S. HRG. 108–539

RECLAMATION RURAL AND SMALL COMMUNITY WATER ENHANCEMENT ACT; RECLAMATION SAFETY OF DAMS ACT; THE RECLAMATION RURAL WATER SUPPLY ACT OF 2003; AMEND THE LEASE LOT CONVEYANCE ACT OF 2002; AND THE RECLAMATION RURAL WATER SUPPLY ACT OF 2004

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

on

S. 1085
S. 1727
S. 1732
S. 1791
S. 2218

MARCH 25, 2004

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THURSDAY, MARCH 25, 2004

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

The subcommittee met, pursuant to notice, at 2:30 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Lisa Murkowski presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Good afternoon, and welcome to the Water and Power Subcommittee. It's my pleasure to welcome all of you here this afternoon.

There are five bills before the Subcommittee today. Three of the bills address the authority of the Bureau of Reclamation with respect to the planning, design, and construction of rural water supply systems. The fourth bill would raise the authorization ceiling on the Bureau of Reclamation's Safety of Dams Program. And the final bill would amend the Lease Lot Conveyance Act of 2002, which would clarify the disposition of certain proceeds obtained pursuant to the act.

We've got a relatively ambitious schedule before us this afternoon. We do have a vote that is scheduled to take place, to begin at 2:45, so we will try to get a little bit of the testimony, and take a break, as needed.

But we do have several parties with different interests pertaining to rural water. We'd like to get through them as quickly as possible.

I'd like to welcome Commissioner Keys, from the Bureau of Reclamation, who will be presenting the administration's testimony on all five bills. Commissioner, we're looking forward to hearing from you and the rest of our witnesses.

Before we hear from the Commissioner, are there any opening statements, Senator Bingaman, that you would like to make at this moment?

[The prepared statement of Senator Domenici follows:]

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

Madam Chairman, thank you for holding this subcommittee hearing today.

Rural Water is the main topic of today's discussion and originally, Mr. Jim Dunlap from New Mexico was supposed to provide testimony with regard to the rural water bills on behalf of the National Rural Water Association. Unfortunately, his plane was cancelled this morning in Albuquerque and so he is not able to be here. However, Mike Keegan from the National Rural Water Association will be testifying on his behalf.

I am excited by the prospect of providing clean and affordable water for our rural communities. The needs of these communities are astronomical and it is time for the Federal Government to step up its efforts.

The State of New Mexico Finance Authority has provided me with a list of over 100 rural communities in New Mexico that don't have sufficient water supply and water treatment facilities. These communities are poor, they are dry and they are pleading with the Federal Government for help. I cannot stand by and let this deplorable situation continue.

Every state in the west has the same desperate problem. The U.S. Census Bureau estimates that 27% of the US Population lives in rural communities. EPA surveys have estimated that the funding needed to bring these community water and waste disposal systems up to safe drinking water levels could be over $50 billion.[1] There are estimates that over 700,000 households in the United States have insufficient water supplies and 370,000 rural households are forced to haul water. These communities are hardest hit by our current drought and often have the highest incidences of water contamination. The EPA has determined that, on average, over 10% of rural communities in the 17 Reclamation states have contaminated water supplies. I challenge my colleagues to step up to this task How do we supply safe water for our rural communities?

The U.S. Department of Agriculture, HUD, and the Environmental Protection Agency work to address these issues, I applaud their efforts, but they can't do it alone. I am convinced that all agencies with responsibility to manage water resources must be engaged.

There are two keys to the solution—better technology and appropriate funding.

I am working to improve technology for such water treatment needs as arsenic, desalination and reuse . We will hold a hearing on these topics later this spring.

Today is our chance to investigate ways for the Department of Interior to engage in solving rural water problems—to provide a program and the funding needed to help solve this national problem.

My colleague Senator Bingaman has introduced rural water legislation (S. 1085). I have a separate version (S. 1732) and the administration has provided a third proposal (S. 2218). All of these bills would create a standing authority within the Bureau of Reclamation to address rural community water needs. There are, however, significant differences in the way each bill addresses actual construction, sharing costs, implementation of Tribal programs and the methods for prioritizing which communities get funded.

Given that we are all anxious to improve the living and working conditions in rural communities in New Mexico and throughout the West, I am confident that we can work together to further develop legislation that takes the best of these three proposals.

On another topic that will receive a bit less time, but which is equally important, I have introduced S. 1727 which authorizes additional appropriations for the Reclamation Safety of Dams Program. The Bureau of Reclamation has a very well documented need to maintain dams for their short and long-term safety. Reclamation has assessed the needs of our dams and I has found that the current authorization is not enough to meet the projected need. We must move quickly to authorize the additional $540 million dollars needed by this critical program.

[1] EPA 1997 Estimate that small community (< 3,300 people) systems would require $37.2 billion for water supply through the year 2014 and small communities (< 10,000 people) would need $13.8 billion for waste water treatment.

Finally, we will discuss S. 1791 which I jointly introduced with my colleague Senator Bingaman. We worked together on the original Lease Lot legislation last Congress, which I note passed the House and Senate unanimously. The Lease Lot Conveyance Act of 2002 directed-the Secretary of the Interior to convey property comprising 403 cabin sites (located along the western portion of the reservoirs in Elephant Butte State Park and Caballo State Park, New Mexico) under the administrative jurisdiction of the Bureau of Reclamation to the Elephant Butte/Caballo Leaseholders Association, Inc., for fair market value. The bill passed by Congress in 2002, however, was vague with regard to the disposition of proceeds collected from the sale of the lands.

The purpose of S. 1791 is to amend the original act directing the Secretary of the Interior to deposit the proceeds into the Reclamation Fund for the benefit of the Elephant Butte Irrigation District.

Madam Chairman, I thank you for holding this hearing which encompasses so many of the issues I care about.

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

Senator BINGAMAN. Madam Chair, I would just thank you for having the hearing, and indicate my strong belief that this is an important issue. It's critical that we do have an active Federal program to address these rural water needs throughout the West, and we've got three bills that aim in that direction. There are some differences we need to discuss and decide which course to follow, but I think this is an important piece of legislation. I hope we can move ahead on the profitable version of this, which, of course, I now believe is the one that I introduced. But it's possible that I'll be persuaded that we need to make changes there.

So thank you for having the hearing.

Senator MURKOWSKI. Thank you, Senator Bingaman.

And with that, Commissioner Keys, we invite your testimony, please.

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

Mr. KEYS. Madam Chairman, it's my absolute pleasure to be here to talk with you about these current bills this afternoon.

I am pleased to present the administration's position on rural water issues in the Western United States. We must find a cost-effective and innovative solution to unmet water-supply needs in rural communities throughout the West. Of all of the challenges that we have, that's one of the greatest ones facing us right now.

I would tell you that we absolutely have great appreciation for the work that we have been able to do with Senator Domenici and Senator Bingaman, for their leadership on the rural water issues. Their staffs have been a great help in us trying to put together this proposed legislation. And we appreciate the Committee's help in focusing on this West-wide issue that's before us all.

Senator Domenici's bill, S. 1732, Senator Bingaman's bill, S. 1085, and the administration's bill, S. 2218, share the same goal, meeting Western rural water supply needs in a more systematic fashion. My comments today will focus on S. 2218, as this bill represents the administration's views.

S. 2218 contains the following elements that we think comprise a complete legislative package to address rural water.

The first is the needs assessment. The bill requires the Secretary to develop programmatic criteria and guidelines to guide Reclama-

tion in rural communities for a predictable and fair process for evaluating rural water needs.

The second is project evaluation, because each rural water project has been authorized individually. And because of the lack of general programmatic authority for Reclamation, we're limited in our ability to evaluate them against consistent criteria. As a result, rural water projects have not fared well during the budget process. S. 2218 will create more realistic expectations for project sponsors in this process.

The third point is equity in cost sharing. S. 2218 would apply a well-established methodology identifying the capability to pay of rural communities to determine appropriate levels of local contribution with a 35 percent minimum non-Federal cost-share. Capability to pay applies to trial projects, as well. But S. 2218 recognizes their unique circumstances and trust relationship with the Secretary of the Interior. Therefore, S. 2218 allows the Secretary to reduce travel contributions for studies and project construction based upon an analysis, and to seek appropriations to assist tribes in paying for the difference between annual operation, maintenance and replacement costs, and their capability to pay those costs. As the projects generate economic benefits for tribes, the need for this Federal assistance with operation, maintenance and replacement costs should decline, facilitating greater self-sufficiency for the tribal communities.

The fourth point is identifying best project options. In the past, projects authorized have not looked at the full range of options available to the individual communities. As a result, even though a better or more cost-efficient solution is identified after authorization, the project cannot be changed without subsequent legislation. S. 2218 propose that Reclamation get involved early in the process in appraisal and feasibility study phases, and look at a full range of options for each project.

The fifth is realistic schedules and cost ceilings. Early involvement of Reclamation will yield more attainable completion schedules and cost ceilings, avoiding later legislative fixes.

The sixth point is coordination with other Federal rural water programs. All of the agencies with formal rural water programs—the Department of Agriculture, HUD, the Environmental Protection Agency—signed a joint memorandum to foster cooperation and encourage efficient use of funds. Due to our need for a formal program, Reclamation has not been able to formally participate, though we do work closely with these agencies at the field level. S. 2218 requires Reclamation to coordinate with Federal and State rural water programs to determine the most appropriate agency to undertake a given project and otherwise facilitate the development of the most efficient and effective solution to meeting the water needs of Western rural communities.

Enactment of S. 2218 will provide authority to create a structured program that will enable Reclamation and the Department to establish criteria and make the process more consistent, equitable, and transparent. Establishment of a structured program will provide a desperately needed and demanded service to rural communities in the West that have previously been unserved.

Again, I would like to thank Chairman Domenici for introducing S. 2218, and to Senator Bingaman for working very closely with us, and this committee for working with us on this legislation. Certainly, we would look forward to working with you as we go forward on these bills.

The second bill that I would talk about today is S. 1727, our Safety of Dams Program. Madam Chairman, the administration strongly supports S. 1727, to increase the cost ceiling for the Safety of Dams Act by $540 million. This is needed because we anticipate that fiscal year 2004 and 2005 commitments will reach the currently-enacted ceiling.

Madam Chairman, we can't take dam safety for granted. Half of our dams were built between 1900 and 1950; and 90 percent before current state-of-the-art design and construction practices evolved. Monitoring, facility, review, analysis, investigations, and emergency management are critical parts of our dam safety program.

We're proud of our Safety of Dams Program. In 1997, the Association of Dams Safety officials reported that Reclamation has an effective dam safety program overseen by highly competent staff using state-of-the-art technology, standards, and expertise. Communication with water users is crucial to ensuring that any upgrades take into account economic impacts as safety-improvement alternatives are developed, selected, and implemented. Our policy and directives formalize this requirement, and we have enjoyed satisfactory results to date.

Also, we support the legislation increasing the contract cost threshold from 750,000 to $1,250,000 for Reclamation to send a Safety of Dams Modification Report to Congress for review. This change is basically an adjustment for inflation since 1984.

Madam Chairman, the last bill that I would talk about is S. 1791, the Elephant Butte Lease Lot Conveyance bill. Madam Chairman, it is not possible for the Reclamation or the Department to support S. 1791. The issue is not new to Reclamation. When Congress enacted the Least Lot Conveyance Act of 2002, it considered, but wisely did not include, a provision to require proceeds from the lot sales to be deposited in the Reclamation fund on behalf of the Rio Grande Project, and made immediately available to the subject irrigation districts. Current law deposits proceeds from the sale of lands withdrawn from the public domain as a general credit to the Reclamation fund, and deposits sale proceeds from acquired lands as a credit to the project for which the lands were acquired. S. 1791 would instead transfer the funds directly to the irrigation districts, circumventing the appropriate process.

This battle has been fought in court, and the Tenth Circuit has reinforced the Department's position. The Department supported, and the President signed, the original Lease Lot Conveyance Act of 2002 because it did not include the language of S. 1791.

Madam Chairman, that concludes my oral testimony. I would certainly try to answer any questions that you might have on any of these.

[The prepared statements of Mr. Keys follow:]

PREPARED STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 1732, S. 1085, AND S. 2218

Madam Chairman, I am John W. Keys, III, Commissioner of the Bureau of Reclamation. It is my pleasure to present the Administration's position on rural water issues in the Western United States and on the following bills pending before the Committee:

- S. 1732, the Reclamation Rural Water Supply Act of 2003;
- S. 1085, the Reclamation Rural and Small Community Water Enhancement Act; and
- S. 2218 the Reclamation Rural Water Supply Act of 2004, which was introduced by request on behalf of the Administration.

The three rural water bills before this Committee launch the discussion of designing a programmatic integrated approach to meeting needs for clean and healthy water supplies in rural communities in the Reclamation States. The Administration agrees that we must find cost-effective and innovative solutions to rural water needs. We applaud Chairman Domenici and Senator Bingaman for their leadership on this matter, and the whole Committee for focusing on this issue.

The three bills have much in common. However, we think S. 2218, the legislation proposed by the Department, is the most comprehensive approach to addressing this issue. While S. 1732 establishes similar criteria and guidelines, it lacks important provisions related to the needs facing many Native American communities. S. 1085 is limited to authorizing studies, does not appear to address the Secretary's project development activities, and would seriously hamper Interiors ability to apply its professional expertise and oversight to project development.

We appreciate Chairman Domenici's courtesy in introducing S. 2218. I would like to focus the Committee's attention today on S. 2218, first by describing the situation that Reclamation and the Department face with rural water issues, by explaining how S. 2218 addresses those issues.

S. 2218 THE RECLAMATION RURAL WATER SUPPLY ACT OF 2004

S. 2218 would establish a rural water supply program within the Department of the Interior and authorize Reclamation to develop programmatic criteria and guidelines that would guide Reclamation and rural communities through a predictable and fair process for evaluating the water supply needs in rural communities. Further, S. 2218 establishes a programmatic framework for managing and prioritizing the development and construction of rural water supply projects for the benefit of communities, both Indian and non-Indian.

HISTORICAL BACKGROUND

Since the early 1980's, Congress has authorized thirteen separate single purpose Reclamation projects for municipal and industrial water supply in rural communities in Reclamation States. The total federal budget authorization for those projects is over $2.3 billion. These have all come at a time when security and law enforcement costs, operation and maintenance costs, dam safety costs, and other program obligations continue to grow, competing for scarce budget resources.

NEED FOR RURAL WATER SUPPLY

Millions of Americans still live without safe drinking water, a basic necessity of life. A 1995 needs assessment conducted by the U. S. Department of Agriculture's Rural Development State Offices estimated that over 1 million people in the United States had no water piped into their homes, and more than 2.4 million had critical drinking water needs. Recently released Environmental Protection Agency (EPA) data revealed $31 billion in total funding needs for small systems serving populations of 3,300 or less. Many rural residents carry heavy containers of water from cisterns, purchase bottled water at distant stores, or pay a water hauling service for these potable water needs.

THE FEDERAL ROLE IN RURAL WATER SUPPLY PROJECT DEVELOPMENT

In 1995. the General Accounting Office reported that eight Federal agencies had 17 programs designed specifically for rural areas to construct or improve water and wastewater facilities. These programs are managed in the Departments of Agriculture, Commerce, Health and Human Services, Interior and the Environmental Protection Agency. Of these programs, 11 are small grant programs, one is a loan program, 3 provide a combination of grants and loans, one provides "direct payment for specified uses" and one provides Federal surplus property and goods.

