned or operated and funded by private corporations or a local government agency if they were constructed today.

The Department of Interior has announced that reclamation would transfer responsibly for a significant number of facilities to state, local governments and other entities. To date, few of them have been forwarded to the Congress and passed. Transfers of

these facilities out of Federal ownership remains a high priority, and expeditious steps must be found to facilitate them.

I look forward to hearing from our witnesses today regarding two land transfer bills, one in Nevada and the other in New Mexico. But before we go into that, we have the gentleman from New Mexico who is senior member of the House and an appropriator, Interior Appropriations Chairman, Mr. Joe Skeen. Would you like to have an opening statement?

STATEMENT OF THE HON. JOE SKEEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. SKEEN. Mr. Chairman, I want to take the opportunity to extend my very warm regards to you for holding this hearing today. I know how busy the Subcommittee is, especially with respect to the, quote, "little California" bill. My intent is to keep my testimony short so that the witnesses seated next to me have the opportunity to explain to you and the members of this fine Subcommittee the Elephant Butte story.

The Elephant Butte Reservoir story begins in the 1930's as the Government offered people the opportunity to build recreational homes on land leased from the U.S. Bureau of Reclamation. The covenants in the lease agreements required leaseholders to make substantial investments on the 400 sites released under the program. It was every leaseholder's hope that the Government would someday privatize the leased land and offer it for sale through a purchase option. Unfortunately, this has not yet happened. The Bureau, throughout most of the 20th Century, apparently felt that someday they might need this land if the dams were ever modified or enlarged. Needless to say, we now believe that modifications or enlargement will never occur.

While legislation enacted by Congress in 1984 allowed the leaseholders of Lake Sumner—another Bureau of Reclamation project where recreational homes existed—the opportunity to purchase their lots, the residents of Elephant Butte remain in a lease-only situation. Despite my previous efforts, including the introduction of prior year legislation, and established patterns of Government transfers, we appear before you to make our request once again.

There are three issues that had to be resolved with the Bureau of Reclamation in order to facilitate a successful transfer. These include property appraisals, the number of lots that would be sold, and the issue of where the money would go. My bill, H.R. 706, addresses each of these issues in a fair and equitable manner. In effect, current leaseholders would have the opportunity to purchase the land on which their homes currently exist at an unimproved, lakefront property appraised value. Proceeds would be deposited in the reclamation fund on behalf of the Rio Grande Project and would be distributed under existing statutes. Finally, the bill guarantees continued public access to water.

This legislation is carefully crafted to resolve these issues. We must not lose track of the fact that this is really a story about people, their lives and the role of the Government in the settling of the West. In closing, Mr. Chairman, I would like you and the Committee to do what is right by passing this legislation, and you are known for your fairness. It is time that we offer these fine people

the opportunity to purchase the land that many have leased for over 60 years.

I would like my statement to be—

Mr. CALVERT. Without objection, the full statement will be entered into the record.

Mr. SKEEN. Thank you.

[The prepared statement of Mr. Skeen follows:]

Statement of Hon. Joe Skeen, a Representative in Congress from the State of New Mexico

Mr. Chairman, I want to take this opportunity to extend my very warm regards to you for holding this hearing today. I know how busy the subcommittee is, especially with respect to the "little California" bill. My intent is to keep my testimony short so that the witnesses seated next to me have the opportunity to explain to you and the members of this fine subcommittee the Elephant Butte Story.

The Elephant Butte Reservoir story begins in the 1930's as the Government offered people the opportunity to build recreational homes on land leased from the U.S. Bureau of Reclamation. The covenants in the lease agreements required leaseholders to make substantial investments on the four-hundred sites released under the program. It was every leaseholder's hope that the Government would someday privatize the leased land and offer it for sale through a purchase option. Unfortunately, this has not yet happened. The Bureau, throughout most of the 20th Century, apparently felt that someday they might need this land if the dams were ever modified or enlarged. Needless to say, we now believe that modifications or enlargement will never occur.

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There are three issues that had to be resolved with the Bureau of Reclamation in order to facilitate a successful transfer. These include property appraisal, the number of lots that would be sold, and the issue of where the money would go. My bill, H.R. 706 addresses each of these issues in a fair and equitable manner. In effect, current leaseholders would have the opportunity to purchase the land on which their homes currently exist at an unimproved, lakefront-property appraised value. Proceeds would be deposited in the reclamation fund on behalf of the Rio Grande Project and would be distributed under existing statutes. Finally, the bill guarantees continued public access to the water.

This legislation is carefully crafted to resolve these issues. We must not lose track of the fact that this is really a story about people, their lives, and the role of the Government in the settling of the west. In closing Mr. Chairman, I ask you and the committee to do what is right by passing this legislation. It is time that we offer these fine people the opportunity to purchase the land that many have leased for over sixty years.

Mr. CALVERT. And we thank the Chairman for coming out here today to offer some assistance on good legislation. And with that, also we have up today H.R. 1870 that is sponsored by the gentleman from Nevada, whose home State we are in, and we are grateful for your wonderful hospitality. And if you would like to speak to H.R. 1870, you are recognized.

STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Thank you very much. Mr. Chairman, thank you and I want to welcome you. I want to welcome my colleague, Mrs. Napolitano, from California here was as well, as well as my good friend Mr. Skeen from New Mexico. And I want to thank you for having this hearing today and having this hearing in Nevada on

this piece of legislation, as part of your Committee's field hearing that you are holding today.

H.R. 1870 is a bill to provide the city of Fallon, Nevada the exclusive right to purchase approximately 6.3 acres of public land located in the downtown area of that city. The Fallon Rail Freight Loading Facility Transfer Act—if you can say that quickly, you are better than I am—will enable the city of Fallon to make the necessary long-term investments to ensure the future viability of this important municipal asset.

Now, the city of Fallon is a rural, agricultural community of 8,700 residents located in northern Nevada, approximately 70 miles east of Reno. Since 1984, the city has leased approximately 6.3 acres of property from the U.S. Bureau of Reclamation that it utilizes as a rail freight yard and loading facility. The city, the State of Nevada, the U.S. Department of Transportation and the Southern Pacific Railroad have all collectively invested a significant amount of money in this facility, thus providing approximately 400 jobs in that community.

On January 1, 2000, the long-term lease agreement between the city of Fallon and the Bureau of Reclamation expired. It was not terminated; it simply expired. And as negotiations began for a new long-term lease, the city of Fallon and the Bureau came to the conclusion that it would be in the best interest of both parties to have ownership of this property transferred to the city of Fallon. The city would be able to make those long-term investments to a facility that it owned without having to worry about renegotiating new leases and the possibility of losing access to the property at some future date.

The Bureau of Reclamation would be able to divest itself from an asset that no longer serves a purpose to its core mission allowing more of its scarce resources then to be focused on the traditional roles of the Bureau of Reclamation. Of course, Mr. Chairman, this transfer will be contingent on the satisfactory conclusion of all necessary environmental reviews and will be purchased by the city at fair market value. The Fallon Rail Freight Loading Facility Transfer Act is a win-win situation for all of the affected parties.

And, finally, Mr. Chairman, this bill has strong support from Nevada's bipartisan congressional delegation. Along with the city of Fallon, we look forward to further consideration of this legislation and, ultimately, its passage. And again, Mr. Chairman, welcome to Nevada and thank you for providing the city of Fallon and Nevada with this opportunity.

[The prepared statement of Mr. Gibbons follows:]

Statement of the Hon. Jim Gibbons, a Representative in Congress from the State of Nevada

Mr. Chairman, welcome back to my home state of Nevada. I want to thank you for allowing this legislation, H.R. 870, to be considered today as part of your committee's field hearing.

H.R. 1870 is a bill to provide the City of Fallon, Nevada the exclusive right to purchase approximately 6.3 acres of public land located in the downtown area of the City.

The Fallon Rail Freight Loading Facility Transfer Act will enable the City of Fallon to make the necessary long-term investments to ensure the future viability of this important municipal asset.

Fallon is a rural, agricultural community of 8,700 residents located in northern Nevada—approximately 70 miles east of Reno.

Since 1984 the City has leased approximately 6.3 acres of property from the U. S. Bureau of Reclamation that it utilizes as a rail freight yard and loading facility.

The City, the State of Nevada, the U.S. Department of Transportation and the Southern Pacific Railroad have collectively invested a significant amount of money in this facility—thus providing over 400 jobs in the community.

On January 1, 2000 the long-term lease agreement between the City of Fallon and the Bureau of Reclamation expired.

As negotiations began for a new long term lease, the City of Fallon and the Bureau came to the conclusion that it would be in the best interest of both parties to have ownership of this property transferred to the City of Fallon.

The City would be able to make long-term investments to a facility that it owned without having to worry about renegotiating new leases and the possibility of losing access to the property.

The Bureau of Reclamation would be able to divest itself from an asset that no longer serves a purpose to its core mission allowing more of its scarce resources to be focused on the traditional roles of the Bureau.