In general, assistance through these programs is available based upon specific eligibility criteria relating to the missions and authorities of the agencies and programs. In contrast, Reclamation has had no structured program for developing or funding rural water projects and therefore has no established eligibility criteria.

The other Federal rural water programs that exist today offer a combination of grants and loans for each project. The main difference between those projects and the ones Congress directs Reclamation to undertake is the scope of Federal involvement and the size of the projects. Projects that the other Federal programs support tend to be small. In contrast, the majority of the projects that Reclamation has been involved in tend to be large, often including more than one local entity, covering a large geographic area, and serving multiple local utilities. They cost from $20 million for the Perkins County Project in South Dakota to $417 million for the Mni Wiconi Project in South Dakota. Further, they tend to take five to ten years to plan, design, and construct and usually involve a significant amount of technical assistance from Reclamation employees and some longer-term design, construction, and contract management oversight.

Over the past fifteen years, numerous rural communities have approached Reclamation either with a proposed project in hand or asking for assistance in developing a project, based upon the model of previous projects that have already been authorized for Reclamation's involvement. What we have learned from these communities is that they do not seem to meet the criteria for the established Federal programs: their communities are too small or too large, too sparsely or too densely populated, or they cannot afford either the up-front local cost share requirements or the continuing operations, maintenance and replacement (OM&R) costs that are required. In some cases, they come to Reclamation because other Federal programs did not give their projects priority for funding.

RECLAMATION'S DE FACTO RURAL WATER "PROGRAM"

As I noted above, thirteen communities have secured legislation authorizing Reclamation projects. These represent a major Reclamation obligation for developing and providing rural water supplies without an integrated rural water program.

Because Reclamation lacks generic authority to plan, design, and construct rural water projects, it has limited ability to set priorities and criteria for project development, and to budget accordingly.

PROGRAM PERFORMANCE ASSESSMENTS (FY 2004)

In 2002, as part of the President's budget and performance integration initiative. Reclamation's rural water activities were assessed under two lenses: the Program Assessment Rating Tool (PART) and Common Measures. Under PART exercise our rural water program was rated "Results Not Demonstrated," despite the fact that Reclamation's rural water projects were meeting authorized project purposes. Further, the assessment concluded that stronger controls for project development were needed and *"lack of agency involvement during project development mats result in a project that is not in the best Federal interest."*

As a result of the PART exercise, the Administration suggested legislation should be developed to establish a Reclamation rural water program with adequate controls and guidelines. S. 2218 is our response to that good-government recommendation. The Administration urges its enactment.

RECLAMATION'S RURAL WATER MANAGEMENT CHALLENGES

The process of evaluating our rural water activities, both for the PART analysis and in crafting S. 2218, has helped us identify the following challenges that restrain our ability to effectively serve our customers and help Western rural communities meet their water needs. Addressing these challenges is the purpose of S. 2218.

Need for Quality Control

Because each rural water project has been authorized individually, and because of a lack of general programmatic authority, Reclamation and the Department have been limited in their ability to budget for projects effectively or establish relative priorities either within our budget for rural water activities or within Reclamation's overall budget. As a result, the rural water projects have not fared well during the budget process. Establishing an integrated rural water program as proposed in S. 2218 will improve budgeting and other priorities. It will also allow for more realistic planning so that rural water projects are not proposed in a vacuum, but are, as part of the program's budgeting and planning process, compared to a set of eligibility criteria as well as to other rural water related activities all within an overall cost ceiling established by the program. This approach will foster some competition, will

allow for the development of priorities, and could create more realistic expectations when a project is authorized for construction that it will actually be developed.

Cost Share Requirements Not Based Upon Capability to Pay

The non-Federal cost shares for each of the currently authorized projects range from zero for the Indian portion of the Mni Wiconi Project in South Dakota to 25 percent for the non-Indian Dry Prairie Rural Water System connected to the Fort Peck Reservation Rural Water System in Montana. Most recently, it appears that non-Federal cost share levels have been based upon the precedent created by previously authorized projects rather than by an actual assessment of the capability of the communities to pay for the capital costs. In the absence of a formal program, Reclamation has had limited input leading up to authorization of projects or to setting a reasonable cost share for local sponsors.

In contrast, capital investment costs associated with traditional Reclamation projects or portions of projects authorized for municipal and industrial (M&I) use must be fully repaid with interest. Further, traditional Reclamation irrigation projects require that repayment of costs be based upon a project sponsor's ability to pay, as determined through the study of both the projects sponsor's financials (cash flow) and the project's economic (cost/benefit) feasibility.

For these reasons, S. 2218 includes a well-established Reclamation methodology identifying the "capability to pay" of rural communities for determining the appropriate level of their contribution for development and construction costs and would establish a 35% minimum non-Federal contribution.

Mismatch Between Current Authority and Sponsors' Expectations

Current Reclamation law and policy do not satisfy expectations of rural water users. Current Reclamation law and policy requires project specific authority for feasibility studies and construction and that municipal water projects repay all allocated construction costs with interest. Although we can temper the impact of this requirement with long-term, low-interest-rate contracts, full repayment can be an unrealistic requirement in areas with low population densities and large construction costs.

Over the past several years, Reclamation has opposed every piece of legislation authorizing rural water projects—citing inadequate repayment requirements. However, through 2003, Congress has authorized thirteen rural water projects for Reclamation's involvement, each of which has included repayment terms proposed by the project proponents. This has resulted in relatively low non-Federal cost-share levels for authorized projects.

The legislative template for authorizing individual rural water systems has come as a result of negotiations mostly between the sponsors and Congress, with limited Reclamation or Administration involvement. As a result, many of these projects do not meet basic planning guidelines and are treated as earmarks in the development of the President's budget.

In response, S. 2218 proposes to establish a new structure and method for consideration of rural water projects. The bill distinguishes these rural M&I projects from traditional M&I projects which require 100% repayment of construction costs plus interest. S. 2218 proposes to establish rural water-specific guidelines and criteria for evaluating prospective projects as well as the development of cost share requirements based upon a technical analysis of the capability of the non-Federal entities to pay the appropriate share of the costs.

100% Reimbursability an Impediment For Tribes

Traditional Reclamation M&I projects requiring 100% reimbursement of construction and operation and maintenance costs, with interest, have proven particularly difficult for Tribes. S. 2218 recognizes the distinct circumstances and conditions faced by many Tribes. First, the Administration bill would allow the Secretary to reduce the Tribal contribution for studies and project construction based upon a capability-to-pay analysis. Further, while the legislation makes OM&R the responsibility of the non-Federal project entities, S. 2218 would allow the Secretary to seek appropriations to assist Tribes in paying for the difference between the actual OM&R costs and the projected revenues from water sales to project beneficiaries. As the projects generate economic development, Tribes will have a greater capability to pay for their OM&R costs and the need for this assistance will decline, facilitating greater self-sufficiency for the Tribal communities.

Project Design and Financial Precedent

Following the precedent of the Mni Wiconi Project in South Dakota, most recent projects (both tribal and mixed tribal and non-tribal) have had similar design configurations and cost-share requirements. The usual approach has been to build

pump stations, water treatment facilities and pipelines to dispersed communities. While this model works for many communities, Reclamation would like to use its expertise and knowledge to look at these and other alternatives to effectively and efficiently meet the water supply needs of other more rural communities. For example, local desalination or water reuse and recycling facilities could be more cost-effective approaches for some communities, especially as new technology is developed. Making institutional changes to facilitate the creation or expansion of water markets could also offer opportunities to address, in a more efficient and quick manner, the water supply challenges of some communities.

This is a key reason why the Administration wants to establish a structured rural water program with a consistent process by which Reclamation and the other appropriate Federal and state agencies will work with the local communities to identify their water supply needs and develop a proposal that is both appropriate to those needs and cost effective.

Current Studies May Not Fully Explore all the Options and are Completed Without Reclamation's Involvement

Because Reclamation does not have an integrated rural water program, communities in need of technical expertise do not have the ability to seek and receive assistance from Reclamation to identify their needs and explore all the alternatives. Instead, many follow the precedents of previously authorized projects and initiate studies that have been reviewed by Reclamation and are not prepared in accordance with current Federal planning and engineering standards. As a result, while these plans become the basis for legislation, some are not a good basis for decision-making, may not have explored all the options, and must be redeveloped once the project is authorized. Meanwhile, the basic project mandated by legislation cannot be changed without further legislation, even if it turns out not to be the most effective option.

Reclamation's current role is primarily as banker, administrator, and post-authorization overseer to monitor the Federal investment. In most cases, Reclamation has had no involvement in the early scoping or project evaluation process, despite its expertise in the planning, design, and construction of major civil works projects. Since most of the funds provided for rural water projects are Federal, it would be prudent to have early Federal involvement in their development and design as well as on-going administrative oversight sufficient to protect the Federal investment and to minimize escalating project costs.

The rural water program proposed in S. 2218 will allow communities to approach Reclamation for assistance early in the process and, more importantly, will allow Reclamation to participate in the appraisal and feasibility study processes for rural water projects in the Western United States. This early involvement will allow Reclamation to engage in the early stages of scoping to evaluate the comprehensive needs of the Communities.

Inadequate Cost Ceilings

Because Reclamation was not involved in pre-authorization planning for most of the currently authorized rural water projects, the cost ceilings and completion schedules that we are asked to follow often do not meet Reclamation's or the project's needs. For example, in the 107th Congress, the completion sunset date for the Mni Wiconi Project had to be extended and the Federal cost ceiling had to be increased by an additional $58 million.

Establishment of the rural water program proposed in S. 2218 allows Reclamation to be involved in the development of rural water systems from the very beginning, rather than after the project is already authorized. This will enable Reclamation to work with the non-Federal entities to prepare appropriate cost estimates as well as realistic completion schedules and hopefully avoid the need for such follow up legislation in the future.

O&M Obligations for Native American Projects

The legislation authorizing the Mni Wiconi Project and the Gamson Project each directed the Secretary to operate and maintain project facilities constructed to serve the Indian reservations. As construction of these Indian rural water projects are completed, the associated O&M costs consume an increasing percentage of Reclamation's budget with no prospect of declining. If the trend toward non-reimbursable O&M costs for the tribal systems continues, current and future budget targets will become totally consumed by tribal O&M obligations to the exclusion of other budget priorities and activities. Further, these ongoing obligations will have increasingly significant budget impacts without any consideration for the improvements to the tribes' financial situation or to their improved capability to pay for these O&M costs due to the improved water supply systems.

S. 2218 proposes to address this issue by allowing Reclamation to assist Tribes in meeting their OM&R needs, but does so in such a manner as to recognize and account for the positive economic impacts that the rural water delivery projects will have in these communities. It will also encourage greater tribal self-sufficiency, conservation, and the development of the technical and financial expertise needed to efficiently manage these water systems themselves. In contrast to current practice of subsidizing all the OM&R costs associated with Indian rural water facilities, S. 2218 allows the Secretary to seek appropriations to assist Tribes to pay for the difference between the actual OM&R costs and the projected revenues from water sales to project beneficiaries. We anticipate that as project benefits spur economic development, Tribes will have a greater capability to pay for their OM&R costs and the need for this assistance will decline.

Lack of Coordination with Other Federal Rural Water Programs

In an effort to expand coordination and cooperation, USDA, HUD, and EPA signed a Joint Memorandum to foster cooperation, encourage more efficient use of funds, and reduce administrative inefficiencies among the various organizations that administer water programs at the Federal, state, and local level. Lacking a formal rural water program, Reclamation has not been able to formally participate, though we do work closely with these agencies at the field level.

By establishing a formal rural water program in Reclamation, S. 2218 would empower Reclamation to coordinate with other Federal and state rural water programs to determine the most appropriate agency to undertake a given project and otherwise facilitate the development of the most efficient and effective solution to meeting the water needs of western rural communities. Thus, S. 2218 will enable the rural water supply programs in the various Federal and state agencies to maximize the use of the limited Federal and state resources identified for this purpose.

CONCLUSION

In conclusion, Madam Chairman, Reclamation has been involved in rural water projects for a long time. In fact we were founded as an agency to deal with rural water issues, primarily related to irrigation, in the Western United States. Enactment of S. 2218 will provide authority that is critically needed to create a structured program that will enable Reclamation and the Department to set priorities and make the process more equitable and transparent by establishing a consistent set of criteria and guidelines. In so doing, the establishment of this structured program will enable us to provide service to rural communities in the West that have previously been underserved.

Madam Chairman, let me conclude by reiterating my appreciation to you, Chairman Domenici and Senator Bingaman for your leadership on this issue. We look forward to working closely with you and your staffs to make this program a reality. I am pleased to answer any questions.

PREPARED STATEMENT OF JOHN W. KEYS, III, COMMISSIONER BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 1727

Madam Chairman, I am John W. Keys, III, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to provide the Department's views on S. 1727, to increase the authorized cost ceiling for the Reclamation Safety of Dams Act administered by the Bureau of Reclamation's Dam Safety Program by $540 million, and adjust the reporting threshold for inflation. The Administration strongly supports this bill.

Since the passage of the Reclamation Safety of Dams Act of 1978, the Bureau of Reclamation has developed a model dam safety program to implement the Federal Guidelines for Dam Safety and to modify dams in accordance with the, act. In 1996, an independent review team comprised of representatives from the Association of Dam Safety Officials was assembled to assess the Department of the Interior's Dam Safety Program. It was the first outside review of Reclamation's program in two decades. In 1997, the team released a comprehensive and independent report. The report found that the Bureau of Reclamation has "an effective Dam Safety Program" overseen by "highly competent" staff using "state-of-the-art technical standards and expertise." Reclamation's ability to respond to dam safety issues and to take preventative, corrective actions to reduce the public risks under the authority of the Reclamation Safety of Dams Act was a critical component of this favorable peer review. The team made a number of recommendations in Reclamation's program, and we have taken steps to implement them. Among them, we now have an officer who audits and oversees the dam safety program, but is independent of the dam safety

program staff. Outside experts annually review Reclamation's dam safety activities to ensure that the program has adequate policies and procedures in place to address public safety issues.

BACKGROUND

Public Law 95-578 and Public Law 98-404, along with Federal Guidelines for Dam Safety and the Department manual, guide Reclamation's dam safety efforts. In this regard, Reclamation's top priorities are to deliver water to and generate power for its customers without disruption, while protecting public safety.

There are 369 high hazard dams and dikes located at 250 water projects in Reclamation's inventory. The dam safety program helps to ensure the safety and reliability of these facilities. Approximately 50 percent of Reclamation's dams were built between 1900 and 1950 and approximately 90 percent of the dams were built before current state-of-the-art design and construction practices. Considering the age of Reclamation dams, the ongoing monitoring, facility reviews, analysis, investigations, and emergency management are critical components of the dam safety program. We are proud of our dam safety work but we also realize we cannot take safety for granted.

In its 100 year history, Reclamation has only had one dam failure—Teton Dam—that resulted in loss of life and damage to property. Teton Dam toppled in 1976 during initial filling due to a design and construction deficiency.

After Teton, Reclamation instituted a dam safety program. Congress enacted the Reclamation Safety of Dams Act in 1978 (Public Law 95-578) to preserve the structural safety of Reclamation dams and facilities. In 1984, Congress adopted amendments (Public Law 98-404) instituting a 15 percent non-Federal cost share requirement for modifications made as a result of new hydrologic or seismic information or changes in the state-of-the-art technology. Public Law 95-578 authorized $100 million and Public Law 98-404 increased the authorized cost ceiling an additional $650 million, indexed for inflation. The 1984 Amendments also directed Reclamation to submit to Congress, prior to taking corrective actions, a report on any modifications expected to exceed $750,000 in actual construction costs. In Fiscal Years 2001 and 2002, Congress adopted amendments to increase the authorized cost ceiling by $95 million (Public Law 106-377) and by $32 million (Public Law 107-117) respectively.

Recognizing the importance of our relationships with the end users of the water and power from Reclamation projects, we have adopted a policy and directives that formalize requirements for communicating the need for modifications in a timely fashion. The policy and directives also require the development of a plan in cooperation with our water and power contractors to assure continued communication and involvement during the development of alternatives, selection of a preferred alternative, and implementation of the actions required to reduce risk.

As of September 30, 2003, approximately $159 million remained in budget authority for the dam safety program. Reclamation anticipates that entire remaining authorization ceiling will be committed in fiscal years 2004 and 2005 to fund new and ongoing projects.

EFFECT OF S. 1727

S. 1727 would make two primary changes in the existing program.

First, the bill would increase by $540 million (indexed for inflation) the authorized cost ceiling for the Reclamation Safety of Dams Act. Reclamation anticipates that this funding level will provide Reclamation with authority to carry out safety of dams activities through approximately Fiscal Years 2012-2014, based on current projected funding needs for safety of dams modifications. If annual obligations are required at a faster rate to meet identified needs, the ceiling would be expended sooner.

Second, the bill would increase from $750,000 to $1.25 million the contract cost threshold amount for the Bureau of Reclamation to send a safety of dams modification report to Congress for review. This change would adjust the threshold for inflation since 1984, and thus allow Reclamation to independently initiate the modifications of the size and scope contemplated in the 1984 amendments.

CONCLUSION

Since 1978, when Congress first created the Safety of Dams program, we have carried out 64 risk reduction corrective actions and 4 more are currently underway. Reclamation has implemented these corrective actions to protect public safety at the lowest cost possible.

S. 1727 would provide the additional budget authority for this effort to continue into the future. While the Administration supports the increase of appropriations ceiling, we will continue to evaluate this program for potential changes to improve planning and operations, better serve the taxpayer, and protect the safety of the people and businesses that rely on the soundness and integrity of Reclamation facilities.

In conclusion, Madam Chairman, the Administration strongly supports S. 1727, and I would be pleased to answer any questions you may have.

PREPARED STATEMENT OF JOHN W. KEYS, III, COMMISSIONER BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 1791

Madam Chairman and Members of the Subcommittee, I am John W. Keys, III, Commissioner of the U.S. Bureau of Reclamation (Reclamation). I am pleased to be here today to present the views of the Department of the Interior on S. 1791, a bill to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that act shall be deposited in the Reclamation Fund.

On December 16, 2002, the President signed into law the Lease Lot Conveyance Act of 2002 (P.L. 107-335) which provides for the conveyance of 403 lease lots at Elephant Butte and Caballo Reservoirs to the Elephant Butte/Caballo Leaseholders Association, Inc. (Association). Reclamation has been working closely with the Association to carry out the objectives of P.L. 107-335.

Madam Chairman, the Department cannot support S. 1791. In previous testimony on H.R. 706, the Lease Lot Conveyance Act of 2002, I spoke in opposition to a similar provision in that legislation which would have required the proceeds derived from the sale of the lots to "*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 bill was subsequently amended, remaining silent on the issue and leaving in place existing law as to the general disposition of the funds derived from the sale of the leased lots.

Existing law provides that the proceeds from the sale of lands withdrawn from the public domain be deposited as a general credit to the Reclamation Fund and that proceeds from the sale of acquired lands be deposited into the Reclamation Fund as a credit to the project for which those lands were acquired.

The proposed amendment would direct all funds, from both acquired lands and withdrawn public lands, to be deposited in the Reclamation Fund as a credit to the project and immediately made available to the irrigation districts. The Department believes the proceeds from the sale of the leased lots should be disposed of consistent with existing law.

In continuing litigation during the past 13 years, Reclamation has contended that these revenues, as well as other similar project revenues, are not of the types of revenues covered by Subsection 4(i) of the Fact Finder's Act. The 10th Circuit Court of appeals has ruled that Subsection 4(i), as amended by the Haden-O'Mahoney amendment (43 U.S.C. §§ 391a-1, 392a), provides credits for revenues derived from only two specific sources: leasing of project grazing and farm lands; and the sale or use of town sites. Revenue from the sale of these lots does not derive from either of these specific sources, insomuch as the lease lots are being sold not leased. and "town sites" is a legal term of art applying only to town sites which were created under the Town Sites and Power Development Act of 1906 (34 Stat.116; 43 U.S.C. § 561, et seq.). The Districts are not currently entitled to receive Subsection 4(i) benefits from any sources other than those two specific sources listed above. In addition to amending the Conveyance Act, Section 1(2)(B) of the proposed bill would amend Subsection 4(i) of the Fact Finders Act to provide these Districts with a unique benefit. We are concerned that the amendment would set a precedent and encourage other districts to seek benefits under the Fact Finders Act that are otherwise not provided.

Also important to this case is that a small portion of the lease lots are located on public land that was withdrawn from the public domain for the project by Reclamation. As such, the Districts have never paid anything toward acquisition cost for these lands. The remainder of the lots are located on lands acquired out of private ownership by Reclamation for construction of the Project. Originally, the Districts cost of purchasing these lands was included in the Districts' repayment obligation. However, in 1937 the Districts were relieved of their obligation to repay any portion of the cost of these acquired lands and the cost of constructing Elephant Butte Dam and Reservoir. All payments made by the Districts prior to that time were returned to them as credits toward their remaining repayment obligation. All

costs of constructing Caballo Dam and Reservoir were deemed non-reimbursable by the Districts and charged to flood control. In light of this history, the proposed amendment would make available to the respective irrigation districts funds from the sale of lands to which they have no legal right, and where the federal government has borne all the associated costs.

In summary, while the Department supported the original Lease Lot Conveyance Act of 2002 as it was passed and signed into law, we cannot support passage of S. 1791 for the reasons stated above.

That concludes my testimony, Madam Chairman. I would be happy to answer any questions the Subcommittee may have.

Senator MURKOWSKI. Thank you, Commissioner.

Senator Dorgan, we've just heard the testimony from Commissioner Keys. I don't know whether you had any comments you wanted to put into the record prior to us beginning our questions. I've indicated we're probably going to take a break for a vote here pretty quickly, but if you wanted to make an opening statement, you could do that.

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

Senator DORGAN. Thank you, Madam Chairman. I've been in an Agriculture Appropriations Subcommittee hearing downstairs on the first floor, so I regret I was delayed, but I appreciate your starting the hearing.

Senator MURKOWSKI. Thank you, Senator.

Commissioner, you talked about the coordination with other agencies, and recognize that this is a substantial issue, and complementary efforts with these agencies are critical. It also seems logical to utilize, to the maximum extent practicable, existing infrastructure that could complement greater efforts in many of the smaller communities. Will connection to existing Bureau of Reclamation infrastructure aid in truly bringing water to the rural communities?

Mr. KEYS. Madam Chairman, connection to existing Reclamation facilities would be possible under any of the alternatives that we consider for rural water. What we're trying to do in the administration's bill is make available, to those communities, the engineering expertise that we have and a programmatic approach to evaluating the needs, evaluating the proposed solutions, picking the best solution, and then implementing it, rather than it just being kind of a hit-or-miss-type operation now.

But your question is, Would connection to Reclamation facilities be there? It would be there under any of those circumstances.

Senator MURKOWSKI. We recognize, in Alaska, that when we're talking about water, and clean, potable water, we've got some very, very serious issues. Our Indian Health Service estimates that approximately 20,000 households in American Indian communities and in Alaska native villages lack potable water supplies. Alaska and Hawaii clearly have some challenges, when it comes to their water supplies in rural areas, that I would suggest are equal to those in the Southwest. Given this need, why should we target water-supply development subsidies to only certain rural and small communities instead of opening up funding to other communities, such as those in Alaska and Hawaii?

Mr. KEYS. Madam Chairman, the 1902 Reclamation Act only authorized Reclamation to work in the 17 Western States, and those

other States that we have addressed with this legislation—certainly if your committee—subcommittee or the committee or Congress would like us to work with the other two States you mentioned, we would be more than happy to do that.

Senator MURKOWSKI. I guess I would note that Alaska and Hawaii weren't yet States when we had the Reclamation Act, but you wouldn't be averse to considering such efforts in additional States if that was appropriate?

Mr. KEYS. Madam Chairman, we would not. I would hasten to add that you would need to put that language in there to authorize us to do it, because currently we don't have that authorization.

Senator MURKOWSKI. I understand. Do you have a sense of the magnitude of the need for infrastructure rehabilitation, modernization, and development necessary to support the rural communities in the designated Reclamation States?

Mr. KEYS. The only measure that I have right now are the number of projects that we are working on at the direction of Congress and those that have asked for help. Currently, we are working on 16 of those projects—I'm sorry, 17—and we have had requests for aid in looking at others—from 33 or 34 other small communities. The large majority of those are Indian communities in the Western United States, so I think that's an indication that there's a large number of them out there that need that sort of help.

Senator MURKOWSKI. So you just identify them by a specific project, then?

Mr. KEYS. Yes.

Senator MURKOWSKI. OK. As far as the dam safety issue, I understand that the administration recently made some policy decisions related to dam safety issues in an effort to provide for more local participation in the process, and I think we would all agree that local involvement in decision-making is a good thing. Can you explain the specific changes that were made with respect to allowing for local involvement? And can you address how these changes will allow for—just exactly that, for more local involvement and participation in the process?

Mr. KEYS. Madam Chairman, in the past, it was almost like we had a black box, and we would go in there and decide what was the right thing to do with the dam, and come out and say, "This is what it is. And just give us your money, and we'll build it." Over the past year, we've developed a process so that the irrigation district or the entity that is involved in the repayment for that project is able to come in and attend the sessions where the different alternatives are discussed, and see different alternatives that could be implemented for the Safety of Dams fix. It does not mean that we give up the authority to decide which one is the right one to do, because ultimately the liability and responsibility is with Reclamation. But we can walk those project sponsors through the whole design and construction process so that they can see how much of their money it will take, how it will be used—in other words, how every penny of it will be spent, and then how the project will be operated after it's done.

I understand that Mr. Smith is going to propose an amendment, and we support that. There is a couple of issues that we're trying to work through in trying to make this whole process transparent.

The one issue is security. In other words, looking at some of the portions of those facilities that probably should not be in the public eye. The second part of it is trying to be sure that we don't get into a dueling consultants situation where a district might hire a consultant to look at the fix, and come in and say, "We think it should be something different." Those are two that we're still trying to work through.

But the ultimate goal in all that we're doing there is to make that process transparent so that the project sponsors can see how the process operated, what is being proposed, what the alternatives are, and have the questions answered of why the final alternative was selected.

Senator MURKOWSKI. Senator Bingaman.

Senator BINGAMAN. Thank you very much.

Commissioner, one of the key differences in the three bills that give the Bureau of Reclamation this new authority is that the bill Senator Dorgan and I and Senators Baucus and Daschle have proposed authorizes the Bureau to undertake appraisal level and feasibility studies. It does not, then, also say that the Bureau can go ahead and construct projects, absent a separate authorization by Congress. I think what we were trying to do was to follow what I understand has always been the practice, and that is that each individual rural water project would have to be authorized by legislation out of the Congress so that it wouldn't be totally up to the appropriators which efforts were pursued. Is that a big difference between what we are proposing and what you believe ought to happen? If so, how do you explain your position on that?

Mr. KEYS. Mr. Bingaman, that is not different than what we are proposing. We're proposing the same thing, that we work with the local folks on appraisal-level studies and feasibility-level studies. And then once we have decided with them on what approach to take, we come back to this committee for—or to the Appropriations Committee—we come back here for authorization, and then we go to the Appropriations Committee for funding.

Senator BINGAMAN. So you're in agreement with what we are trying to accomplish on that particular issue.

Mr. KEYS. On that particular issue, we absolutely agree.

Senator BINGAMAN. OK, that's very helpful.

Madam Chairwoman, let me put in a statement that the Navajo Nation has provided to us, if we could just include that in the record related to this hearing.

Senator MURKOWSKI. That will be included.

Senator BINGAMAN. Let me also ask, very briefly, about another bill that you testified on here that is a subject of the hearing. This is more a statement than it is a question, but in your testimony on S. 1791, you referenced this ongoing litigation that exists between the Bureau of Reclamation and the Elephant Butte irrigation district. Your assessment of the decisions that have been rendered by the District Court and the Tenth Circuit Court differ from what my staff tells me we understand those opinions to hold. So what I'm going to do is to develop some questions that I can submit to you for the record, and maybe get clarification as to exactly how we do disagree on this, and see if there is a way to resolve that.

Mr. KEYS. Mr. Bingaman, we would be more than happy to do that. I would tell you that it's a long and complicated history there, and we would certainly try to work with your questions to work through that to answer them.

Senator BINGAMAN. OK. Well, thank you very much. I think it is important that we try to clarify if we do have a real disagreement about what those decisions decided.

Thank you very much, Madam Chairman.

Senator MURKOWSKI. Senator Dorgan.

Senator DORGAN. Commissioner, based on your answer to Senator Bingaman, I assume, then, you would not object to our adding to S. 2218 a provision of the type that exists in our legislation S. 1085 requiring the Secretary to develop a plan to ensure that the already authorized projects are completed within the timeframe set forth in the authorizing legislation. The reason I ask that question is this. If we're going to talk about new projects, we have eight rural water projects in North Dakota underway. The NAWS Project, for example, which scores 84 on the so-called "PART analysis," has been recommended for no funding last year, not enough funding this year. You've got a crease in your loafers, I think, from the shovel that—didn't you wield a shovel in Minot 1 day when we shoveled some dirt to have the groundbreaking for this wonderful NAWS Project? You did pretty well with a shovel, by the way, but we did the groundbreaking. It is a great project, by all accounts. Then we get no funding recommended last year. We had to add it here in Congress, and less-than-adequate funding this year.

The proposition that Senator Bingaman asked you about is very important. Do you believe that we ought to proceed with the authorized projects that are good projects, and complete them? And if so, would you object to our putting a provision into S. 2218 that is similar to the provision we have in our bill, S. 1085?

Mr. KEYS. Mr. Dorgan, S. 2218 does not affect those that are already authorized. This is a way for us to deal with the needs in the future. Those that are already authorized——

Senator DORGAN. I understand that. That's not my question.

Mr. KEYS. I understand. Those that are authorized, we are working diligently to get them done as quickly as possible with the funding and the means that we have. Certainly, we're willing to work with you on this kind of provision. I could not speak—let me just say that we will work with you on a provision to do what you're trying to get done.

Senator DORGAN. Well, Mr. Commissioner, I would intend to offer an amendment when we mark up this legislation to do just that. The people in the city of Minot are paying a 1-percent sales tax for the purpose of developing the local cost-share for NAWS. We've got people paying up to a $750-per on a hookup charge, waiting for water from NAWS. And then, last year, we opened the President's budget, and he says, "Oh, by the way, that project for which Commissioner Keys shoveled the dirt at the groundbreaking, we recommend zero funding." And I asked why. Well, they've got this goofy thing called PART, and everyone understands that this project would pass every test—and, of course, it has—under PART. So you can understand my frustration and the frustration of the people of North Dakota. Mr. Koland is going to represent that in

his testimony, and he has every right to be frustrated and upset by this spending pattern, or the pattern of underfunding that which we have been promised.