Of course, this transfer will be contingent on the satisfactory conclusion of all necessary environmental reviews and will be purchased by the City at fair market value.

The Fallon Rail Freight Loading Facility Transfer Act is a win-win situation for all of the affected parties.

Finally, Mr. Chairman, this bill has strong support from Nevada's bipartisan congressional delegation. Along with the City of Fallon, we look forward to further consideration of this legislation, and ultimately, its passage.

Again, Mr. Chairman, welcome to Nevada—and thank you for providing the City of Fallon with this opportunity.

Mr. CALVERT. I thank the gentleman. And with that, I think we will get into our first panel. And we are pleased that Commissioner John Keys is with us today, with the Bureau of Reclamation, Department of Interior. And, Mr. Keys, you are recognized. We are on a 5-minute rule here. I don't think we are that strict about that. We will try to keep the testimony to about 5 minutes, and we will have more time for questions.

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

Mr. KEYS. Mr. Chairman, thank you very much. It is a pleasure to be here with you today and to testify on H.R. 706 and 1870. I would ask that my full statements on both of these bills be included in the record.

Mr. CALVERT. Without objection, so ordered.

Mr. KEYS. Mr. Chairman, H.R. 706 provides for the conveyance to private ownership of 403 residential lots at Elephant Butte and Caballo Reservoirs in New Mexico. The Department supports this legislation with a few technical modifications.

In the late 1940's, quarter- and half-acre lots along Elephant Butte and Caballo Reservoir shorelines were made available for public lease on a short-term basis for part-time recreational use. There are 348 lots at Elephant Butte and 55 lots at Caballo. Over time, the temporary structures that were put there became permanent, and the leaseholders want to purchase and acquire title to the individual leased lands. The Bureau of Reclamation has done a resource management plan for the two reservoirs and has done the necessary environmental impact statement for that plan.

As I said earlier, the Department supports H.R. 706 with a few modifications. The first one is there is a few of those lots that may

create some inholdings and may be needed for future consideration. We are certainly willing to work with the leaseholders and with you on determining which ones of those and how significant that is. The second issue is fair market value. As the lands are really used, should be used for their valuation. Proceeds from the sales of the lots should be properly credited, and time limits and the costs of surveys and appraisals need to be revisited. We will look forward to working with you on accomplishing these few technical changes and then the passage of the legislation and conveyance of those lots at the two reservoirs.

H.R. 1870 provides for the conveyance of the 6.3 acres of land, otherwise known as the Fallon Freight Loading Facility or the Fallon Freight Yards, within the Newlands Project in Nevada to the city of Fallon. Since the facilities no longer serve the needs of the project, the Bureau supports the conveyance. The Department supports H.R. 1870 with a few technical modifications also.

The Fallon Freight Yard was acquired by the Bureau of Reclamation for the Newlands Project in 1920. The acquisition cost was allocated to the Truck E. Carson Irrigation District who has since repaid that obligation. For many years, the city of Fallon leased the facilities for industrial uses. While that lease was terminated in January of 2001, the city wants to acquire the lands, and we certainly support that. Truckee-Carson Irrigation District, the project beneficiary, has stated that it doesn't want or need those lands for its operation.

As I said before, the Department supports H.R. 1870 with a few technical clarifications. The first of those is the Comprehensive Environmental Response Compensation and Liability Act—most of us that work with that call it CERCLA—and reclamation policy that requires that all liability issues, including environmental liability, be resolved before title transfer. We have conducted a Phase I site assessment and identified 13 conditions on those lands that need to be further investigated and cleaned up. The Phase II assessment must be done and then accomplished. We have a contract and a work plan, and we are working with Fallon to get that done. The conveyance should not be done until these conditions are resolved.

Second, since Truckee-Carson Irrigation District has repaid the allocated costs for these lands, we feel that the proceeds from the sale should go to reimburse the Newlands Project. Third, some details of the appraisals need to be worked out, and, fourth, since the leases ran out, the city of Fallon has leased some of those lands to another company, there were some funds involved, and we are working with them to get that straightened out. And, certainly, I don't see any problem with any of those.

Mr. Chairman, in summary, Reclamation strongly supports transferring ownership of all of these facilities—at Elephant Butte, at Caballo and at the Fallon Freight Yard—with the above-mentioned modifications or some work on those. We would look forward to resolving the issues and then completing the transfers. Look forward to working with you and your staffs on the legislation, and I would certainly answer any questions that you might have.

[The prepared statements of Mr. Keys follow:]

Statement of John W. Keys, III, Commissioner, Bureau of Reclamation, U.S. Department of the Interior on H.R. 706

Mr. Chairman and members of the Subcommittee, I am John Keys. I am Commissioner of the U.S. Bureau of Reclamation (Reclamation). I appreciate the opportunity to appear today to present the Administration's views on H.R. 706, the Lease Lot Conveyance Act of 2001. H.R. 706 provides for the transfer and disposal of residential leased lots located on federal properties at Elephant Butte and Caballo Reservoirs near Truth or Consequences, New Mexico.

In the late 1940s, small quarter-acre and half-acre lots along the shoreline of Elephant Butte and Caballo Reservoirs were made available for the public to lease and occupy on a short-term basis. Individuals were permitted to place tents, campers, or construct temporary structures on the site for the duration of their stay. Although the original intent of the lease lot program was to provide lots for part-time recreational use, over the years permanent structures and other improvements have replaced initial recreational facilities with many of the structures now used as full-time residences.

H.R. 706, as introduced, would convey ownership of 403 lease lots at Elephant Butte and Caballo Reservoirs to the lessees for "fair market value." However, rather than appraise these lots at their actual value the legislation requires that the lease lots be appraised as unimproved land, as though they were vacant building lots, and the proceeds be deposited in the Reclamation Fund on behalf of the Rio Grande Project and made immediately available to the subject Irrigation Districts under subsection I of the Fact Finders Act.

The Administration supports the effort to convey certain lands and facilities to private entities—in particular, those that are no longer necessary for managing either the dam or the recreation areas. However, we have concerns about a number of provisions in the bill, and cannot support it as currently written. We would appreciate the opportunity to work with the Committee to address the various technical provisions necessary to facilitate this land transfer.

Section 7 should be modified to direct proceeds from the sale of lots on acquired lands to the Reclamation Fund pursuant to existing laws and of lots on withdrawn lands to the general Treasury pursuant to existing law. Approximately 57 percent of the land in question is public land that was withdrawn from the public domain for the project by the Bureau of Reclamation from the Bureau of Land Management and as such, the districts have not paid anything toward acquisition costs. The remaining 43 percent of the lots are located on lands acquired by the Bureau of Reclamation for construction of the Project. However, in 1937 the Districts were relieved of their obligation to repay any portion of the costs of acquired lands or the cost of constructing Elephant Butte Dam and Reservoir and all payments made up to that time were returned to the districts as credit. All costs of constructing Caballo Dam and Reservoir were charged to flood control. Also, in continuing litigation during the past 10 years, Reclamation has contended that these revenues, as well as other similar project revenues, are not one of the three types of revenues covered by subsection I. Since the proceeds of this sale would not be credited or subject to treatment under subsection I, the reference to this subsection is inappropriate and should be deleted. We believe the bill should be amended to clarify issues regarding the disposal of withdrawn (as distinct from acquired) lands, and would like to work with the Committee to develop legislative language.

Section (3)(1), as drafted requires that the lots be appraised as if they are unimproved lands. Since the existing lots are prime lakefront recreational home sites, are the only such properties in this area of southern New Mexico and have fully developed roads and access to all necessary utilities to sustain full-time residency, such an appraisal would seriously understate their value. This section should be modified to require that fair market value be established by an appraisal in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and with currently accepted industry appraisals techniques.

Other issues that merit further consideration are the time limits contained in this act and the need to include administrative, survey and appraisal costs for conveyance of the lots from the government to the purchaser in Section (5)(a)(2), Administrative Costs. Surveys could take from 3 to 6 months to complete and appraisals requiring sufficient time for review and approval would take another 4 to 5 months, most likely exceeding the timing proposed in Section 5(d). These survey and appraisal costs should be borne by the beneficiaries.

In summary, while Reclamation generally supports legislation to privatize certain leased lots at Elephant Butte and Caballo Reservoirs, we have concerns about some provisions in H.R. 706, and the Administration cannot support it as written. We

would appreciate the opportunity to work with the Committee to address these concerns.

Statement of John W. Keys, III, Commissioner, Bureau of Reclamation, U.S. Department of the Interior on H.R. 1870

I am John Keys, Commissioner of the Bureau of Reclamation, and I am here today to present the Administration's views on H.R. 1870, the Fallon Rail Freight Loading Facility Transfer Act. This bill provides for the sale of about 6.3 acres of real property within the Newlands Project, Nevada, to the city of Fallon, Nevada. Reclamation supports conveyance of this acreage to the city of Fallon; however, four issues B credit of sale proceeds, appraisal, liability, payment to Reclamation of certain revenues B remain to be addressed. We cannot support the bill as written, but we look forward to working with the Subcommittee to resolve these issues so the work of conveying this land to the city of Fallon can proceed.

The land to be conveyed to the city of Fallon is part of the Newlands Project. It was acquired in 1920 by the United States government. The proceeds of the sale of this land to the city of Fallon should reimburse the Newlands Project. Therefore, Section 2(b) of H.R. 1870 should be amended to state that the amount paid by the city of Fallon should be credited to the Newlands Reclamation Project fund in the Treasury, in accordance with section 204(c), of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(c)).

The fair market value of the real property should be determined by an independent appraiser approved by the Commissioner of Reclamation, in accordance with regulations concerning disposal of real property. [43 CFR 402.6] H.R. 1870 should be amended to state that the appraisal under section (b) be conducted at the city of Fallon's expense by an independent appraiser approved by the Commissioner of Reclamation.

As required by law (the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. ' 9601 et seq.) and Reclamation policy, all liability issues, including environmental liability, need to be resolved before conveyance of title to the city. The city of Fallon leased this land for some time—its lease was terminated on January 31, 2001. During the lease period, the city of Fallon used the site for various purposes, including: storage of electrical equipment such as transformers and capacitors; storage of gasoline and diesel fuel; and construction and operation of a truck to railroad transfer structure. A Phase I Environmental Site Assessment (completed under contract by Tetra Tech Environmental Management, Inc., in accordance with ASTM Practice E 1527) revealed 13 recognized environmental conditions that will need to be investigated and, if verified, cleaned up. Reclamation is working with the city of Fallon on a work plan to perform this investigation.

Finally, the city of Fallon must pay to Reclamation revenues it has improperly received from Premier Chemical, the company using the Fallon Rail Freight Loading Facility for freight loading purposes. Since April 3, 2001, the city of Fallon has had no legal interest in the property; nonetheless it has received revenues from Premier Chemical for its use of the property. In a recent conversation with the Reclamation manager in Carson City, the city has committed to promptly pay those revenues to Reclamation.

In summary, Reclamation supports the proposed conveyance, but cannot support the bill until certain technical modifications are made. H.R. 1870 should be amended to address the four issues listed above with special attention to the condition that the conveyance shall not occur until the Commissioner of Reclamation certifies that all liability issues relating to the property (including issues of environmental liability) and all revenue issues relating to revenue improperly retained by the city of Fallon have been resolved.

Mr. CALVERT. I thank the gentleman. If it is OK with the Commissioner, I think we will go ahead and recognize the second panel, and then we can open it for questions for everybody to participate.

In panel two, we have several witnesses. Mike Mackedon will be speaking on H.R. 1870. He is the city attorney, the city of Fallon. We have Charles C. Ward from Elephant Butte, New Mexico, and Mrs. Sherry Mowles, both of which will be speaking toward H.R. 706. With that, Mike, you are recognized. Again, we are on

a 5-minute rule, more or less, and you may begin any time you like.

STATEMENT OF MIKE MACKEDON, CITY ATTORNEY, CITY OF FALLON, NEVADA

Mr. MACKEDON. Thank you, Mr. Chairman. It is a pleasure for me to be here, but as you have indicated, I am here to speak and give the testimony of Mayor Ken Tedford who could not be here for himself today. But I am knowledgeable on this matter and be able to answer questions after I have read his statement. This is the statement he would have given had he been here, and I am quite sure it will fall within the 5-minute category.

Chairman Calvert, members of the Subcommittee, my name is Ken Tedford—and that is the Mayor of the city of Fallon. Had he been here today, he would have told you how pleased he would have been to have the opportunity to appear before the Subcommittee and to testify in favor of the passage of H.R. 1870. He says in the statement, “I am particularly mindful that this hearing is being held at a time when the Congress and our Nation’s leadership face unique and extraordinary challenges and, yet continues to do the people’s business in the face of those challenges.” And he thanks you.

If enacted into law, H.R. 1870 will enable the city of Fallon to acquire, through purchase at appraised value, a 6-acre parcel of federally owned land that the city leased from the Bureau of Reclamation originally in 1984. This parcel is located, as our congressman has told you, entirely within the corporate limits of the city itself.

The city is aware that the U.S. Government, through the U.S. Reclamation Service, predecessor of the Bureau of Reclamation, acquired the freight yard property in 1920. It appears that from 1920 until the mid-1980’s the Bureau of Reclamation conducted operations thereon related to the Newlands Project, which included but were not limited to the electrical generation and distribution utility, which was operated by the Bureau of Reclamation and the Truckee-Carson Irrigation District.

Federal use of the property ended in the early 1980’s. And I think, in truth, that the Federal use of the properties probably ended in 1968 or 1969, although Federal ownership was discontinued—or has continued, I should say. But it was in 1968, I believe, that the Bureau of Reclamation and the Truckee-Carson Irrigation District discontinued the operation of its electrical utility, outgrew the need for this particular yard. And from that point forward, the property has been used, although owned by the Bureau of Reclamation, but used by the parties, including the city of Fallon.

The lease anticipated—that is the lease with the city—construction of the present railroad loading facility, which was accomplished in 1990 by virtue of lease between the city and the Bureau of Reclamation. That was a 10-year lease.

Earlier this year, during negotiations to extend the city’s lease of the property, which has not been concluded, the Bureau advised the city that it was their preference that the city assume fee ownership of the property rather than continuing to lease it. The city

manifested the same intent. This is the city's desire, and as a result, we asked Representative Jim Gibbons to introduce this legislation to authorize the Bureau to sell the parcel to the city. We believe a companion measure has been introduced in the Senate by our Senator Harry Reid.

The city's construction and operation of the freight yard facility under a lease arrangement has been financially encouraged and supported by the State of Nevada and the Southern Pacific Railroad, pursuant to an operating agreement dated July 5, 1990. The United States Department of Transportation also participated financially through the operation agreement, funding certain grants designed to assist and promote local railroad service.

Accordingly there is a significant financial investment in the freight yard facility by Federal and state governments and private industry. The city has expended approximately \$150,000, the State of Nevada approximately \$75,000, and the U.S. Department of Transportation approximately \$500,000. Additionally, Southern Pacific Railroad has funded capital improvements to upgrade and maintain approximately 20 miles of track necessary for the operation of the facility. Accordingly, the combined investment in this facility is well in excess of \$1 million. This cooperative funding demonstrates the importance to the community and the State for the continued viable operation of this facility by the city.

For more than 10 years the freight yard facility has served as an anchor for the railroad spur which extends through the city limits. The railroad spur would have been discontinued and taken out of service were it not for this facility. And very importantly, the facility serves as a railhead for a mining company located in the small town of Gabbs, 70 miles to the east and south of Fallon. Mining is that community's only industry, and maintaining a railhead is essential to the economy of the town.

I should say, or the Mayor would tell you, that the revenue that the city might receive from the freight yard facility and the rent that it has paid to the Bureau for the use of the property are insignificant as compared to the regional economy that the facility and the railroad spur generate and support.

I should tell you that since the railroad spur was improved and this facility was developed, a number of other companies have now located and are using this facility. So it has fulfilled—this is an occasion where the project that was the joint project of the Federal Government, the State of Nevada and the city, has worked very well for our economy.

Before concluding, Mr. Chairman, I would like to touch briefly on the environmental condition of the property. Because the property has been used for industrial purposes for more than 75 years—for the bulk of that time as an electrical utility maintenance, storage and operations area—we and the Bureau both believe that an environmental assessment should be completed prior to a transfer. To that end, Phase I and Phase II environmental assessments have been completed. Soil samples have been taken, a laboratory analyses conducted. While things generally look good, or we believe they do, from the information we have, additional investigation is clearly necessary and needs to be completed before it can be determined if the property is environmentally clean or whether some

sort of remediation will be required and how that cost of remediation should be allocated.

This concludes the Mayor's statement. I would be happy to answer questions when that opportunity comes.

[The prepared statement of Mayor Ken Tedford follows:]

Statement of Hon. Ken Tedford, Mayor, Fallon, Nevada

Chairman Calvert, Members of the subcommittee, my name is Ken Tedford and I am here today in my capacity as the Mayor of the City of Fallon, Nevada. I am pleased to have this opportunity to appear before the subcommittee and testify in favor of the passage of H.R. 1870. I am particularly mindful that this hearing is being held at a time when the Congress and our Nation's leadership face unique and extraordinary challenges and, yet, you continue to do the people's business in the face of these challenges. Thank you.

If enacted into law, H.R. 1870 will enable my City to acquire through purchase at appraised value a six (6) acre parcel of federally owned land that the City currently leases from the Bureau of Reclamation. This parcel is located inside the corporate limits of the City. The City is aware that the United States government, through the U.S. Reclamation Service, predecessor of the Bureau of Reclamation, acquired the freight yard property in 1920. It appears that from 1920 until the mid-1980's the Bureau of Reclamation conducted operations thereon related to the Newlands Project, including but not limited to the electric generation and distribution utility operated by the Bureau of Reclamation and the Truckee-Carson Irrigation District. Federal use of the property ended in the early 1980's. The first agreement for the City's use of the property was a five (5) year lease in 1984 between the Bureau of Reclamation and the City. That lease anticipated construction of the present railroad loading facility, which was accomplished pursuant to the 1990 lease between the City and the Bureau of Reclamation.