So I really hope you will support our putting an amendment on S. 2218 that does exactly what we want to do in our bill.

Mr. KEYS. Mr. Dorgan, we'd be glad to work with you.

Senator DORGAN. Let me just mention briefly—you know that with the problem of both a drought and then also the mismanagement of the Missouri River by the Corps of Engineers, we've threatened to lose water for the city of Parshall in February. Your agency was very involved in extending the line. We actually lost water for 8,000 people down in the Fort Yates area. And I introduced a piece of legislation that would take the management of the Missouri River system away from the Corps of Engineers and give it to the Bureau of Reclamation. And it had nothing to do with my abiding affection for the Bureau. I have plenty of problems with the Bureau. But I was just trying to send a message to the Corps of Engineers that, "If you continue this mismanagement, you ought not be managing this river system."

So that's a long way of saying thank you for what you've done. I should say to you that your men and women of the Bureau, down in Fort Yates, did a heroic job. Working, incidentally, over the Thanksgiving break. I was down there. These are terrific employees, and they deserve, I'm sure you've probably given them, a real big pat on the back. But your agency did terrific work in Fort Yates, and you did terrific work to help get a water supply assured so that Parshall wouldn't lose it in February.

But that's a mouthful simply to say we've got a lot of problems out there, and we really need your agency to work with us. We had this interminable delay on the studies on the Red River Valley water supply. I mean, we're 3, 4 years late on that, as you know.

So, Mr. Commissioner, thanks for being here. Work with us on these issues. Let's get these water projects funded. If we're going to authorize them, if they're good projects, and if we're going to shovel some dirt for the groundbreaking, let's build them and get them done.

Mr. KEYS. Mr. Dorgan, I absolutely agree with you, there's a lot of problems out there. Those projects that are already authorized mount up to about $2.3 billion. And certainly we'll work with you on a way to try to get there. The PART exercise again demonstrated the need for a systematic approach to those that need help in the future, and that is what S. 2218 is trying to address.

Senator DORGAN. Madam Chairman, I guess we have 6 minutes left in this vote. If you intend to recess——

Senator MURKOWSKI. I think what we would like to do at this point—Commissioner, thank you for your testimony this afternoon, and for fielding the few questions. We will take a brief break here from the record, and will come back to the second panel.

So give us a few minutes here, and we'll be back to join you. Thank you.

[Recess.]

Senator MURKOWSKI. Let's go back on the record, please.

Our second panel this afternoon will be speaking about the three water bills, and presenting views on a comprehensive program. We

were originally supposed to have Mr. Jim Dunlap, from New Mexico, who was representing the National Rural Water Association, but we were notified that his plane was canceled in Albuquerque this morning, so he's not able to be with us today. But we have Mr. Mike Keegan, with the National Rural Water Association, presenting comments on behalf of Mr. Dunlap. And I would also like to welcome Mr. David Koland, manager of the Garrison Diversion Conservancy District, in North Dakota.

So, gentlemen, welcome. And, Mr. Keegan, if you would like to begin with your testimony, please.

STATEMENT OF MIKE KEEGAN, APPEARING ON BEHALF OF JIM DUNLAP, REPRESENTING THE NEW MEXICO RURAL WATER USERS, AND THE NATIONAL RURAL WATER ASSOCIATION

Mr. KEEGAN. Thank you, Madam Chairwoman.

My name is Mike Keegan. I'm an analyst with the National Rural Water Association, a nonprofit association with over 23,000 small rural water suppliers. All of these communities join me in thanking you and the committee for the support you've given us and our efforts to improve and protect our drinking water.

As you mentioned, I'm here because our past president of the association, Jim Dunlap, had his flight canceled in Albuquerque early this morning. Thank you for allowing me to pinch hit for Jim, and I'll summarize the key points of Jim's prepared testimony.

Rural and small communities strongly support both bills S. 1085 and S. 1732 and their objective of having the Bureau of Reclamation fund more rural water development. We believe the bills rightly expand the Bureau's historical mission to accomplish more rural water development for drinking water supplies. The key points we would like to make today with regard to the bills are—there is a great need in the West.

The nexus of the following three realities is resulting in a problem that merits additional Federal water development assistance. These realities include the fact that many U.S. rural households don't have decent, if any, water service. This number is estimated from two to five million households.

Second, unfunded mandates disproportionately impact rural households, and these mandates are increasing. I have handed out this map that shows this trend, with EPA's recent Arsenic Drinking Water role. This map shows approximately 15 percent of the counties had water supplies that violate the EPA standard. The green counties have a medium household income above the national median. The red ones have incomes below the national median. The map indicates that most of these communities facing compliance costs will be rural for arsenic, most will be in the West, and most will be comparably lower-income counties. In the coming years, EPA will begin to enforce the arsenic rule, the uranium rule, the disinfection byproducts rule, the radon rule, the groundwater rule, and many others that will cause tremendous strain on local communities.

The third reality is quantity, the fact that many rural areas in the West have never had adequate water supplies. With regard to funding, we believe that any enterprise needs adequate annual

funding, and we are suggesting an annual amount similar to the Department of Agriculture or the EPA's water funding appropriations, which are routinely funded at approximately $600 to $900 million annually. Currently, these two efforts are not meeting demand. We can conclude this because only communities that meet a strict economic and public-health need assessment can qualify for a USDA grant. And even with this limited factor, USDA currently has over $2 billion backlog in eligible funding.

I handed each of you a list of communities in your State—it's the red-covered document—that received USDA water funding last year. And Alaska is on the front page. So you can see how far a $700 million national program goes when disbursed among the states.

Our last key point on the bill is, we would like to acknowledge that water development under the Bureau is unique in nature. Bureau development has tended to be large and regional, allowing communities to share one central supply, treatment, and distribution system. No other Federal agency has this unique mission or the Bureau's history and experience with western water issues.

I will close and, once again, thank you, Madam Chair and the committee, for its continued assistance. It is appreciated. Thank you very much.

[The prepared statement of Mr. Dunlap follows:]

PREPARED STATEMENT OF JIM DUNLAP, BOARD MEMBER, UPPER LA PLATA WATER DISTRICT, NEW MEXICO RURAL WATER ASSOCIATION, AND THE NATIONAL RURAL WATER ASSOCIATION

Mr. Chairman, my name is Jim Dunlap and I am a Board Member of the Upper La Plata Water District, the New Mexico Rural Water Association, and the National Rural Water Association. I am a rancher, a farm equipment store owner, and I am currently the Chairman of the Interstate Stream Commission for the State of New Mexico. All of these organizations and every state rural water association join me in thanking you and this Committee for the support you have given our rural and small communities in our efforts to improve and protect our drinking water. We also appreciate the opportunity to testify before the Committee on the Senate bills to assist rural families to enhance water supplies through the Bureau of Reclamation (S. 1085 and S. 1732).

I cannot tell you how happy I am to have two Senators, with separate party affiliations, each with original legislation, holding the chair and ranking positions on this committee—working to better rural America's water—and looking at the Bureau as an agency to do it. I may be out of my league on how to successfully heap praise and appreciation on both of you simultaneously and just want to make it clear that if there are any disagreements between the Senators from New Mexico on how to craft this legislation—I agree with both of you.

Mr. Chairman, I strongly support the objective of having the Bureau fund more rural water development. The six key points I want to make today with regards to S. 1732 and S. 1085 are:

1. There is a great need of public health, economic viability, and compliance for additional financial resources for rural water development.
2. In certain circumstances, it is more cost-effective to develop large region water supplies as opposed to multiple local supplies.
3. The Bureau of Reclamation should get into rural water development as they have a unique mission not accomplished by other federal agencies (namely the U.S. Department of Agriculture and the U.S. Environmental Protection Agency).
4. The unique situation of rural communities should make them the priority for federal assistance for drinking water.
5. Please consider a local or independent process that could determine cost, feasibility, coordination and planning in the legislation.
6. Due to the unique federal mission proposed in the bills, any new water initiative within the Bureau of Reclamation should include significant annual appropria-

tions—comparable to EPA's approximately $800 million state revolving fund and USDA's approximately $700 million loan and grant effort.

There is a great need for public health, economic viability, and compliance for additional financial resources for rural water development.

The nexus of federal unfunded mandates, the fact that many rural areas have never had adequate water supplies, the shortage of local water supplies in the west, and need for a reliable water supply to attract and maintain any rural economic health reflects a great need for additional rural water development.

According to the USDA at least 2.2 million rural Americans live with critical quality and accessibility problems with their drinking water, including an estimated 730,000 people who have no running water in their homes (USDA study available on the internet at *www.ruralwater.org/water2000.pdf*). About five million more rural residents are affected by less critical, but still significant, water problems, as defined by the federal Safe Drinking Water Act. These problems include undersized or poorly protected water sources, a lack of adequate storage facilities, and antiquated distribution systems. Today, many rural families are still hauling water to their homes and farms. In La Plata County, Colorado—an area near my home that we are trying to organize in to a rural water district, lack of water is forcing hundreds of families to haul water for their home use and their livestock. Their wells and springs are drying up due to the drought.

Rural Americans have been living with inadequate water conditions that large communities could never imagine. For example: the Village of Hatch, New Mexico is located on the west side of the Rio Grande River in Doña Ana County. The County is in southern New Mexico borders both the State of Texas and the Republic of Mexico. Hatch is in northern Doña Ana County approximately 40 miles north of Las Cruces, the county seat and a community of over 130,000. The large metropolitan area of El Paso, TX—Juarez, Mexico lies 80 miles to the south.

Hatch is an incorporated community with a population of 1 136 per the 1990 census, however, the current estimated 1997 Village population is 1550. Due to the seasonal nature of agriculture, the main economic base, the population fluctuates as migrant laborers move in and out. The Village operates a community water system serving the Village and outlying rural areas including approximately 799 residents residing in the two "Colonias" known as Rodey and Placitas. The total population served by the water system is estimated at 2500. Over 75% of the population consists of minorities, primarily Hispanics. Projected population in the service area by the year 2010 is 3570.

There is one health clinic, funded by the former Farmers Home Administration, two grocery stores, seven restaurants, a post office, two bank branch offices, two convenience stores, one motel, one public laundry, and several other retail and service-related businesses. Average income is extremely low as the 1990 census shows a Median Household Income (MHI) of 512,975 well below the National Poverty Line of 516,050. The New Mexico Statewide Non-Metropolitan MHI is $21,656.

Rural Utilities Service (RUS) recently funded a water system improvements project to add additional storage capacity and run transmission lines directly from the storage tanks site to Placitas and Rodev. Before this project. water ran from the tanks to Hatch's distribution system, and then back uphill to the two Colonias. During summer peak usage, the Colonias experienced zero water pressure. The RUS project corrected this situation. Hatch, along with the Colonias, received the direct benefit of the additional storage.

Small communities are often in the greatest need, lacking the technical resources to comply with federal mandates because of their limited economies of scale and lack of technical expertise. Of the approximately 54,000 community water systems in the country, more than 50,000 serve populations under 10,000.

U.S. COMMUNITY WATER SYSTEMS SIZE BY POPULATIONS

[Source: U.S. EPA]

	500 or less	501 to 3,300	3,301 to 10,000	10,001 to 100,000	Over 100,000	Total
No. of systems	31,262	14,241	4,498	3,432	350	53,783
Percentage of Systems	58	26	8	6	1	100

Due to a lack of economies of scale, small-town consumers often pay high water and sewer rates. Water bills of more than $50 per month are not uncommon in rural areas. At the same time, the rural areas have a greater percentage of poverty and

lower median household income. This results in a very high compliance cost per household in rural systems coupled with an increased inability to pay.

Each year the list of regulations grows and the burden increases on small communities. Next year, we are facing new regulations on arsenic (92 Federal Register pages), radon (134 Federal Register pages), and an expanded ground water treatment rule (82 Federal Register pages) in addition to the over 80 regulations (40 CFR parts 141-42) that are currently on the books.

Drinking water regulatory requirements affecting small drinking water systems have steadily increased since enactment of the Safe Drinking Water Act (SDWA) in 1974. Not only has the number of regulated contaminants increased, but also regulations have also increased in complexity. As each new regulation is implemented by EPA small water systems face a compounding effect. That is, compliance with one particular regulation may be much more difficult as a result of one or more prior regulations, or one or more future regulations. Currently, National Primary Drinking Water Regulations (NPDWRs) are set for 92 contaminants. These include turbidity, 8 microbials or indicator organisms, 4 radionuclides, 19 inorganic contaminants, and 60 organic contaminants. Maximum contaminant levels (MCLs) have been set for 83 contaminants and 9 contaminants have treatment technique requirements. USEPA's Office of Ground Water and Drinking Water (OGWDW) is currently in the process of developing new regulations as required by the SDWA. Future rules intended to control microbial risks include:

- Long-Term 1 Enhanced Surface Water Treatment Rule (LT IESWTR)
- Long-Term 2 ESWTR
- Ground Water Rule (GWR)

Future rules intended to control chemical risks include:

- Arsenic
- Radon
- Stage 2 Disinfection Byproducts (DBPs)
- NPDWR Revisions
- Drinking Water Candidate Contaminant List (DWCCL)

The EPA list of communities that are likely to be out of compliance with the arsenic rule can be found on the internet at: *www.ruralwater.org/arsenicus.xls*.

In certain circumstances, it is more cost-effective to develop large region water supplies as opposed to multiple local supplies.

The reason—that over 9 out of every 10 U.S. water supplies serve populations under 10,000 people—it has historically been more economical to build smaller utilities than expand larger ones. The cost of running main lines a few miles can be cost prohibitive. However, in certain circumstances, it is more cost effective (especially over the long-term) to build larger or region water supplies. The factors that are used in making these complex discussions include future regulations which may require centralized treatment, the need to share one supply that may be far from many of the communities, the need for a distribution system to share water rights, projected growth, economic planning, etc.

For example, the regional Rocky Boys rural water supply, authorized by Congress for Bureau construction will allow many smaller communities to comply with the EPA's Surface Water Treatment Rule which they can't afford on their own, it will ensure long-term supply to numerous communities that currently lack quality supplies, it: will provide an economy of scale for future regulations like disinfection byproducts, and it will ensure the need infrastructure for those local economies.

Another example is the Navajo-Gallup pipeline project in New Mexico. This is a project to supply much needed drinking water to the Navajo Reservation, parts of the Jicarilla Apache Indian Reservation and to the city of Gallup. This will involve 41 Chapters in New Mexico and two Chapters in Arizona (a Chapter is similar to county government). It will involve a population of some 98,000 people utilizing 38,000 acre—feet of surface water and 4,000 acre feet of ground water. The project will start from Farmington, NM with a 48-inch pipeline and extend to the community called Yah Ta Hey, which is adjacent to the City of Gallup. This pipeline %will be approximately 520,000 feet with laterals to Window Rock, Arizona and Crownpoint, New Mexico, with lateral extensions of 388,000 feet. There will be a separate lateral extending from Cutter Dam to Pueblo Contado and Ojo Encino. This lateral will be approximately 400,000 feet in length.

In my own experience, we are currently organizing a variety of regional interests with water supply problems that can only be solved through a regional system. This ad hoc effort is looking at a solution for:

- The City of Durango, Colorado, which has supply issues and is growing rapidly.

- An unincorporated area in La Plata County, Colorado where families up on the Red Mesa are hauling water to their houses
- The Animas La Plata Conservancy which includes homes that need domestic water and has domestic water rights they cannot use because of a lack of a distribution system
- The Upper La Plata Rural Water District that has 564 homes and needs additional supply.
- In New Mexico, the La Plata Conservancy District has M&I water that can only be used for that purpose.

Due to the complexity and variety of the problems in each of these communities—the only real solution is a regional cooperative effort. In this example, it is critical to note that the unused municipal and industrial water rights held by the conservancy could be used by the other communities if there was a large distribution system to move the drinking water.

The Bureau of Reclamation should get into rural water development as they have a unique mission not accomplished by other federal agencies (namely the U.S. Department of Agriculture and the U.S. Environmental Protection Agency).

In the New Mexico-Colorado example provided in the previous section, there is no federal or state agency with the mission of looking at this type of project. We are organizing the parties as an ad hoc project and using local funds to do the planning. This project includes two states, multiple communities, conservancy districts, and unincorporated areas. Such a project does not fall within the USDA's rural water program guidelines for area and density of users. The list of communities funded last year by USDA is available on the internet at *www.ruralwater.org/report2003*. This program is truly the most successful rural public health and economic development program in the country. It was the reason piped water came to my community in 1966. It needs to be continued and funding needs to be increased, however, it has its own mission and it currently cannot meet the demands of the communities that fit into its guidelines.

I believe your bills create a new federal agency mission to assess and fund the type of project needed in New Mexico-Colorado and the rest of the western states. If projects would better fit in the USDA program or the EPA program then they should be referred to those agencies. However, it is clear to us working in the western states that there currently is no program to meet many of these pressing water problems.

The unique situation of rural communities should make them the priority for federal assistance for drinking water.

Many water organizations have been petitioning Congress for additional water infrastructure funding through increased authorizations and appropriations in EPA and the Bureau. However, rural communities face greater economic and often greater public health need than most of these organizations. No large community consumer pays $100.00 a month for drinking water service. However, in the western states, this is not uncommon in rural districts.

Also, compliance costs are typically much higher in smaller utilities. For example, Desert Sands water district in Anthony, New Mexico formed a water association more than two decades ago that finally provided clear water. However, to comply with the new arsenic rule, their estimates show customers' monthly water bills would at least triple under the new standard. The average bill last July was $32.18 per household. An Associated Press article (*www.ruralwater.org/desartsands.htm*) showed that one of the district's wells contained arsenic at 10.4 ppb and that "many Desert Sands customers are factory or farm workers who live in wind-beaten mobile homes or modest frame houses on small, sandy, treeless lots separated by rickety metal fences. The sand that blows across the flat desert is deep enough in some of the area's unpaved roads for cars to get stuck." Affording a rate increase of three fold will be dramatic to say the least.

We believe both bills recognize this unique situation of rural America and the cost of providing safe water service. We are grateful for this recognition and the bills' attempt to ameliorate this situation.

Please consider a local or independent process that could determine cost, feasibility, coordination and planning in the legislation.

Both bills represent a significant step forward in addressing the enhancement of rural drinking water supplies. Both bills provide for a new authorization for the Bureau to study opportunities to construct rural water projects and report back to Congress on feasible projects for funding—through the Congressional appropriations process. We think this is the proper way to try to identity feasible projects. How-

ever, we would urge the Committee to include an additional process that would act as an incentive for the Bureau to develop cost-effective projects in a timely manner. Please consider allowing for the submission of studies and feasible projects to Congress (through the Bureau) published by the local organization to Congress at any time. This option for local advocacy would serve as an incentive for the Bureau to work cooperatively with the locals. If the local organizations and the Bureau had different options on which projects were feasible and how they should be designed, Congress would be provided both options—and the Bureau would be able to comment on any local plan/study submitted to Congress. This would also serve as an incentive to move projects through the process in a timely manner. It appears that there is no limit to the time the Bureau could take on studying and analyzing various projects. We would also urge you to allow for the option of having the local organizations do the up front work on planning, financing, cost sharing, and feasibility of projects. Perhaps small planning grants could be made to local organizations to plan and study projects to determine feasibility and submissions of projects back to Congress. Such grants could be made by the Bureau utilizing a discretionary amount of program money—or they could be made to individuals through the appropriations process. In such cases, the Bureau would be intimately involved in the studies through their oversight authorities, but the locals could control more of the scope and process of the studies to promote timeliness and economic consideration.

Any new initiative within the Bureau of Reclamation should include significant annual appropriations.

Thank you Senator Domenici and Senator Bingaman for introducing these two bills. Rural America is grateful. I appreciate the details and thought that went into both bills that seek to find the best ways to divide up the intergovernmental responsibilities to plan, design, build, and fund public drinking water supplies under the federal umbrella. I have over 30 years experience dealing with the various levels of government and the various federal funding agencies. I have learned that it can be a long, complicated and bureaucratic process. Rural communities sincerely appreciate the thought that went into both bills to design the most efficient process, balanced with need for adequate oversight to ensure funds are well spent. We support the effort to craft legislation that will allow the Bureau to fund the water supplies that evolve from the studies and assessments. The main ingredient in a successful Bureau of Reclamation drinking water initiative will be a commitment from the federal government to a significant amount of annual appropriations. When communities see funding available to solve their compliance, supply, and rural public health needs—they will put it to sound use immediately. The agency will come to be known as a solution to immediate and long-term water challenges. We will see dramatic public health improvements; farm families receiving clean water for the first time, entire regions that have been out of compliance for years developing solutions, and intractable western water arguments being settle with communities moving forward. This has happen under the Bureau's direction in ad hoc manners in some western states. We encourage the committee to change this and make the Bureau a permanent and recognized solution to some the county's most challenging water issue by establishing an authorization for annual funding comparable to the USDA and EPA.

BACKGROUND ON STATE RURAL WATER ASSOCIATIONS

Each state rural water association membership is comprised of small non-profit water systems and small towns. All members have water supply operation as their primary daily activity. Membership averages about 400-500 communities per state, with systems from all geographic areas of each state. These are active members—who continuously participate in the training and technical assistance program in an effort to improve their drinking water. This program actively assists all small water systems whether they are members of the state association or not. With a significant turnover in water operators and board members—and the ever-increasing regulatory burden—the need for training and technical assistance remains constant. The problem with delivering safe drinking water is that improving drinking water in small communities is more of a RESOURCE problem than a REGULATORY problem. Every community wants to provide safe water and meet all drinking water standards. After all, local water systems are operated by people whose families drink the water every day, who are locally elected by their community, and who know, first-hand, how much their community can afford. Without the support of local people, regulations alone won't protect drinking water. Many small communities rely on volunteers or part-time administrators to operate their local water-supplies.

In my personal experience, two teachers, four farmers, one banker, and a group of kids from the Future Farmers of America acted locally to bring the first piped drinking water to my part of San Juan County in 1966. I was one of the two teachers. The community had been relying on ground water from individual shallow wells contaminated with minerals, oil, and methane gas for their farms and some household uses. Safe water used for drinking needed to be hauled in from town. We organized the 175 families in the area to incorporate a small rural water system and accept responsibility for repaying a 420 thousand-dollar start up loan from the U.S. Department of Agriculture's Farmers' Home Administration. At that time we did not have enough people to meet the threshold for population density to repay a loan, so a few of us accepted more than one water meter on our property. It was all the community could do to make the payments on the loans and the operations and maintenance of the systems was taken care of by community volunteers. Today, we have over 2,500 families on the system that has allowed for economic development in the area with over 100 new taxable businesses.

MISCELLANEOUS COMMENTS: THE ARSENIC ISSUE

Please provide relief to small and rural communities and their low-income citizens from overly burdensome EPA drinking water regulations. Specifically, we urge you to include a prohibition on enforcement and implementation of EPA drinking water rules for naturally occurring substances regulated for long-term exposure for small communities (less than 10,000 population) until EPA identifies a reasonably affordable treatment process for small communities. This probation could be limited to only the communities that EPA is not providing the funding necessary to comply. EPA is authorized to allow small communities to utilize a special "affordable" technology to comply with EPA standards because they are determined by what is economically "feasible" for a large community. This use of a comparably affordable technology for small communities seems only fair for standards based on the feasibility of large communities. However, to date, EPA has not allowed any small community the opportunity to use affordable variance technology because EPA adopted a policy that rural and small community families can afford annual water rates of 2.5% of median household income (MHI) or $1,000 per household. We do not think rural families, especially low-income populations, can afford up to 51,000 a year in water rates. Consumer advocates see such precipitous rate increases resulting in families being forced to choose between paying for medical care, food, heat or other necessities that directly impact public health.

The 1996 Safe Drinking Water Act (SDWA) mandated that EPA start to regulate these naturally occurring chronic substances (including radon, radionuclides, uranium, arsenic, disinfection by-products, etc.). This was a new direction from EPA's historical focus on contaminants that are introduced to drinking water supplies through pollution like manufacturing solvents and pesticides. EPA, either by questionable agencies decision or an unclear authorizing statue, is promulgating inflexible regulations for these substances that the communities do not support and believe result in a misallocation of their limited public health budgets. The way EPA wrote the arsenic rule, a small low-income community with an arsenic level just above the 10 parts per billion standard (i.e. 10.5 parts per billion) is treated the same as a large wealthy community with an arsenic level four times the standard (40 parts per billion). Treatment for small communities could triple water rates for an arsenic level that is not appreciably more risky than EPA's standard.

In the last few months, PBS, the New York Times, National Public Radio, and 60 Minutes all did exposes on the plight of low-income populations in the U.S. These features covered the reality of the difficulty of these economically sensitive subpopulations to afford housing, food, medical care and obtaining employment. They also brought to light real people and families in dire economic situations. The documentaries highlighted increasing rates of unemployment in minority populations, housing expenses increasing at uncontrollable rates, and families avoiding medical care to pay for other expenses necessary for survival.

The occurrence of these naturally occurring substances has been with us (and the populations regulated) since time immemorial. Many of the communities think these issues are local acceptable conditions and would never chose to spend the compliance cost if they were given the local choice. Also, no travelers among the states would be put at any increased risk for two very important reasons; (1) this has been the condition of the country for the eternity of all of our lives, and (2) these substances are only being regulated as a matter of chronic health effects which means the possible effects of massive daily ingestion of water over a 70-year period. The levels have no relationship to temporary ingestions that any traveler would experience.

Many interest groups petition this Congress to authorize more and more, ever-stringent federal unfunded mandates on small communities with the intention of improving public health on the communities' behalf. Unfortunately, this does not work and things are not that simple. The key to long-term improvement is local support, local education and available resources. We continually ask for the list of the small communities that need to improve their drinking water and are not willing to take the steps to do it. Such a list does not exist. The problem has been that small communities do not support most of these policies at the local level because they waste limited resources on non-priority projects.

In addition to EPA's lack of understanding to the realities of rural community economics, we are seeing a disturbing pattern in the evolution of science on the health effects of arsenic in drinking water. The NAS's National Research Council study of arsenic health effects that EPA based its decision to regulate arsenic called for additional health effects studies to clear up the uncertainty of the health effects of lower levels of arsenic exposure in drinking water. Since that conclusion, the following four studies have been published in peer-reviewed scientific journals. All four studies reached conclusions contrary to the EPA's determined health risk from arsenic in drinking water. All four rely on data from U.S. populations and low levels of arsenic exposure—similar to the levels found in U.S. drinking water supplies. Two of the studies seem to reject the conclusions in the two core studies (Argentina and SW Taiwan Studies) that EPA relied on to decided on the current standard. The study that seems to reject the original Argentina study, that EPA relied on to call for lowering the standard, is by the same author/scientists—Dr. Allan Smith. In his new recent study (No. 4 below), Dr. Smith, et al., found, "no evidence of association with exposure estimates based on arsenic concentrations in drinking water."

1. Bladder Cancer and Arsenic Exposure: Southwest Taiwan, Lamm, Byrd, Kruse, Feinleib, and Lai—Biomedical and Environmental Sciences (2003)
2. Arsenic in Drinking Water and Bladder Cancer Mortality in the U.S., Lamm, Engel, Kruse, Feinleib, Byrd, Lai, Wilson, & Phil—Journal of Occupational and Environmental Medicine (2004)
3. Case-Control Study of Bladder Cancer and Drinking Water Arsenic in the Western United States, Steinmaus, Yuan, Bates, and Smith—American Journal of Epidemiology (2003)
4. Case-Control Study of Bladder Cancer and Exposure to Arsenic in Argentina, Bates, Rev, Biggs, Hopenhayn, Moore, Kalman, Steinmaus, and Smith—American Journal of Epidemiology

As a small community elected official in charge of leading the public health interests of my community, I find it hard to tell people they need to spend their limited dollars on risks that we are learning are not as dangerous as portrayed. How can we are responsible local leaders, morally let this happen?

Senator MURKOWSKI. Thank you, Mr. Keegan.

Mr. Koland, your testimony, please?

STATEMENT OF DAVID J. KOLAND, MANAGER, GARRISON DIVERSION CONSERVANCY DISTRICT, CARRINGTON, ND

Mr. KOLAND. Madam Chairman, members of the subcommittee, thank you for the opportunity to testify on the rural water bills being considered by your committee.

My name is Dave Koland. I'm the manager of Garrison Diversion Conservancy District, headquartered in Carrington, North Dakota.

The provision of a high-quality reliable water supply has been changing the face or rural America. A reliable, safe drinking-water supply has helped stabilize the population of rural counties, afforded additional opportunities for economic development, and provided a better quality of life for our citizens. We have learned much during the last 30 years, as the concept of a rural water system has evolved, from providing safe drinking water for single-family rural households, to sophisticated regional water systems.

A Federal policy that guides the orderly development and timely construction of this rural infrastructure will benefit all our citizens. That policy should provide that the currently authorized projects be

completed without further costly delays. A sound Federal policy must honor the commitments that were made to the tribes and the States, such as North Dakota, that have endured a 50-year flood to provide flood protection to downstream States. That Federal policy should acknowledge that many projects and program have already undergone extensive study and review, and should not be required to duplicate those efforts or embark on additional studies. A Federal policy should also provide that the required reports can be developed by entities other than the Bureau of Reclamation, to aid in reducing the timeframe within which the project can meet the needs of the local sponsor. A sound Federal policy should be able to accommodate State policy when establishing eligibility criteria for developing a rural water infrastructure. A Federal policy should not encourage the displacement of agricultural use to the detriment of the economic base of rural communities by offering additional incentives for the conversion of water rights from irrigated agriculture to municipal water use.

In my written testimony, I summarize the steps outlined that are practiced by the State of North Dakota in administering a statewide municipal, rural, and industrial program. This partnership between the Federal Government, State government, and the local sponsor has resulted in an astounding success story. Thousands of rural North Dakota citizens now have a reliable supply of safe drinking water. Every single rural water system built in North Dakota is still operating, paying their debts, maintaining their systems, and providing for additional growth with internally generated revenue.

Let me direct your attention to some specific questions regarding the legislation being considered.

What is the expectation of this new process for projects currently under construction? It is our view that North Dakota's MR&I program is outside the new process that is being contemplated by Congress. Section 3 of S. 2218 makes no mention of currently authorized projects or how this legislation would impact the current rural water projects. In my view, the legislation should clearly state that the currently authorized projects should be completed, or a reasonable and prudent timetable for completion endorsed, before construction on any new projects is allowed to commence. Section 3 should also reference the Federal trust responsibility to Indian tribes that were forced to move when the Pick-Sloan dams were constructed on the Missouri River.

In section 5, what is the definition of an appropriate water conservation measure that would be applied to a family that is hauling every drop of water that is used for drinking, bathing, washing clothes, and other household uses? Section 5 of S. 2218 seems to preclude the blending the various forms of project financing that are available to communities now.