Earlier this year, during negotiations to extend the City's lease of the property, the Bureau advised the City that it was their preference that the City assume fee ownership of the property rather than continuing to lease it. This is the City's desire as well. As a result, we asked Representative Jim Gibbons to introduce this legislation to authorize the Bureau to sell the parcel to the City. A companion measure has been introduced in the Senate by Senator Harry Reid.

The City's construction and operation of the freight yard facility under the existing lease has been financially encouraged and supported by the State of Nevada and the Southern Pacific Railroad pursuant to an Operating Agreement dated July 5, 1990. The United States Department of Transportation also participated financially through the Operation Agreement, funding certain grants designed to assist and promote local railroad service. Accordingly there is a significant financial investment in the freight yard facility by federal and state governments and private industry. The City of Fallon has expended approximately \$150,000.00, the State of Nevada has expended approximately \$75,000.00, and the U.S. Department of Transportation has expended approximately \$500,000.00 on the facility. Additionally, Southern Pacific Railroad has funded capital improvements to upgrade and maintain approximately 20 miles of track necessary for the operation of the facility. Accordingly the combined investment in this facility is well in excess of \$1,000,000.00. This cooperative funding demonstrates the importance to the community and the State of Nevada for the continued viable operation of this facility by the City of Fallon.

For more than ten years the freight yard facility has served as an anchor for the railroad spur which extends through the City limits. The railroad spur would have been discontinued and taken out of service were it not for this facility. The facility serves as a railhead for a mining company located in the small town of Gabbs, seventy miles to the east and south of Fallon. Mining is that community's only industry and maintaining a railhead is essential to the economy of the town.

The revenue that the City receives from the freight yard facility and the rent that it pays to the Bureau of Reclamation for the use of the property are insignificant as compared to the regional economy that the facility and the railroad spur generate and support.

Before concluding, Mr. Chairman, I would like to touch briefly on the environmental condition of the property. Because the property has been used for industrial purposes for more than 75 years—for the bulk of that time as an electrical utility maintenance, storage and operations area—we the Bureau both believe that an environmental assessment should be completed prior to a transfer. To that end, Phase I and Phase II Environmental Site Assessments have been completed at the site.

Soil samples have been taken and laboratory analyses conducted. While things generally look good, some additional investigations will need to be completed before it can be determined if the property is environmentally clean or whether some sort of remediation will be required.

Mr. Chairman, this concludes my statement but I would be happy to answer any questions that you or the other Members may have. Thank you again for allowing me to testify in support of this legislation.

Mr. CALVERT. Appreciate the gentleman's testimony.

Mr. MACKEDON. Thank you.

Mr. CALVERT. Next, Mr. Charles C. Ward, from Elephant Butte, New Mexico in regards to H.R. 706. Mr. Ward, you are recognized.

STATEMENT OF CHARLES C. WARD, PRESIDENT, ELEPHANT BUTTE/CARBALLO LEASEHOLDERS ASSOCIATION

Mr. WARD. Thank you, Mr. Chairman. Mr. Chairman and distinguished Committee members, my name is Charlie Ward. I am the president of the Leaseholders' Association at Caballo and Elephant Butte Reservoirs. I have with me here today two members of our Board of Directors: Mr. Mike Mowles and Mr. Jerry Stagner.

Mr. Mowles is one of the leaseholders whose lease lot was not recommended for privatization in the draft resource management plan and the environmental impact statement. Mr. Stagner is not a leaseholder, but he is one of the civic leaders of our community and has volunteered to serve on our board. He is the president of the State Bank, a member of the Economic Development Committee and a member of the Work Force Development Board of Truth or Consequences, New Mexico, which is a companion town to Elephant Butte.

We are here today representing the leaseholders of Elephant Butte and Caballo Reservoirs. Thank you for allowing us the opportunity to address your Committee on behalf of the Elephant Butte and Caballo Leaseholders' Association. And I think that is extremely important. We appreciate you taking the time out in a year that we have had a lot of unusual events happening in Washington, D.C. And we are very proud of our Congress for carrying on the business under these trying conditions.

Our association is a non-profit organization formed to achieve the purchase of what are referred to as the lease lots at Elephant Butte and Caballo Reservoirs. On behalf of the association, I would like to thank Representative Joe Skeen for his continued support of our efforts to privatize the lots we are leasing and for introducing H.R. 706, The Lease Lot Conveyance Act, which allows for the privatization of the lease lots. Senator Dominici has also assured us of his support and has given us his commitment to introduce a companion bill in the Senate.

We would also like to take this opportunity to thank Senator Bingaman and Representatives Wilson and Udall, of the State of New Mexico, for their support of the legislation. Also, our thanks is extended to the Bureau of Reclamation, in particular, Mr. Clay McDermeit, who invited our association to have a representative on the Working Group Committee, formed to provide input into the resource management plan and the environmental impact statement. I would say that plan is in its final phases now.

Although the final documents have not been released, the draft plan and the EIS released for comments recommended only 378 of the 400 lease lots be privatized. However, our association supports H.R. 706, introduced by Representative Skeen, which provides for the privatization of all the lease lots. These lease lots are in the State of New Mexico, along the shores of Elephant Butte and Caballo Reservoirs. The Elephant Butte Reservoir was dedicated in 1916 and is near the small community of Truth or Consequences, New Mexico. As time has progressed, a small community of homes and businesses have resulted in New Mexico's 101st city, Elephant Butte, incorporated in 1999.

Caballo Reservoir was built around 1930 as a flood control and holding area. It is about 15 miles south of Truth or Consequences. The reservoirs are about 2 hours to the south of Albuquerque and about 2 hours to the north of El Paso, Texas, which are the closest, largest cities in our area.

The first lease lots became available in the 1940's. In spite of the \$10 per year lease fee, it took a good 40 years before all lots were leased. In those times, lessees were avid fishermen or people who treasured the quiet and solitude the reservoirs offered. The leaseholders pioneered the development of these lease lots, actually encouraged to do so by the Government. In leases of old, leaseholders were told unless improvements were made to the lots, the leases would revert back to the Government. Leaseholders got busy and established roads, poured foundations for their cabins or trailers, brought in electricity and either had water piped in or drilled wells. Drainage and retaining walls were built, septic tanks were installed and other upgrades were made including utilities. All of these improvements were a result of the sweat, labor and equity of the leaseholders.

It is important to note, all improvements were approved by the Government, and, insofar as we know, no funds whatsoever have been expended by the State of New Mexico nor the Federal Government for the benefit of the lease lots. However, Sierra County does maintain roads for public access to the beaches.

Some leaseholders have improved their lease lots, and even built homes, but the majority of lease lots still reflect the general populations' status of retiree or those on a limited income. Original cabins have been upgraded or replaced with manufactured homes.

Collectively, we now feel somewhat threatened for two reasons. First of all, the State of New Mexico has increased our lease fees, and as time progresses we must anticipate even more increases. Leaseholders fear they will be priced out of their homes. These are the people who moved here because of affordability, many of whom are considered to be at poverty level or below. More than 75 percent of the lease lot holders are over age 55, and about 70 percent of these are over age 65. The majority of these senior citizens are on fixed incomes. Most are retired and having an affordable place to live, on land they themselves have worked and nurtured, is an opportunity they should be secure in.

Second, our hold on the lease lots we call home is tenuous, at best. We are all acutely aware we can be removed at any time due to a clause in our lease agreement which states, if the Government determines there is a greater need for these lots, they can give us

a 60-day notice, and we must return our lease lots to their original condition.

There are 403 lots, but far more people will be affected by the outcome of this legislation. Every lease lot has a family associated with it and is often used by several generations. There are many families in which the father acquired the lot. He raised his kids with the Butte as an integral part of their upbringing. That tradition continues today in the lives of his grandkids and great grandkids. Every lot touches the lives of a family, and many hundreds of people call these lots home.

Elephant Butte and Caballo Reservoir boundaries, including the lakes, encompass approximately 78,000 acres. The lease lots occupy only approximately 250 acres, or 0.3 percent, of the land within the area. Therefore, more than 99.5 percent, or 77,750 acres, of the area are, and will be, available for full public utilization. These lots are not an issue with regard to public recreation. There are more than 200 miles of shoreline available for public utilization around the two reservoirs. Lease lots do not encroach upon or otherwise affect public utilization of shorelines around the reservoirs.

Currently, the majority of leaseholders are reluctant to make major improvements on their lease lots due to the land title questions. Private ownership of lease lots will not only sustain existing economic conditions, but will also provide owners the security to invest in permanent structure and improvements. It will add needed jobs to the community, increase economic stability, increase revenue to the county through property taxes and to the surrounding community through gross receipts taxes.