Section 6 is also unclear, in that it establishes the responsibility of oversight by the Federal Government be paid by the local sponsor. Section 6 could be enhanced by providing that revenue from the sale of water off the reservation could be used for the operation and maintenance and replacement costs that are now borne by the Bureau. The challenge we jointly face is how to streamline the

process of providing water where it is needed before the people we intend to serve must move elsewhere.

The North Dakota MR&I program is a successful model that has worked for North Dakota. The cost-effective partnership of local control, statewide guidance, and Federal support has combined to provide safe, clean water to hundreds of communities and thousands of homes all across North Dakota.

Thank you.

[The prepared statement of Mr. Koland follows:]

PREPARED STATEMENT OF DAVID J. KOLAND, MANAGER, GARRISON DIVERSION CONSERVANCY DISTRICT, ON S. 1085, S. 1732, AND S. 2218

Madam Chairman, members of the subcommittee, thank you for the opportunity to testify on the rural water bills being considered by your committee.

The provision of a high quality, reliable water supply has been changing the face of rural America. A reliable, safe drinking water supply has helped stabilize the population of rural counties, afforded additional opportunities for economic development, and provided a better quality of life for our citizens.

We have accomplished much in constructing a rural infrastructure in America, but much remains to be done. Increasingly, state and Federal incentives are provided to direct the relocation of jobs to rural areas without any provisions for providing the basic necessities of a quality living environment for the expected workforce.

We have learned much during the last 30 years as the concept of a rural water system has evolved from providing safe drinking water for single-family rural farmsteads to a sophisticated regional water supply system for multi-family rural communities. Complying with the increasingly complex Safe Drinking Water Act regulations is no longer possible or economically feasible for many small communities. A regional water system serving numerous communities can provide the benefits of safe drinking water to both urban and surrounding rural areas.

The inclusion of a large community as a core component of the regional system is often necessary to make a regional system viable. The larger the community the further the penetration into the surrounding area and, hence, the greater attainment of the policy objective of providing service to the greatest number of people who would otherwise be unable to afford a reliable safe water supply.

A Federal policy that guides the orderly development and timely construction of this rural infrastructure will benefit all our citizens. That Federal policy should provide that the currently authorized projects be completed without further costly delays. A provision that accomplishes that objective is found in section 4(b)(2) of S. 1085. A provision addressing this issue needs to be added to S. 2218. Such a provision would greatly assist us in completing the Dakota Water Resources Act (DWRA).

The present policy of denying adequate funding to currently authorized projects is a travesty. This treatment of people on the verge of realizing the dream of finally having a reliable water supply is not justified under any circumstances. A government policy that promises, authorizes, studies, designs, and begins construction with one hand and then blithely and blindly curtails construction with the other hand must not be perpetuated one day longer.

A sound Federal policy must honor the commitments that were made to tribes and states, such as North Dakota, that have endured a 50-year flood to provide flood protection to downstream states. That unfulfilled Federal promise has been reformulated, reneged on and finally renewed in the Dakota Water Resources Act of 2000 only to have the funding severely reduced in the budget on the faulty premise of an OMB Program Assessment Rating Tool (PART) analysis.

When the PART is applied to the North Dakota MR&I program, it reveals a program with a weighted score of 84%. Where is the justice in reducing funding for such a highly rated program or for any authorized project while the Federal government attempts to set a policy for future projects? We are grateful that Congress stepped forward and provided funding for our projects in FY04. (Appendix A OMB PART as modified by North Dakota)*

In North Dakota, we have eight MR&I projects under construction, including the Northwest Area Water Supply Project (NAWS) that are critical to meeting the water needs of our citizens. Nearly 1500 people have paid a "sign-up" fee as high as $750 while they wait for the pipeline to reach their home. The people living in the NAWS

*Appendixes A and B have been retained in subcommittee files.

service area, including the 36,567 citizens of Minot, are paying a 1% sales tax to finance the 35% local share of the NAWS project.

The Federal policy should acknowledge, as section 6(e) of S. 1085 does, that many projects and programs have already undergone extensive study and review and should not be required to duplicate those efforts or embark on additional studies.

A Federal policy should also provide that the required reports can be developed by entities other than the Bureau of Reclamation to aid in reducing the time frame within which the project can meet the needs of the local sponsor. Section 6(c) of S. 1085 captures this concept.

A sound Federal policy should be able to accommodate state policy when establishing eligibility criteria for developing a rural water infrastructure. The state water plan should play a significant role in developing the considerations outlined in section 3(b)(2) of S. 1732.

A forward-looking Federal policy will focus efforts on providing access to rural water in areas that do not have a reliable supply of quality water now. The policy should encourage the inception of projects at the local level. Projects that are driven by a local need will be better able to sustain themselves through the already too long gestation period from the recognition of a need to the completion of construction.

A Federal policy should not encourage the displacement of agricultural use to the detriment of the economic base of rural communities by offering additional incentives for the conversion of water rights from irrigated agriculture to municipal water use. In developing priorities, a Federal policy needs to look beyond economic considerations and examine if the project also meets environmental or social policy objectives.

A Federal policy should deal with providing solutions for entire regions by directing Federal resources towards implementing projects that provide solutions dealing with both present and reasonable foreseeable future needs.

When the transfer of water from one basin to another basin can best serve the national interest and be accomplished in a safe and prudent manner, it should be encouraged.

Before I talk about specific issues, let me briefly describe a process and a program that has enjoyed tremendous success in providing high quality, affordable drinking water to thousands of North Dakota citizens who had been without a reliable supply of safe drinking water.

The goal of the North Dakota Municipal, Rural and Industrial (MR&I) program is to provide a high quality, affordable supply of safe drinking water to people who do not have water now or have an unsafe supply of water. (Appendix B, Rural Water: A Program that works for North Dakota)

We recognize the need for a process that focuses our efforts on providing water to the greatest number of people who would have no other way to obtain clean, safe drinking water without the assistance of our MR&I grant program.

The process begins at the local level with the preparation of a Preliminary Engineering Report. Then a Feasibility Study is conducted by a professional engineering firm, followed by appropriate environmental studies performed by the Bureau of Reclamation. The Bureau of Reclamation also reviews the final design of the project before construction can begin.

Projects are approved for funding by a joint committee of the State Water Commission and Garrison Diversion Conservancy District. Projects are prioritized based on the state water plan, inadequate current supply, the affordability of the water supply, quality of current supply, and local support.

The MR&I program was authorized by Congress in 1986. In North Dakota, the program is jointly administered by the State Water Commission and the Garrison Diversion Conservancy District. A state-wide water plan is updated annually and works with a five-year projected project funding schedule.

Step One is the submission of an application to the MR&I program.

Step Two is the completion of a Preliminary Engineering Report. This report is normally paid for by the local sponsor of the project. The local sponsor may be a community or a rural water system. If the local sponsor is a rural water system, they have collected an "interest fee" from people interested in seeing if a system could be built in their area. The interest fee usually is from $50 to $100 and is used to hire an engineering firm to help design the project.

Step Three is the Feasibility Study conducted by the engineer to determine who can be served and how the system would be constructed. In order to determine who is really willing to hook up to the water system, a sign-up campaign is conducted. The sign-up fee is from $300 to $800 and is used to fund the local share of the Feasibility Study. The MR&I program will provide a 65% cost share, . provided they feel funding will be available when the project is ready for construction. The firm

hired to assist the local sponsor typically will not be able to recover all their costs unless the project goes to construction.

Step Four involves the Bureau of Reclamation in the environmental studies and approval of the final design before construction can begin. Funding for construction is currently provided on a 70/30 matching basis. The local share of a project is usually borrowed from a Federal or state source such as, Rural Development, and repayment is funded by a monthly payment from each water service customer. The O&M expenses for the local system are funded in the same manner. The lender normally requires that reserve accounts be established to provide for both expected and unexpected future O&M expenses.

This partnership between the Federal government, state government, and the local sponsor has resulted in an astounding success story.

Thousands of rural North Dakota citizens now have a reliable supply of safe drinking water. Hundreds of communities can now provide affordable, safe drinking water to all their citizens. Every single rural water system built in North Dakota is still operating, paying their debts, maintaining their systems and providing for additional growth with internally generated revenue. North Dakota is building a strategic regional water supply system. And, most importantly, the Federal interest is served by compliance with the environmental laws, the natural selection of the most cost-effective solution, the built-in need to apply appropriate water conservation measures, and the provision for future O&M expenses by the local sponsor.

Let me direct your attention to some specific questions regarding the legislation being considered.

What is the expectation of this new process for projects currently under construction? Should we be viewed as models for this new process or outside the process? It is our view that North Dakota's MR&I program is outside the new process that is being contemplated by Congress.

Section 2(8) of S. 2218 addressing rural water infrastructure definitions should include closed storage structures such as water towers and/or underground reservoirs and canals that have been converted to water supply use.

Section 3 of S. 2218 makes no mention of currently authorized projects or how this legislation would impact the current rural water projects. In my view the legislation should clearly state that the currently authorized projects should be completed or a reasonable and prudent timetable for completion endorsed before construction on any new projects is allowed to commence. A key element of this section should be the extent to which a project complements or enhances an existing State Water Plan.

Section 3(d)(4) of S. 2218 does not clearly define what integrated resources management approach means or what type of entities are envisioned to be partners in a rural water supply project. Does this refer to military bases, urban areas, energy companies, tribal governments, counties, water resource districts, grazing authorities, Federal agencies, and State agencies? In North Dakota all of these entities have been partners in building rural water systems.

Section 3(e)(1) of S. 2218 introduces a new term "capability-to-pay" that needs to be clearly defined.

Section 3(e)(2) of S. 2218 should also reference the Federal trust responsibility to Indian tribes that were forced to move when the Pick Sloan dams were constructed on the Missouri River.

Section 5(a) of S. 2218 should provide that feasibility reports from other sources such as professional engineering firms should be utilized to reduce the time spent in duplicating studies of proposed projects. What is the definition of "appropriate water conservation measures" that would be applied to a family that is hauling every drop of water that is used for drinking, bathing, washing clothes and other household uses?

Line 18 and 19 speak to market-based mechanisms that imply that converting agricultural water to urban use is sound policy for all situations. In my view a sound policy would encourage the continued existence of a solid agricultural base coupled with the continued growth of the urban core. In North Dakota agriculture forms the core basis of a major portion of our economy.

Section 5(c)(9) of S. 2218 seems to preclude blending various forms of project financing that are available now. We have built projects with combinations of different loans from various agencies which leverage the advantage of each to construct an affordable project. The net effect is to reduce the amount of grant money that is needed by the project.

Section 5(d)(3) of S. 2218 raises some very troubling issues in my view. If a tribe has decided to provide water to its members and constructs a delivery system to do so should it pass by the house that has non-tribal members living in it only to have to return and add the house to the system if a tribal member moves or marries into

that household? If non-tribal members are working in a hospital on tribal lands will the hospital be required to purchase water on a different rate structure for each class of employees and/or patients?

Section 6(a)(4) of S. 2218 is unclear. We are only going to construct projects that can pay their own way in the future but we will always get to pay the Federal government a fee to provide oversight? Our experience in North Dakota has been that when projects are controlled at the local level they have prospered and grown. See Appendix B, Rural Water: A Program that works for North Dakota.

Section 6(a)(5) of S. 2218 could provide that revenue from the sale of water off the reservation could be used for operation, maintenance, and replacement costs.

Section 8(b) of S. 2218 seems to be more one-sided than it would need to be. There should be some requirement to consult, review or discuss with the non-Federal entity on these issues.

Section 9 of S. 2218 does not address projects that are already authorized by Congress. By the time you go through the process outlined in this bill the people who need water will have moved. Is this a "competitive program" to submit project requests to Congress?

Section 5(c)(2)(C) of S. 1732 seems to require that each proposed project must be authorized by Congress before construction can begin. Section 5(d) would appear to set priorities for funding the construction of proposed projects.

The challenge we jointly face is how to streamline the process of providing water where it is needed before the people we intend to serve must move elsewhere.

S. 1085, S. 1732 and S. 2218 are important steps in working towards a process for future rural water project authorizations. I would suggest that it is important that some thought be given first to having a National Rural Water policy. A National Policy would help drive the process and focus the program on whether you presently have water or not and further ensure that proposed projects are consistent with a state's water plan for developing its water infrastructure.

It is also important to have time frames for completion of the appraisal investigations and feasibility studies and be able to give the sponsor some realistic idea of how long it is going to take before the project is complete and the needs met. We can not tolerate a never-ending regimen of studies.

The North Dakota MR&I program is a successful model that has worked for North Dakota. This cost-effective partnership of local control, state-wide guidance and federal support has combined to provide safe, clean, potable water to hundreds of communities and thousands of homes all across North Dakota. Garrison Diversion is committed to assisting you in whatever way we can as you move forward.

Thank You.

Senator MURKOWSKI. Thank you.

We appreciate the testimony from both of you this afternoon.

I'm sure you heard the question that I posed to Commissioner Keys about perhaps some expansion to States, such as Alaska and Hawaii, that experience similar problems and issues, challenges, as it relates to their water.

I would throw the same question out to both of you. Should we target water-supply development subsidies to certain rural and small communities instead of opening up funding to other communities with similar needs? What do you think?

Mr. Keegan.

Mr. KEEGAN. I'm not so sure you could stop it at Hawaii and Alaska if you opened it up, but I think the principle is exactly right. It should be based on need. And the one thing the Bureau of Reclamation does seem to have is a unique mission that satisfies western needs. And I think Alaska would probably be similar to that, too. And I'm sure some people would talk about the eastern states. But it does seem primarily targeted to the West and its unique problems. But I agree, if it's going to be a Federal subsidy, it should be based on needs across all the states.

Mr. KOLAND. Madam Chairman?

Senator MURKOWSKI. Mr. Koland.

Mr. KOLAND. I agree, the focus of the MR&I program in North Dakota has not been to spend all the money where we get the biggest bang for the buck, if you were to look at the program. It's to provide water to people that could not afford to have water on their own, and that serves a broader economic policy issue for the state of North Dakota if we can shore up the rural communities and provide an infrastructure there so that people will live there, support the quality of life. And we've found that economic benefits follow, that the economic benefits follow a good water supply.

Senator MURKOWSKI. Just talking about the challenges that rural communities face, they've got a smaller financial base from which to generate their funding for their capital projects, and essentially pay for them. They've also got few operation and maintenance resources, meaning basically the knowledgeable people and the equipment. In your experience, what are the typical water rates in—say, for instance, in western rural communities—in your part of the country, Mr. Koland—for both the community systems and wells? And are these, then, higher than what you would find in the larger municipalities?

Mr. KOLAND. Madam Chairman, across North Dakota, we are trying to provide water, 6,000 gallons a month for a family household, at about $35 to $50 a month for that family, and we're trying to keep that comparable to a lot of communities. Communities charge water on a different base because it's part of their real estate taxes. Normally the infrastructure has been built. And we've found that the way that we can most efficiently do that is by building a regional water system, and that calls for some hard decisions for small communities. Small communities are reluctant to give up the water plant, to run the water plant themselves, even though they think they can do it. But in a regional system, we've been able to accomplish and build strong systems by providing water to these smaller communities at a reasonable rate and continue to increase that infrastructure.

I could give you an example. A water system that started with 700 members in the late 1970's is—now has about 2,300 members that—they started with just chlorination and iron and manganese removal. They now operate a reverse-osmosis plant, one of the latest technologies, and they're able to do that by generating funds internally and by growing in their community, without additional Federal help.