Truth or Consequences, Williamsburg, Caballo and Elephant Butte have grown and are prospering with the increased population. If leases are terminated, a significant negative impact to the local economy and loss of sustainability will occur. Most significantly, a large number of elderly people, many of whom cannot afford to live elsewhere, would be uprooted or displaced.

The important point I want to make today is our association, the State of New Mexico, its congressional delegation and the surrounding communities, as reflected in Representative Skeen's bill, believe all the lease lots should be privatized. We believe all the lots are equally important to those currently leasing them. There is no effect to the public by allowing the lots to be purchased by their leaseholders. In the past four to five decades, these lots have been leased, there has been no conflict with public users and no loss of use by the public. Therefore, we encourage you to pass Representative Skeen's bill, as written, to include privatization of the 403 lease lots.

Our process has been long and arduous. We have been working for more than two decades toward the purchase of our lots. It is impossible to condense into a 5-minute presentation lifetime experiences such as a kid's first fish, a widow living on a fixed income or a neighbor whose wife is in the final stages of cancer.

We are thankful to finally be before you today and thank you for your time, and hopefully for your support of Representative Skeen's bill, 706. Please feel free to ask me or one of the other board members any questions you might have. We would be happy to answer those, and I would like to say that we would be happy to cooperate

with you Committee or the Bureau of Reclamation in any changes that might be necessary. Thank you, Mr. Chairman.

[The prepared statement of Mr. Ward follows:]

**Statement of Charles C. Ward, President, Elephant Butte/Caballo
Leaseholders Association**

Mr. Chairman and distinguished Committee Members, my name is Charlie Ward, I am the president of the Elephant Butte/Caballo Leaseholder's Association. I have with me today two members of our board of directors: Mr. Mike Mowles and Mr. Jerry Stagner.

Mr. Mowles is one of the leaseholders whose lease lot was not recommended for privatization in the draft resource management plan and the environmental impact statement. Mr. Stagner is not a leaseholder but he is one of the civic leaders of our community and has volunteered to serve on our board. He is the president of the State National Bank, a member of the economic development committee and a member of the work force development board.

We are here today representing the leaseholders of Elephant Butte and Caballo Reservoirs. Thank you for allowing us the opportunity to address your Committee on behalf of the Elephant Butte/Caballo Leaseholders Association. Our association is a non-profit organization formed to achieve the purchase of what are referred to as the lease lots at Elephant Butte and Caballo Reservoirs.

On behalf of the association, I would like to thank Representative Joe Skeen for his continued support of our efforts to privatize the lots we are leasing, and for introducing H.R. 706, the Lease Lot Conveyance Act, which allows for the privatization of the lease lots. Senator Dominici has, also, assured us of his support and has given us his commitment to introduce a companion bill in the Senate. We would also like to take this opportunity to thank Senator Bingaman and Representatives Wilson and Udall for their support of this legislation. Also, our thanks is extended to the Bureau of Reclamation, in particular Clay McDermeit, who invited our association to have a representative on the working group committee formed to provide input into the resource management plan and the environmental impact statement.

Although the final documents have not been released, the draft plan and the EIS released for comments recommended only 378 of 403 lease lots be privatized. However, our association supports H.R. 706, introduced by Representative Skeen, which provides for the privatization of all the lease lots.

These lease lots are in the State of New Mexico, along the shores of Elephant Butte and Caballo Reservoirs. Elephant Butte Reservoir was dedicated in 1916 and it is near the small community of Truth or Consequences, New Mexico. As time has progressed, a small community of homes and businesses have resulted in New Mexico's 101st city, Elephant Butte, incorporated in 1999.

Caballo Reservoir was built around 1930 as a flood control and holding area. It is about 15 miles south of Truth or Consequences. The reservoirs are about two hours to the south of Albuquerque, New Mexico and about two hours north of El Paso, Texas, which are the closest large cities to our area.

The first lease lots became available in the 1940's. In spite of the \$10.00 a year lease fee, it took a good 40 years before all of the lots were leased. In those times, lessees were avid fishermen or people who treasured the quiet and solitude the reservoirs offered.

The lease holders pioneered the development of these lease lots, actually encouraged to do so by the government. In leases of old, lease holders were told unless improvements were made to the lots, the leases would revert back to the government. Leaseholders got busy and established roads, poured foundations for their cabins or trailers, brought in electricity and either had water piped in or drilled wells. Drainage and retaining walls were built, septic tanks were installed and other upgrades were made including utilities. All of these improvements were a result of the sweat, labor and equity of the lease holders.

It is important to note, all improvements were approved by the government, and, insofar as we know, no funds whatsoever have been expended by the state of New Mexico nor the Federal government for the benefit of the lease lots. However, Sierra County does maintain roads for public access to the beaches.

Some lease holders have improved their lease lots, and even built homes, but the majority of lease lots still reflect the general populations' status of retiree or those on a limited income. Original cabins have been upgraded or replaced with manufactured homes.

Collectively, we now feel threatened for two reasons. First of all, the State of New Mexico has increased our lease fees and as time progresses, we must anticipate even more increases. Leaseholders fear they will be “priced out” of their homes.

These are the people who moved here because of affordability; many of who are considered to be at poverty level or below. More than 75 percent of the lease lot holders are over age 55, and about 70 percent of these are over age 65. The majority of these senior citizens are on fixed incomes. Most are retired, and having an affordable place to live, on land they themselves have worked and nurtured, is an opportunity they should be secure in.

Secondly, our hold on the lease lots we call “home” is tenuous, at best. We are all acutely aware we can be removed at any time due to a clause in our lease agreement which states, if the government determines there is a greater need for these lots, they can give us a 60 day notice and we must return our lease lots to their original condition.

There are 403 lots, but far more people will be affected by the outcome of this legislation. Every lease lot has a family associated with it and is often used by several generations. There are many families in which the father acquired the lot. He raised his kids with “the butte” as an integral part of their upbringing. That tradition continues today in the lives of his grandkids and great grandkids. Every lot touches the lives of a family. Many hundreds of people call these lots home.

Elephant Butte and Caballo Reservoir’s boundaries, including the lakes, encompass approximately 78,000 acres. The lease lots occupy only 250 acres, or 0.3 percent of the land within this area. Therefore, more than 99.5 percent, or 77,750 acres of the area are, and will be, available for full public utilization. The lease lots are not an issue with regard to public recreation.

There are more than 200 miles of shoreline available for public utilization around the two reservoirs. Lease lots do not encroach upon or otherwise affect public utilization of shorelines around the reservoirs.

Currently, the majority of leaseholders are reluctant to make major improvements on their lease lots due to the land title questions. Private ownership of lease lots will not only sustain existing economic conditions, but will also provide owners the security to invest in permanent structure and improvements. It will add needed jobs to the community, increase economic stability, increase revenue to the county through property taxes and to the surrounding community through gross receipts taxes.

Truth or Consequences, Williamsburg, Caballo and Elephant Butte have grown and are prospering with the increased population. If leases are terminated, a significant negative impact to the local economy and loss of sustainability will occur. Most significantly, a large number of elderly people, many of whom cannot afford to live elsewhere, would be uprooted or displaced.

The important point I want to make today is our association, the State of New Mexico, its Congressional delegation and the surrounding communities, as reflected in Representative’s Skeen’s bill, believes all the lease lots should be privatized. We believe all the lots are equally important to those currently leasing them. There is no effect to the public by allowing the lots to be purchased by their lease holders. In the past 4 to 5 decades these lots have been leased, there has been no conflict with public users and no loss of use by the public. Therefore, we encourage you to pass Representative Skeen’s bill, as written, to include privatization of 403 lease lots.

Our process has been long and arduous. We have been working for more than 2 decades towards the purchase of our lots. It is impossible to condense into a five minute presentation lifetime experiences such as a kid’s first fish, a widow living on a fixed income or a neighbor whose wife is in the final stages of cancer.

We are thankful to finally be before you today, and thank you for your time, and hopefully for your support of Representative Skeen’s bill, 706. Please feel free to ask me or one of the other board members any questions you might have. We would be happy to answer your questions.

Mr. CALVERT. I thank the gentleman for his testimony, and I am sure we will have some questions. Next, Mrs. Sherry Mowles—is that how it is pronounced? Sherry, you are recognized for 5 minutes.

STATEMENT OF SHERRY MOWLES, EL PASO, TEXAS

Ms. MOWLES. Mr. Chairman, and honorable Committee members, I would like to submit my full statement into the hearing record. Thank you for giving me—

Mr. CALVERT. Without objection, so ordered.

Ms. MOWLES. —this opportunity. I am Sherry Mowles, and I have spent my entire life in the Rio Grande Valley where my husband and I own a home on land that is leased from the Government. I have my Master's Degree in architecture with an emphasis on planning, park design and historic presentation from the University of New Mexico with a special emphasis on planning, park design, and historic preservation.