Senator MURKOWSKI. So you don't have the disparity, then, so much, between the rural communities and the larger urban centers that one would think, through this regional planning approach.

Mr. KOLAND. Madam Chairman, what has happened is, our core communities—Bismark, North Dakota, is about 50,000 people—the rural water system that was started in the rural area around Bismark now buys all of its water from Bismark, North Dakota. They drink exactly the same water that that community drinks, very high-caliber Missouri River water, some of the finest in the country. And that is a social policy objective of the State of North Dakota, and it's one of the reasons, I think, any policy or bill has to look to the State to set a policy of how they want to build this infrastructure and what policy objectives they want to meet with their water infrastructure plan.

Senator MURKOWSKI. I'm assuming that we still have, in many, many areas, the model of the domestic wells, the local wells, local ownership of their rural water projects in these smaller community systems. Can this type of a model, can this type of a system, continue to work? Or do we move toward consolidation, of sorts, in order to find greater efficiencies?

Mr. KOLAND. Madam Chairman, I think the movement will there internally. North Dakota water districts—they started out as cooperatives or nonprofit corporations—have moved to a water-district model, a governmental model. But the key is, the board of directors are users of the water system, and they make the best decisions. There are people that are using the water. When they raise the rates, they're raising their own rates. When they make improvements, they're improving the system for themselves. So it's been an excellent model.

They need to get larger, and they have. They've combined management of systems in the southeast part of our State. There are three separate systems. They have three boards right now, but they will eventually have one board of directors. They have one manager that oversees all of them, and they moved that way naturally.

Senator MURKOWSKI. Mr. Keegan, did you want to add anything to what——

Mr. KEEGAN. Thanks. I agree with what Dave has to say. Consolidation is a very sensitive word in rural communities—and consolidation or regionalizing, you just have to look at it ad hoc and—with the community's consent. And they will do it when it makes sense, but it's really a solution for certain problems. It is not a solution for small water supply. And as long as you can make that—distinguish that before taking a look at any problems, things can work themselves out.

The other thing I would mention to your previous question, is that there's never been a really good study on comparing municipal or urban water rates, versus rural communities. No nationwide study I'm familiar with. I think, anecdotally, everybody kind of assumes that, and they've seen it, but there's another trend, too, which is the ability to pay the water is often lower in the rural areas and small communities, too. So you have these things working, complementing each other, to make it more and more difficult.

Senator MURKOWSKI. Thank you.

Senator Bingaman.

Senator BINGAMAN. Thank you very much.

Mr. Keegan, in your testimony you site the USDA study which states that 730,000 people have no running water in their homes. This testimony that we received from the Navajo nation has a statement in it between 20 and 50 percent of Navajo households rely solely on water hauling to meet daily water needs. I guess I would ask you, first, whether you know if that is 730,000 homes, or 730,000 people, that you're referring to in your testimony? Do we know where those people live? If we set out to solve that problem first, because that may be the most severe problem facing any of our citizens, would we know where to put the resources and how to do it?

Mr. KEEGAN. I haven't seen it accumulated so you have the list of 730,000 households, but what it is is a State-by-State assessment, and that was done by the Department of Agriculture. So they actually relatively looked, county-by-county, addressing needs. So I think within USDA there probably is a list. And there were some attempts—this was back in 2000 when they put this report together—to go after an initiative that would hook all those 730,000 homes up to water. And they haven't——

Senator BINGAMAN. You don't know what happened to that?

Mr. KEEGAN. Well, it's incrementally been funded. There's never been enough funding to actually satisfy that.

Senator BINGAMAN. I see.

Mr. KEEGAN. But it probably—I know if you asked USDA, they would have a list of communities that did make some improvements on that list.

Senator BINGAMAN. One of the difficult issues involved if we're trying to set up a Bureau of Reclamation rural water project, or legislation to fund rural water projects, is to funding rural water projects. In our bill, the one Senator Dorgan and I put in, we've said that that could include communities with populations up to 40,000. Is that the right place to draw the line? Is that too big? Is that too small? Should there be prioritizing? I mean, are we really talking about dealing with rural communities? Are we talking about—a 40,000 person community in my state, is—you know, there aren't that many of them. Do either of you have an idea as to what the right size is for rural?

Mr. KOLAND. Well, Madam Chairman, Senator Bingaman, that is a difficult question. We have the same thing. We don't have many communities that are that large. But, at the same time, one of the core things that we've found we can do is, if we can buy water from a large municipality, we can construct a lot more rural infrastructure around that community to provide—and sometimes that's the most cost-effective solution. So I would hesitate to preclude Fargo, North Dakota, which is a population of 90,000, if that, in fact, would be our cheapest source of water. And certainly—Bismark, North Dakota, is 52,000 people; our rural water system that serves about 2500 customers, hook-ups, buys all its water from that community, and that's a good partnership for both the municipality and the rural water system.

Senator BINGAMAN. Let me ask either one of you if you have an opinion as to what the appropriate cost-share ought to be. That's obviously another big issue in this legislation. To what extent should we settle on a particular cost-share and put that in law? Or should we remain flexible about that, depending upon the circumstances involved with each project? What do you think the right cost-share should be?

Mr. KOLAND. Senator, I think—in North Dakota, we had the authority to do a 75 percent/25 percent cost-share for the program started in 1986. For 10, 11, 12 years, we looked at it, and said, let's make the cost-share 65/35, and our Federal money will go farther. And we did that. But in the last few years, with the increasing cost of building water systems, we had to change that to 70/30 cost-share in order to get as much penetration as we could into the rural area. I think you have to allow some flexibility, because as

a system, as each one is individual designed, will more or less determine the water rate, it's difficult to set it based on a top water rate, but the cost you're going to pay for water decided by the local people, they'll tell you when they've reached—how much they can afford to pay. And we have to design a system so that the widow living on social security can afford to hook up to the water.

Now, that seems like a strange statement, but what we've found is, a home with rural water has greater value than one without, because that home can be resold or sold when it comes on the market. Someone will buy it and move into it. Young people will not tolerate the same water quality as an older person will tolerate.

Senator BINGAMAN. Thank you very much.

Senator MURKOWSKI. Senator Dorgan.

Senator DORGAN. Madam Chairperson, thank you very much.

Mr. Keegan, thank you for your testimony. And, Mr. Koland, thank you for being here. I was just sitting here thinking it may be good to mention Warren Jamison. This, as you know, my colleagues know, Warren Jamison was one who testified here on behalf of the Garrison Conservancy District and on behalf of the Garrison Project for many, many, many years. And he died of cancer some months ago. And when you talk about water policy in North Dakota, it would be hard to talk about achievements in water policy without giving recognition to his wonderful work, and I want to do that.

Mr. Koland, your work is similarly extraordinarily beneficial to our State. I think it might be useful for me just to ask a couple of leading questions, if I might. And before I do, let me compliment you. I think in many ways what you've described, with respect to regional efforts, describes a model that we have created in North Dakota that would be very, very useful as we construct public policy here, because the regional approach to development, for the development of rural water systems, has, I think, been very attractive, cost effective, and very helpful to bring water to a larger number of people than otherwise might have been the case.

But you, too, I believe, were at the groundbreaking in Minot of the NAWS Project, and the commissioner was there, and we all smiled. And all that was missing was suspenders and cigars for a bunch of politicians to, you know, break ground on a new project. And then last year it was zeroed out. This year, it's funded at less than what it should be funded at.

Describe to me what the impact of these projects are, including the NAWS Projects, when we have these fits and starts in funding.

Mr. KOLAND. Madam Chairman, Senator, thank you so much for the kind comments, and I'm sure Warren—as I walked by The Dubliner, we all thought of him.

It is, in a way, unconscionable that we would start a Federal project, promise people water—the people north of Minot, where this project is going to help with water, they're out of water. When the drought hits, they go to water rationing, et cetera. But the money that we are wasting if we do not properly fund this project, we have no defense for.

We have started a project that we should construct in 5 years. If we don't do that, the warranties will expire. We won't be able to test the water line to see if we can't—the people north of Minot

are convinced that we're never going to go any further than Minot with this project. And as much as we promise them, they just look and see the news out of Washington, the fund levels that we're achieving.

We were averaging $10 million before the Dakota Water Resources Act appropriated to the MR&I Program in North Dakota and—not an unreasonable amount, given the slowness of it. We have $600 million more of authorization in the Dakota Water Resources Act. We met with the tribes. And as you well know, the relationship sometimes between Tribes and State is tenuous. But we struck an agreement to share the MR&I money 50/50, because we promised them that would be the best way that we could get their projects built. And we come to Congress, and we go home with $2½ million each, and we can't hardly design the project for $2½ million, much less do any construction.

Now, North Dakota, as you well know, will do all we can to keep these projects under construction, but it is a daunting task without the help of Congress.

Senator DORGAN. Well, you know, we have very serious fiscal policy problems here in the Congress that we have to grapple with, but having said that, it really is a matter of making the right choices. And the question that I asked the commissioners about, Don't we have an obligation to complete and move forward and finish projects that are underway before we begin trying to draw new ones in? I think that is a very important concept.

One other question, because I think your regional model is really successful, and I've seen it in all parts of our State. Are there things that you believe we could do—incentives, perhaps, or other devices, or other policy approaches—that would enhance that regional approach in the rest of the country?

Mr. KOLAND. Madam Chairman, Senator, I have to go back, that if you're going to deal with the water-infrastructure problems of the State, it should be guided by State policy, and a State policy is driven by the local need. In North Dakota, it's driven by the local need. We're successful. The southwest pipeline that the State had the foresight to construct and size to meet the eventual needs of that State, has proven to be very successful. Every community—communities that said no when we were planning the pipeline, have come and said, "Hey, we need that water." We've had communities that said, "We'll take half our water from there," were on the water for but a short time and they said, "We want all our water from this pipeline." So we have a lot of experience as to what happens when you build a project the correct way.

Senator DORGAN. But, in many respects, that's a function of what it ultimately cost to deliver that water, and that's a function of what we fund and what the local match is. I know, having visited with people from communities, who have said, "You know, we know there's a rural water system nearby, but we really think we ought to develop our own municipal water supply and dig a new well and create a new system." As they think through that, however, cost becomes something that drives it—the citizens of that community, to take a look it and say, "Well, you know, if we have good, fresh water coming nearby in a pipeline, what does it cost for us to punch into that, as opposed to building and completing a new

water system for our town?" So cost is very important. As you think of these incentives to help develop a more regional strategy nationally, let us know what you think good policy might be in those areas.

Again, I always appreciate your testimony. I think this project, whose origin was mid-1940's, and authorization in the mid-1960's, and reauthorization or a change in authorization in the mid-1980's, and then a final change just a couple of years ago. This is a long and tortured trail that we've been on, and the chairperson of this committee is new to this committee, and so she doesn't know the history. But I will not take all afternoon to recite it, except to say this. We now have a one-half-million acre flood that came and stayed in our State, not because we asked for it, but because the Federal Government asked us to host a permanent flood, and they said, "If you do that, we'll give you something return." So we did it, we have the cost, but we haven't gotten all the benefits. And that's why we struggle. And I think Alaska, perhaps more than any other State, understands that struggle, the struggle to try to make things better and try to improve things in your State.

So I want to thank you very much. Mr. Keegan, thank you for testifying. Dave Koland, thank you for your work. And thank the board, of course, for the work they have done. We're going to keep working on these policies to see if we can't continue to improve them. Thank you very much.

Madam Chairman, thank you.

Senator MURKOWSKI. Thank you.

And you are correct, Senator Dorgan, I don't have all of the history, but the more that I learn about the water situation in the various parts of the state, and compare them to the situations we have in Alaska, the battles that we have for our resources, there's an awful lot of commonality, I think, that we do share.

Gentlemen, I would just like to ask you one more question. And this follows on the comments from Senator Dorgan and Senator Bingaman, in terms of how much is enough. Every year, Congress is trying to provide a few billion dollars for rural community water-system development. These are through EPA, State revolving funds, Department of Ag., the rural utility services, all of these other pots and programs. It's apparent that we need a larger investment to really begin to meet the needs of the rural communities as it relates to the water.

So the question to you is, How big? How much? What does it have to be? You know, in your particular areas, the needs. We heard from Commissioner Keys. He had identified the various projects out there. But what is it that we really need?

Mr. KOLAND. Well, Madam Chairman, Senator Dorgan talked about the permanent flood. When we built the dams in North Dakota, the Federal Government said, "You can have a million acres of irrigation." And through the reformulation, we don't have that million acres of irrigation. Instead, as a State, we said we'd settle for the $600 million, plus the $200 million that was paid before, and we would call it square. So, in my view, the Federal Government owes the State of North Dakota that compensation.

And the State of North Dakota decided that the best way we can spend that money is to spend it on a water infrastructure in our

State for our tribes and for our communities. And that was a decision that the State made. And what I'm offering is that that model of regional construction, the partnership that we have with the Bureau of Reclamation that are involved in the design of the projects, they're involved in their environmental studies of the project, from the very first step they're involved in this.

So there is a way that a Federal partnership and a State partnership and a local control can work. It works in our State; I believe it can work in other States. Maybe not all the States.

The amount of money is contingent upon how much the Federal Government wants to ensure that there will be other places to live in this country, other than metropolitan, urban areas. And that's a policy decision that they have to come to grips with. We can look at places in western North Dakota or Western United States, Los Angeles, Denver, Las Vegas. All of the metropolitan areas are going to reach some type of capacity, if not physical capacity, at least mental capacity, that not everyone wants to live in that type of environment. And I know we're finding people come to our State and want to live there just to get away from that environment. And as our country grows and continues to grow, we have to do something to provide that people will naturally spread out to those areas, if you will, or we're going to face some horrendous problems in those urban areas.

So from a Federal policy area, it's the matter of the will of what kind of quality of life are we going to provide for our people, what kind of environment are we going to have for people to leave those urban areas and come and visit or live?

Senator MURKOWSKI. Closing comments, Mr. Keegan?

Mr. KEEGAN. Thank you. In my testimony, I mentioned the fund levels and the other major Federal water efforts, EPA and USDA and, to some large extent, HUD. But I would take a look at those as maybe a floor rather than a ceiling. And all of those programs are funded at a fraction of their authorized level, and they have seemed to have, kind of, routinely been funded at right around the billion-dollar level per agency. USDA and EPA—and EPA actually has water and waste water, so—and they actually do contribute a lot to solutions out there every year. So I think that's kind of a vague, rough idea of a place to start.

Senator MURKOWSKI. That does give us a starting point.

Well, I appreciate the testimony from both of you this afternoon. Thank you for joining the subcommittee and for helping us as we address these issues that are of great concern to our rural communities across the West.

So thank you. And, with that, we stand adjourned.

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

APPENDIX

Additional Material Submitted for the Record

FAMILY FARM ALLIANCE,
Salem, OR, March 23, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI: I'm writing on behalf of the members of the Family Farm Alliance to strongly urge that the Committee support an amendment by Senator Gordon Smith of Oregon that would give the beneficiaries of Bureau of Reclamation projects a voice in the planning, construction and management of dam safety improvements at Bureau facilities.

We believe that Senator Smith's proposed amendment (S.A. 2218) to your Safety of Dams funding authorization bill (S. 1727) will ensure more efficient and effective dam safety projects while producing significant cost savings for the federal treasury and local irrigation and water districts.

The Family Farm Alliance is a grass-roots organization representing irrigated farmers, ranchers, water managers and local agricultural groups in 16 Western states. We are the Bureau of Reclamation's customers.