The BoR November 19, 1999 Resource Management Plan recommends, "that all present leaseholders be provided the opportunity to secure a lease lot through privatization. Three hundred and seventy-eight could remain at their present location and secure ownership of that lot. The remaining 25 could obtain ownership of a relocated lot," the keyword being "relocated." With the release of RMP, 25 leaseholders were left with homes no one would purchase on land no one would pay to transfer.

The majority of these families are retired, on fixed incomes, and this is their only home. These families cannot afford to purchase another lot, make site improvements and build another home while still paying a mortgage on their existing "phased out" home. Our home is one of the first of the 25 to be phased out, and I was chosen by these 25 families to represent them here today.

First of all, I would like to explain why lease lot holders made significant investments and built homes on land they leased from the Government; the Government's role in this matter, and why we thought all lots would someday be privatized. As Mr. Ward mentioned, the lease lot program began in the 1930's to promote recreation in the area. The leasehold regulation, Attachment A, required lessees to make significant investments within 1 year or risk termination of the lease. The agreement required permanent construction built to code, landscaped and minimum square footages. The Bureau of Reclamation approved all building permits and allowed the leases to be easily renewed or transferred.

Second, in previous legislation, specifically Lake Sumner in New Mexico, and Canyon Ferry, all lease lots were privatized. Congressman Skeen introduced H.R. 1232, which afforded all of the leaseholders in our area to purchase our lease property. Due to a dispute over where the revenue would be allocated, not the lease lots, it did not pass. We especially had no reason to believe any lots would be excluded when it came to privatization.

I have read the RMP and the documents it referenced, attended public hearings and presented boards diagraming inaccuracies in reference to these 25 excluded lots. These inaccuracies have not been addressed. The RMP says that these lots might be needed for future recreation, yet they do not meet the recreational development criteria defined in the RMP.

These homes do not impede public access or water operations in any way. They are not located on the shore where recreation occurs. All lots are inspected annually for compliance with State and Federal environmental standards. Any necessary improvements are

paid for by the leaseholders. The RMP states that the homes on Water Tank Hill are isolated and difficult to access, yet the whole area is directly adjacent to State Highway 51. My door is less than 50 feet, and we are less than two miles from Truth or Consequences, population 6,000.

Furthermore, we are puzzled by the fact as to how 25 minute homes that occupy less 10 acres are at issue. My lot is one-eighth of an acre, or 5,100 square feet. The support of New Mexico for all lots to be privatized is overwhelming. Our representatives in Washington, the state legislature, Governor, lieutenant Governor, Sierra and Socorro County officials, numerous private organizations and Congressman Skeen and Jim Hughes, whom we are proud to have represent us.

These 25 families, like their neighbors, have significant financial and emotional investments at stake. We ask for one thing, and that is to be provided the equal opportunity, as our neighbors, to purchase the property at fair market value, which the foundation of our families and homes lie. Please recommend support for H.R. 706, the Lease Lot Conveyance Act, which includes privatization of all 403 lots, with none being excluded. And I would be happy to answer any questions, and I have two boards, if I could take a minute to show.

Mr. CALVERT. Go ahead.

Ms. MOWLES. On this board here, the RMP states that the homes at Water Tank Hill are rustic cabins or temporary structures, yet the document referenced in the RMP states that they are New Mexico cultural resources and are possibly eligible for the National Historic Register. Many of the 25 homes are important to the history of the New Mexico. Some of them were built before the lake was built in the late 1800's.

And here are some pictures from the museum. And here is a home that originally was built in the late 1800's, and it is surrounded by lots recommended for privatization. It is approximately 300 feet away from the other homes. I think there are over 250, and it is no closer—this home is no closer to a shore than these homes are, but it hasn't been recommended for privatization. And none of these homes are temporary structures. They have been there for a long time with permanent puttings and are part of the history of the area.

[The prepared statement of Ms. Mowles follows:]

Statement of Sherry Mowles, Leaseholder at Elephant Butte

Mr. Chairman, and honorable committee members, I would like to submit my full statement into the hearing record. I appreciate this opportunity and thank you for inviting me to speak. My name is, Sherry Mowles, and I have spent my entire life in the Rio Grande Valley. I have my Master's Degree in Architecture from the University of New Mexico with a special emphasis on planning, park design, and historic preservation. I received an Award of Honor at the International Urban Studies and Architecture Seminar in New York City and an American Society of Landscape Architects Award for a park in Gallup, New Mexico. My husband and I own a home located on land that is leased from the government at Elephant Butte Reservoir. On November 19, 1999 the Bureau of Reclamation released the Elephant Butte and Caballo Reservoirs Resource Management Plan Draft Environmental Impact Statement (hereafter referenced as the RMP). The RMP included recommendations "that all present leaseholders be provided the opportunity to secure a lease lot through privatization...a total of 378 could remain at their present location and secure ownership of that lot through privatization. The remaining 25 could obtain ownership

of a RELOCATED lot through privatization.” The key word in this statement is RELOCATED. With the release of this document 25 leaseholders were left with homes no one would purchase located on land no one would pay to transfer. The majority of these families are retired, on fixed incomes, and this is their only home. The emotional and financial impact has been devastating. These families cannot afford to purchase another lot and build another home while still paying a mortgage on their existing “phased out” home. My home is one of the first, of the twenty-five, to be phased out. I have been chosen by these twenty-five families to represent them here today.

First of all, I would like to explain why lease lot holders made significant investments and built homes on land that is leased from the government; the government's role in this matter, and why we thought all lots would someday be privatized. As Mr. Ward mentioned, the lease lot program began in the 1930's to promote recreation in the area. The government's Leasehold Regulations Attachment “A”, requires lessees to make significant investments within one year or risk possible termination of their lease. The agreement requires all buildings to be built to code, to be permanent structures with minimum square footage (no temporary buildings or coverings), to be landscaped, etc. The Bureau of Reclamation approved all building permits and allowed the leases to be easily renewed or transferred. See Attachment A.

Secondly, in previous legislation, specifically Lake Sumner, New Mexico, and Canyon Ferry, Montana, ALL lease lots were privatized. The Lake Sumner Transfer Title in 1991 allowed leaseholders to buy their 20,000 square foot lots. Canyon Ferry lots are being privatized and many of these lots are located directly on the water. None of the twenty-five homes within this proposal are located on the water. Congressman Skeen introduced H.R. 1232, the Reclamation Facilities Transfer Act, which afforded all the leaseholders in the Elephant Butte and Caballo Reservoir areas the opportunity to purchase the property our homes are located on. Due to a dispute over where the revenue would be allocated, the legislation did not pass. We had no reason to believe any lots would be excluded when it came to privatization.

I have read the RMP and many of the documents it referenced, which was written by an environmental engineering firm located in Utah. I attended the public hearings and presented boards diagramming inaccuracies in reference to these twenty-five lease lots. The Bureau of Reclamation has not addressed these inaccuracies.

1. These homes do not impede public access or water operations in any way. They are not located on the shore where recreation occurs. There are 200 miles of shoreline available and these lots are adjacent to .001%.
2. The RMP says that these lots are going to be needed for future recreation. These lots do not even meet the Recreational Development Criteria defined in the RMP on page 2-5. The RMP states “any ONE or more of the following resource factors made an area less suitable for development of recreational facilities.” Most of the lots do not meet three out of the seven criteria.
3. The area these twenty-five lots occupy is negligible. The Bureau of Reclamation has 78,000 acres of land. The twenty-five lots comprise less than 10 acres or approximately .0015% of the total land acreage. My lot is 1/8th of an acre or 5,100 square feet.
4. The RMP states on page 3-92 that the homes in my area, Water Tank Hill, are “isolated and difficult to access.—My neighbors home is located on State Highway 51 and the rest of our homes are less than 60 ft. from the highway. They are less than two miles from Truth or Consequences, population 7,500. See Attachment B.
5. The homes at Three Sisters are all located on a paved road.
6. Cow Camp is 300 paces from the lots the RMP has recommended for privatization. This is also one area where lots would be offered for the twenty-five to relocate. Unfortunately, the house at Cow Camp cannot be moved. The Bureau of Reclamation approved a recent \$ 20,000 dollar addition to that house. See Attachment C.
7. All lots are inspected annually for compliance with state and federal environmental standards. Any necessary improvements are paid for by the leaseholders.
8. The RMP states that the homes in our area, Water Tank Hill, are “rustic cabins or removable structures.” Not only are all of our homes permanent, but according to the document referenced in the RMP “Class III Cultural Resources Survey of Elephant Butte”, these homes are New Mexico Cultural Resources and are possibly eligible for the National Historic Register. See Attachment D.
9. Many of these twenty-five homes were built before the lease lot program began and are an important part of the history of the area. One, recently restored,

is on the State Historic Register and had been nominated for the National Historic Register. See Attachment E.

10. The RMP proposes four alternatives. In alternatives A; B and D all lease lots are treated equally. The RMP states on page 2-6 [that in] each alternative the major goals and objectives are met." Yet, they selected the only Alternative where 25 lease lots are not treated fairly.
11. Increased valuation of the lease lots is primarily due to capital investment and labor by the leaseholder. The government has not spent any money on the lease lot improvements.

The support of New Mexico for ALL lots to be privatized has been overwhelming. Last summer I met with the New Mexico Representatives offices in Washington, where they all voiced their support. We have received a letter of support from Bill Richardson. The New Mexico State Legislature supporting the privatization of ALL lease lots passed a 1999 and 2000 Memorial. We have letters of support from the Governor and Lieutenant Governor of New Mexico, and from Sierra and Socorro county officials. Many organizations support us including the Cattle Growers Association, Wool Growers Association, Coalition of Counties, and the Southwest Environmental Association. Numerous supportive articles have run in local newspapers. Our greatest support has come from Congressman Skeen, Jim Hughes, and their office, whom we are proud to have representing us here in Washington.

These families like their neighbors, all have significant financial and emotional investments at stake. We love this land; many of the families were here before anyone else was interested in the properties. Lessees often assist stranded campers and boaters, administer first aid, and give tips to visitors on good fishing and camping spots. My children and I routinely pick up any trash that is left in our surrounding area.

Privatization will not only benefit the leaseholders but the economic stability of the surrounding community, which is the second poorest county in New Mexico, and supports all lots being privatized. The increased tax base would benefit Sierra County.

Water operations and recreation are important to this area, and our homes do not interfere with these operations. The land they occupy is negligible. We ask for one thing, and that is to be provided the same opportunity as our neighbors to purchase, at fair market value the property on which the foundations of our families and homes lay. Please recommend support for H.R. 706 the Lease Lot Conveyance Act and allow these families security and serenity.

Mr. CALVERT. OK. Thank you. Thank you for your testimony. I think we may give an opportunity for Mr. Keys to respond to—you indicated your support of this legislation. Are you supportive of privatization of all of these properties, including this 25 that Mrs. Mowles has referred to?

Mr. KEYS. Mr. Chairman, the 378 lots, there is no question that we would support the transfer to private ownership. The other 25, we would certainly be willing to work with you and those folks to try to make that happen.

Mr. CALVERT. OK. Well, that is encouraging. Because it would seem to me, based upon this testimony, there is no reason, as far as a hazard to the property or any encroachment on the reservoir, any real reason for this not to go forward, to be privatized.

Mr. KEYS. Mr. Chairman, I think at times we are victims of looking too far in the future. At times we try to figure what if a development has to be expanded or that sort of thing, and I think some of our folks may have been looking too far into the future to say at some time there may be a need there or those inholdings that are created there may be a problem. We are certainly willing to work with you and those folks to make that happen.

Mr. CALVERT. Good. Another question I have regarding the city of Fallon. One indication, I guess, if there is a problem, would be any environment assessments that is taking place right now, both

the—you indicated there was a Phase I and a Phase II, and there was little or no problem, or is there a problem?

Mr. KEYS. Mr. Chairman, Phase I environmental site review has been done. There were 13 separate things that needed to be looked at. Certainly, as the mayor said, they don't look to be serious, but still we need to do the site II evaluation and carry forth. We have the contractor lined up who has presented a plan to do that.

Mr. CALVERT. I guess the next question would be who is responsible for the cost of any clean-up? Is there a shared responsibility, since it seems there have been several leaseholders over a period of time or is the Federal Government taking that responsibility?

Mr. KEYS. Mr. Chairman, my understanding is that it is a shared responsibility between the Government and the city.

Mr. CALVERT. If you would like to respond to that, Mr. Mackedon.

Mr. MACKEDON. I think that is correct.

Mr. CALVERT. OK. So there is no dispute on how that shared responsibility would take place, that you pretty much have an understanding of the percentages and costs and—

Mr. MACKEDON. Well, there is room for dispute there, I suppose, because we haven't completely—I have indicated we have done Phase II, and I believe that we have—that is technically accurate. We have—I say we, neither the Bureau nor the city has proceeded to go underground here, which clearly needs to be done, but there are—it has got a fairly complicated history, not nearly as complicated as some properties. The information we have now I think would lead us to believe that we are going to be successful with remediation and relatively soon. Who shares will depend on—hasn't been settled because we don't know whether there is contamination of a serious nature and when it might have occurred and who the responsible parties are. But the idea that it is a shared responsibility I think is correct.

Mr. CALVERT. I guess the last comment I would make, I don't know if it is necessary at this point to have that pinned down as far as remediation. This legislation could go through, be enacted and the transfer take place, and within that transfer can have that detailed as far as who is responsible and the shared costs and responsibilities of that, what your intent is going to be.

Mr. MACKEDON. I agree with that.

Mr. CALVERT. We would like to get this taken care of, and then we will just work on that.

Mr. MACKEDON. The city would not want to receive the property until it was clean. I am sure the Bureau wouldn't want to transfer it until it was clean. And if we could not come to terms on that, then—that doesn't affect the principle of whether they should support the transfer, which I think the Committee should do.

Mr. CALVERT. I understand. Mr. Skeen, you are recognized.

Mr. SKEEN. I just want to thank Mr. Keys for his willingness to work with us on the legislation. We will work closely with the Bureau of Reclamation. I have no further questions this afternoon. It has been a marvelous working day.

Mr. CALVERT. Good. All right. Thank you very much. Oh, he needs to change his tape, so we will recess here for just a minute while he changes tapes. Ms. Napolitano?

Ms. NAPOLITANO. Thank you, Mr. Chairman. I was interested in the testimony that was given by you in regard to the use of the property, and of course the issue is whether or not it is going to be cleaned up before the transfer is effective. There was a staging area, am I correct, and they had transformers, so it was electrical use and—it was several uses of that property and there were companies utilizing the property. Am I correct?

Mr. MACKEDON. Yes.

Ms. NAPOLITANO. OK. And were there lease payments or were there rental payments from these other companies, and to whom, what amounts, and where did that money go to?

Mr. MACKEDON. That raises the issue of how rent was paid and during what term. The city had no—did not occupy the property and had no relation to the property prior to 1984. I believe between 1968 and 1984 there were agreements between the Truckee-Carson Irrigation District and the Bureau and Sierra Pacific Power Company, by way of example. I have no knowledge nor do I think it is important to your question, but I want to make it clear for the record—

Ms. NAPOLITANO. Prior to that, understood.

Mr. MACKEDON. —yes, what that—from 1984 until most recently, the city leased the property under a written agreement from the Bureau of Reclamation, and the city paid an annual lease to the Bureau of Reclamation, and the city received rental income essentially from one revenue source, that is Premier Trucking Company. That is who has it now. So the city paid an annual rental payment to the Bureau and received the rental payments from the use of a loading facility.

Our lease was expired, we were a tenant, as we saw it, holding over. We continued to receive the payments from the trucking company. We received a letter then from the—because we couldn't agree on one term of the lease, and that still isn't settled, we received a demand from the Bureau for the payment of the past year's rent, and we paid it. Now we are on another year, it is still not settled in terms of the lease, and the question—and the trucking company has continued to pay the city. And here, very recently, the Bureau has asked, saying, "Well, that is improper or illegal for you, as a city, to continue to receive these payments." I think that is—I don't agree with that characterization, because we believe we were entitled to a lease, and they didn't provide the lease.

That debate aside, we either owe the Bureau—we either reimburse the Bureau for the revenues that we have received from the trucking company since the lease was terminated in the mind of the Bureau and don't pay rent or we receive the revenues and pay rent. We clearly are not trying to have it both ways. And the revenues—our rent was about \$9,000 a year. The revenues are a little more than that. So it is—

Ms. NAPOLITANO. How much more?

Mr. MACKEDON. Well, I think it is—I have the numbers here, but I think it is about \$11,000 in some year, or \$13,000. What the spur has done is generated—what the freight yard has done has been the anchor for the railroad 20-mile line, and we have other—SMI Joyce has now come to town, and there is the 400 jobs that our congressman—

Ms. NAPOLITANO. No, I understand the connection. I am not concerned, I am trying to figure out how much revenue the city is actually generating.

Mr. MACKEDON. Oh, we can report that to the Committee through the congressman without any problem.

Ms. NAPOLITANO. Mr. Keys?

Mr. KEYS. Mr. Chairman, Ms. Napolitano, we are comfortable with what is going on here.

Ms. NAPOLITANO. OK.

Mr. KEYS. We are negotiating with those folks. Certainly, it is something that we can clean up before the title transfer goes ahead.

Ms. NAPOLITANO. OK. That is it.

Mr. CALVERT. Thank you. Mr. Gibbons?

Mr. GIBBONS. Thank you, Mr. Chairman, and, again, thank all of you for your testimony here today. Appreciate you taking the time out of your busy schedules to be here for us.

Mr. Keys, I have read your statement, and it looks like, and from your testimony, that you are very willing to work with the city of Fallon, and the city of Fallon has indicated its willingness to work with you. I guess my question is, reading your testimony, you can support the bill if technical amendments are made. Can your office provide my office with those technical amendments that you want to be made to this bill within, say, the next 30 to 60 days?

Mr. KEYS. Mr. Chairman, Mr. Gibbons, we could give them to you tomorrow, because we have been working closely with this thing, and we know what it would take to do that. So I would tell you that we could have them to you by the first of the year with no problem.

Mr. GIBBONS. OK. Well, then we will expect to see your suggested amendments to this bill around the first of the year.

Mr. KEYS. Yes, sir. And those changes certainly are something that we would work with the city of Fallon to be sure that they were OK with them.

Mr. GIBBONS. OK. Mr. Mackedon, I know the lease is outside, literally, the consideration of this bill, because this is a transfer of title and interest. My thought to you was, is during the time the evolution of this, from the end or the expiration of the original lease that the city had and the Bureau of Reclamation, there seemed to have been some conditions that were attempted to be imposed upon the city which were less than satisfactory to the city, and I presume that it is with the issue of liability. Can you explain some of those issues of liability that the city disagreed with that perhaps the lease suggested that brought us to the point where we now are in this point where we have to consider the transfer of title rather than the lease of this property?

Mr. MACKEDON. Thank you, Congressman Gibbons. Quickly, I think I characterize it correctly when I say that the city was prepared to enter into a lease agreement and proposed to enter into a lease agreement 6 months prior to the expiration of the other agreement. After we had negotiated and discussed this with the Bureau, there was one clause that, for very important reasons to the city, we felt—or the mayor and council felt it could not agree with. And without reading—there has been variations of it—gen-

erally speaking, where the point of disagreement occurred was this: Is that the lease—backing up the prior lease—by the terms of the prior lease, the city was entitled, the phrase, to a new lease, and that is about as technical and fine as it was written. We could have expected more maybe on both sides, but that is how it read, and we were obligated as a city to notify the Bureau 6 months prior to the expiration of that lease that we intended to renew, and we expected to renew.

It came down to one clause, and that clause required the city of Fallon to abide by all environmental rules and certain other conditions of the Federal, State and local—all applicable Federal, State and local laws and regulations and reclamation policies and instructions, existing or after promulgated, concerning any hazardous material that would be used, produced, transferred, stored and disposed of on or in lands, waters or facilities owned by the United States or administered by Reclamation.

Mr. GIBBONS. So Mr. Mackedon, let me explain that what that clause required you to do is be responsible for environmental conditions outside of the property as the subject of this because of the vague, broad language of lands owned by the United States, which could mean 110,000 square miles of Nevada.

Mr. MACKEDON. Well, I don't whether it could, but that—

Mr. GIBBONS. Theoretically.

Mr. MACKEDON. —but that is literally where we are. But our point was that we certainly were obligated and would certainly sign an agreement that obligated us to meet all those laws and rules as to our use and occupation of this property.

Mr. GIBBONS. So you weren't necessarily unwilling to enter the lease, and you didn't expect to get anything from the Government. There was a justifiable and bona fide disagreement as to the interpretation of terms of this lease that was provided by you.

Now, the lease they provided you to sign, was that a take it or leave it lease?

Mr. MACKEDON. Well, the latest indication would be it sounds like take it or leave it, but I have heard from Mr. Keys today that—

Mr. GIBBONS. But up until that time—I mean I have actually got the letter.

Mr. MACKEDON. You have read the letter and the proposed lease.

Mr. GIBBONS. And so they did say, "You must immediately sign this lease," and they provided you with the lease. And that is where we are today.

Mr. MACKEDON. That is where we are today.

Mr. GIBBONS. So I think what we have got here, Mr. Chairman, is two parties willing to enter into an agreement that I think is in the best interest of both parties, the transfer of title and interest for fair market value, based on certain conditions, technical requirements, that both the city and the Bureau of Reclamation are willing to look at and negotiate in good faith. And I think once we work those problems out, that we will have a bill that this Committee can act on. And I want to thank you again and thank both of you for being here today.

Mr. CALVERT. Thank the gentleman. In closing, I think that H.R. 1870 and H.R. 706 are both bills that are worthy of passage.

I pledge to work with both Mr. Skeen and Mr. Gibbons and the Administration to make the technical modifications that are necessary, and we will move this legislation as soon as possible to the President for execution. So hopefully we can do that the first part of next year, and the good people of New Mexico and the good people of Nevada will have a couple less problems to worry about.

Ms. NAPOLITANO. Mr. Chair?

Mr. CALVERT. The gentlelady from California.

Ms. NAPOLITANO. Thank you, Mr. Chair. I had some questions in regard to the—actually, the 706, the New Mexico property.

Mr. CALVERT. The gentlelady is recognized.

Ms. NAPOLITANO. Thank you. One of the things that I had not heard, because I heard a lot that the major portion of the current people living on those properties are elderly, fixed income. Can you give me a percentage of how many of them are?

Mr. MACKEDON. Yes. We did a survey. It has been about 5 years ago. We sent out a questionnaire to all the people. It came in that for elderly there is like—I think it is 75—let me go back to my notes here. It is around 75 percent—75 percent are over age 55. And of those 75 percent, 70 percent of those are over age 65. So they will run from the late 50's up into the 90's. We have a few in that age. But there is—so of the 403 lease lots, we would expect to see about 300 of those would be senior citizens.

Ms. NAPOLITANO. And the others?

Mr. MACKEDON. The others would be a distribution of some relatively young people and up to the 55, 60 years old.

Ms. NAPOLITANO. Because 55 is still young.

Mr. MACKEDON. Well, it is really getting—

Ms. NAPOLITANO. Once you turn 65, I am telling you, 55 is young.

Mr. MACKEDON. —it is young for me.

[Laughter.]

Ms. NAPOLITANO. Other question would be is what are the yearly lease costs?

Mr. MACKEDON. They vary from lot to lot, but currently I would say the average is probably in the \$500 to \$550.

Ms. NAPOLITANO. Per?

Mr. MACKEDON. Per year. So they are relatively modest, but that is your—you are talking about a county which the—I don't have the specific numbers, but the median income for Sierra County is very, very low. It is in the—around \$18,000 per year. And for the least productive—not productive, but the poorest county, we are No. 1—I mean No. 2. The county up North, Mora County, I believe it is, they are the poorest; we are second in line. That doesn't say everybody who is on lease lots are in that condition—that category, but the majority are drawing Social Security. Some of them have a little bit of supplemental retirement. And there are some there that are probably relatively wealthy. So it doesn't mean that—

Ms. NAPOLITANO. Yes. It changes. Then the question would be what would happen after the death of those individuals that would be given the right to that land, to purchase that land?

Mr. MACKEDON. I am sorry?

Ms. NAPOLITANO. If an individual—you say that a number of them are in their 70's. After their death, what happens to that property, and what would be the sale value of that property?

Mr. MACKEDON. Well, it would depend on the improvements that they have made, but the property—of course, if you got a clear title to the property, a deed of trust, it would be just like any other private property. It would be sold on the open market for whatever the market value is. And as the legislation is written, we will pay the fair market value for the unimproved land, because that is what we are buying is the unimproved—the improvements on there is—

Ms. NAPOLITANO. Without the property, in other words, just the land, basically.

Mr. MACKEDON. Yes. Just the land, yes.

Ms. NAPOLITANO. There was a statement that I read that indicated that the leaseholders sold their property. They couldn't have sold the property; they sold the improvements.

Mr. MACKEDON. Improvements on the property, yes.

Ms. NAPOLITANO. OK.

Mr. MACKEDON. Yes. So we have no—there is no one on the lease lot that has a title or deed to their property. All you have is the lease agreement between the—the lease is—the land is leased now from the Bureau of Reclamation to the State of New Mexico, and it is part of the State park, and I believe that lease runs through 2023, I think is correct. And we pay our lease fee to the State of New Mexico, and they have a lease agreement between them and the Federal Government.

Ms. NAPOLITANO. And I guess I am fishing. I am trying to, in my mind, establish something that—because I hopefully will be retiring again one of these days, and the fact that you have individuals who have done great improvements on the property, on lease property, knowing full well that the Government could well reclaim them at any moment, being able to pay \$500 a year for their lease and be able to have their estate sell it for \$20,000, \$30,000, \$50,000, I have no idea with the loans would be worth. Any of that money going to be assigned to the general fund for the increase in the benefit of the sale of that land?

Mr. MACKEDON. Currently, no. That would be a transaction between two parties, two private parties.

Ms. NAPOLITANO. In other words, it would go back to the estate or the people—

Mr. MACKEDON. That is correct, ma'am.

Ms. NAPOLITANO. OK. Thank you. I just want to clarify that.

Mr. CALVERT. Well, we certainly thank all of you for coming out on such a fine day. We will try to expedite this legislation as soon as possible. We are going to recess for about a half an hour and get into something probably a little more controversial—the Colorado River. With that, good day.

Mr. KEYS. Mr. Chairman, thank you very much for allowing us to be here.

[Whereupon, at 12:05 p.m., the Subcommittee was recessed, to reconvene at 12:30 p.m.]