The safety of Bureau dams is especially important to those of us who live in the shadow of these facilities and depend upon them for our livelihoods. The Alliance supports increasing the appropriation authorization for the Bureau's Safety of Dams Program and we have no desire to delay the allocation of badly needed resources.

However, the need to adjust the authorization ceiling presents Congress with an opportunity to improve how the Safety of Dams Program is implemented. Senator Smith's amendment is an improvement that makes good sense for both the Bureau and its customers.

In 1984, Congress amended the Safety of Dams Act of 1978 to require that 15 percent of the costs of dam safety modifications must be allocated to the irrigation purposes of the project and repaid by the project beneficiaries. The requirement applies to modifications that are necessary as a result of new hydrologic or seismic data or changes in state-of-the-art safety criteria.

The cost of individual modifications carried out under the Safety of Dams Act has ranged from a few hundred thousand dollars to hundreds of millions of dollars. Some larger irrigation districts have been able to shoulder their share of these costs, while some small districts are burdened with debt service that nearly exceeds their annual operating budgets. Other districts simply can't afford to pay their share.

In all cases, the local districts have a strong incentive to minimize the cost of dam safety improvements but only a few of them have a real opportunity to affect those costs.

Project beneficiates have no formal role in designing or controlling the costs of Bureau dam safety modifications, for which the law requires them to help pay. In most cases, the Bureau alone determines the scope, design and cost of dam safety work. Some irrigation districts have received little more than a letter from the Bureau telling them what they owe for a safety modification they had no part in selecting.

The practice of excluding local authorities from meaningful participation in dam safety design and management is contrary to both Bureau policy and experience.

For more than a decade, the Bureau has followed a policy of encouraging beneficiaries to take on a larger role in the day-to-day operation and maintenance of its facilities. Some of Bureau's biggest projects and project features are now operated entirely by local authorities. Further, working in partnership with local interests is one of the basic tenets of the Interior Department's Water 2025 Initiative.

Most importantly, experience demonstrates that when local authorities become actively involved the design, operation or maintenance of Bureau projects, costs virtually always go down. Examples can be readily found in the Central Valley Project

in California, the Central Utah Project and at smaller facilities throughout the West where cost-conscience local stakeholders have helped the Bureau figure out better ways to spend their operation and maintenance fees.

To involve local interests is in Safety of Dams projects is nothing new. The Bureau has successfully worked in partnership with several local authorities on dam safety modifications.

One of the first and the largest dam safety projects in the history of the program was the modification of five dams in Arizona's Salt River Project (SRP). Begun in the late 1980s and completed in 1996, this highly complex project cost hundreds of millions of dollars. The Bureau and SRP beneficiaries worked closely together on all aspects of the project, including estimating costs, designing the project and day-to-day construction management.

The SRP-Bureau collaboration was very positive and productive. But it is not the norm in the Safety of Dams Program. The Family Farm Alliance believes that Senator Smith's amendment would make the SRP experience the rule rather than the exception.

SMITH AMENDMENT

The amendment requires the Bureau to invite project beneficiaries to participate in the "joint oversight" of a dam safety modification. This includes planning, design, value-engineering review, cost-containment, procurement, construction and management.

If the project beneficiaries agree to participate in the joint oversight, they would enter into an agreement with the Bureau and any reasonable costs associated with local participation could be credited toward the non-federal repayment obligation.

If a participating project beneficiary were to submit an alternative idea to the Bureau for implementing the safety modification, the Bureau would be obliged to consider the recommendation. If the Bureau rejected the local alternative, it would have to provide the local beneficiary with a written explanation for the rejection. The explanation also would become part of the Bureau's final project report to Congress.

The Bureau would not be obligated to consider or respond to recommendations made by project beneficiaries (or other parties) that had not elected to participate in the joint oversight of the dam safety modification. However, the Bureau would have to provide detailed status reports on the modification to all project beneficiaries regardless of whether they had elected to participate in the joint oversight of the project.

A provision very similar to Senator Smith's amendment was approved by the House in 2000 as part of a Safety of Dams Program authorization increase (H.R. 3595). The measure also required the Bureau to give a formal role to local authorities in the management of dam safety modifications. It had strong bipartisan support.

The Senate did not act on H.R. 3595, but held a hearing on the Safety of Dams program in May, 2000. A short-term increase in the programs' appropriations authorization was approved later that year in the Energy and Water Development Appropriations bill.

The Family Farm Alliance has worked closely and successfully with the Bureau on a number of issues, and we and other interest groups could assist the Bureau in developing a Safety of Dams joint oversight program that would cut costs, minimize conflicts and improve performance. However, we do not believe that can happen without statutory direction from Congress. Senator Smith's amendment would provide that very necessary direction.

Finally, a word on cost-sharing: The Alliance is adamantly opposed to increasing the current 15 percent non-federal cost-share for dam safety modification. Most irrigation districts can ill afford the current level of cost-sharing, and increasing it would only delay or impede work necessary to protect the public health and safety.

A far more effective and sustainable approach to reducing federal dam safety expenditures is to give project beneficiaries a formal role in managing those expenditures. Their self-interest will lead them to work with the Bureau to cut costs.

The Family Farm Alliance commends Senator Smith for introducing his amendment, and we urge you and Members of the Committee to give it your full support.

Sincerely,

WILLIAM D. KENNEDY,
President.

PREPARED STATEMENT OF CHARLES J. BAROCH, MAYOR,
CITY OF GOLDEN, CO, ON S. 2180

Chairman Craig & Members of the Subcommittee, my name is Charles J. Baroch, and I am the Mayor of the City of Golden, Colorado. I appear before you today to testify in favor of S. 2180, and to request that it be processed into law at the earliest possible date. I will explain why.

As I'm sure all of you are aware, Colorado has been experiencing a very severe drought over the past few years, and although things improved in 2003, snowfall has been sparse this year, and the current snowpack in the South Platte River drainage, where most of Golden's water supply is located, is right now at only 67% of normal. So, our City desperately needs to augment our water supply and storage capacity.

To achieve that goal, in December the City of Golden completed construction of a new reservoir, called the Guanella Reservoir, which is shown in this photo taken in February. *Unfortunately, as you can see, the reservoir is sitting almost empty!* Why? Because we need authority to complete a 140 foot stretch of pipeline across National Forest land to connect the new reservoir with the West * Fork of Clear Creek, where we have water withdrawal rights. Currently, the pipeline is complete up to the Forest boundary.

Last year, when we approached the Forest Service about the pipeline, we were told that it could take several years to authorize the pipeline to cross the Forest Service land, and we agreed with the Forest Service to seek an expedited authority from Congress via a small legislated land exchange. Legislation to grant that authority passed the House last fall, but there was not time to take it up in the Senate. Thankfully, Senators Campbell and Allard have introduced S. 2180, and we hope it can be passed immediately.

In the exchange set forth in S. 2180, the City of Golden would receive a 9.84 acre parcel of land from the Forest Service, where the pipeline would be completed, and where we already own a diversion dam and headgate. In return, we would give the Forest Service up to 80 acres of land which they desire to acquire in the Cub Creek drainage near Evergreen, Colorado. And, we would donate approximately 55 acres to the Forest Service along the Continental Divide in Clear Creek and Summit Counties. The 55 acres are traversed by the Continental Divide National Scenic Trail, and also include an access route to the Trail. Donating the land will save scarce trail acquisition funds for other portions of the Trail.

If for some reason, the land exchange cannot be consummated, S. 2180 directs the Forest Service to sell us the 9.84 acre parcel at full fair market value.

Finally—and this is the most critical provision for us right now—S. 2180 authorizes us to immediately construct the pipeline across the 140 feet of National Forest land upon the bill's enactment. Mr. Chairman, I cannot emphasize enough how important it is to our City to see the pipeline completed as quickly as possible. We would have liked to start filling Guanella reservoir in January, and it is now already late March, and we need to have it filled before the peak summer demand season.

Lastly, I note that the land exchange directed by S. 2180 has been endorsed by the Clear Creek County, Summit County and Park County Boards of County Commissioners, and by many others, including the non profit Continental Divide Trail Alliance, which is interested in seeing the land along the Trail acquired by the Forest Service.

I would like to again thank Senators Campbell and Allard for introducing S. 2180, and especially applaud Senator Campbell for arranging to have this hearing so quickly. This land exchange is very important to the City of Golden, and we are deeply appreciative of your efforts to help us augment our municipal water supply.

That concludes my testimony. I would be happy to answer any questions you or other members of the Subcommittee might have.

MNI SOSE INTERTRIBAL WATER RIGHTS COALITION,
Rapid City, SD, April 7, 2004.

Hon. LISA MURKOWSKI,
Chairperson, Subcommittee on Water and Power, Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

Re: S. 2218—The Reclamation Rural Water Supply Act of 2004

DEAR MADAM CHAIRWOMAN MURKOWSKI: The Mni Sose Intertribal Water Rights Coalition respectfully submits comments on Senate Bill 2218—The Reclamation Rural Water Supply Act of 2004, for the Committee's review. The Mni Sose Inter-

tribal Water Rights Coalition, comprised of 24 Missouri River Basin Tribes, strongly recommends the passage of this legislation.

The legislation addresses many of the issues confronting American Indian Tribes in building adequate, safe water supply infrastructures for Indian communities. Tribes have been hampered by inadequate, aging water treatment and distribution systems since the 1950s. Tribal leaders have been attempting to attract new businesses and building tribal enterprises on tribal lands without success since water and power sources are not available. The Act would assist Tribes by putting in place sound infrastructure for business development.

The Act also addresses the need for expanded housing and community facilities in tribal communities. The construction of housing and community facilities has seriously been curtailed since utility infrastructures, including water systems, are not available to serve new homes. The development of water treatment and distribution systems with capabilities for expansion of housing will accommodate the inward migration of tribal members back to the reservations and will meet the population increases projected in the next 40 to 50 years.

The Act also recognizes that Indian Tribes and communities are experiencing all aspects of poverty, with unemployment rates of over 50% common for most reservations. The ability to pay by these beneficiaries is very limited. Without special consideration, Indian Tribes are not able to participate in this program.

Thank you for consideration of these comments. For additional comments, please contact Mr. Woody Corbine, Executive Director of Mni Sose, at the address listed below or call 1-800-243-9166.

Sincerely,

GARY COLLINS,
President.

PREPARED STATEMENT OF GARY COLLINS, PRESIDENT, MNI SOSE INTERTRIBAL WATER RIGHTS COALITION, INC., ON S. 2218

The Mni Sose Intertribal Water Rights Coalition, comprised of 24 Missouri River Basin Tribes, submits the following comments for your consideration on Senate Bill 2218, The Reclamation Rural Water Supply Act of 2004. The Reclamation Rural Water Supply Act of 2004 addresses an important barrier to American Indian Tribes for economic development on Tribal Homelands.

Presently, a Federal process does not exist for American Indian Tribes to build new water infrastructures in tribal communities. Inadequate tribal water treatment and distribution systems have impeded the development of new businesses and enterprises on reservation lands. The systems, constructed in the 1950s and 1960s, were designed to serve the Indian population at that time and did not provide for increased capacity and expansion.

American Indian communities are extremely poor, and reservation unemployment rates of 50% or more are common throughout the nation. The cost-share component of The Reclamation Rural Water Supply Act of 2004 is very fair. However, this requirement may prevent many Tribes from benefiting from the Act. The Coalition recommends the Bureau of Reclamation be given authority to utilize formulas and processes that take into account a Tribe's ability to pay. Reclamation should be given authority to utilize "in-kind" contributions from Tribes to permit the Tribes to receive the full benefits of the Act.

Due to the limited financial ability of Tribes to participate in the Act, the Mni Sose Coalition recommends the establishment, within the U.S. Treasury, of an interest-bearing account called "The Reclamation Rural Water Supply Act of 2004 Operation and Maintenance Account." At the time funds are appropriated for construction of a project, appropriations in amounts necessary for the operation and maintenance of the project shall be deposited into such account and designated for the project. Such funds may be expended by the Secretary for the project's operation and maintenance costs without further appropriations from Congress.

The Mni Sose Coalition recommends The Reclamation Rural Water Supply Act of 2004 include provisions of the Indian Self-Determination Act (Public Law 93-638; 25 U.S.C. 450 et seq.) to aid in partnership building as required by the Act. The planning, design, construction, and operation of The Reclamation Rural Water Supply Act projects shall be subject to the provisions of the Indian Self-Determination Act.

Thank you for your consideration of the Mni Sose Intertribal Water Rights Coalition's recommendations to The Reclamation Rural Water Supply Act of 2004.

PREPARED STATEMENT OF ELECTORS CONCERNED ABOUT ANIMAS WATER (CAW)

While we are concerned that no witnesses with objections to the proposed Rural Water Supply Legislation, S. 1085, S. 1732, S. 2218 ["Bills"], were invited to appear before the Subcommittee to testify, "electors concerned about Animas Water"—CAW—intend to take full advantage of this opportunity to provide testimony to be entered into the public record

The legislation proposed by Republican Chairman Domenici and Democratic Ranking Member Bingaman is essentially redundant in its intents and purpose—as Bureau of Reclamation ["BOR"] Commissioner Keys has specifically pointed out in his testimony, eight Federal agencies already operate seventeen established programs offering generous Federal assistance to individuals choosing to live in areas of the dry and remote West, far removed from conventional domestic water supply systems. Discounts, credits, loans and direct grants are routinely made available to address the specific needs of those Americans who experience unique challenges providing safe drinking water for their families.

Clcarly, Senator Campbell's State of Colorado has no need for such duplicative legislation. The Colorado:) Water Resources and Power Development Authority ["CWRPDA"] has a hug: bank account, flush with Federal and State water development funds. The CWRPDA has authority to make loans of up to $500 million. without legislative oversight.

The Colorado River Basin States are down to our last drops of water in the Colorado River. Therefore, it is of paramount importance that the Federal Government not intrude on or interfere with the rights of these States to determine the allocation, appropriation, adjudication and use of their most important and limited resource. The Bills will only encroach on the State's sovereign powers to prioritize and manage future water use within their borders. Implicit in the Bills is a Federal intrusion into States' rights matters running directly counter to) the McCarran Amendment.

There is no escaping the reality that the BOR's abysmal record of profligacy, project mismanagement, and deceptive construction cost estimation make it unworthy of any serious Congressional consideration for substantially increased funding or expanded authority. Just last month, the BOR revealed to witness Jim. Dunlap, Chairman of New Mexico's Interstate Stream Commission, that the Navajo-Gallup pipeline project Dunlap touts in his testimony is expected to cost Federal taxpayers at least $150 million more than originally estimated. Similarly, the BOR recently confirmed costly mistakes characterized by Mr. Campbell as "malfeasance" in the Animas-La Plata Project ["ALP Project"]. These critical errors in the ALP Project (in effect lies told to Congress and the American people) have resulted in skyrocketing construction cost increases of more than $162 million.

Last week, Chairman Domenici's Appropriations Committee conducted an Oversight Hearing into the BOR's bogus ALP Project cost estimates, but the testimony raised larger, more disturbing questions about circumstances surrounding the mistakes. The Senators from New Memo and Colorado would be well-advised to demand an independent GAO audit of the ALP Project—with an investigation into fraud, corruption, and malfeasance—before moving any further to push their Bills and solicit billions of dollars of additional appropriations for the purpose of extending the BOR's reach. Senator Domenici should pause to carefully consider his own assessment of the BOR's dismal performance reported last week in the *Durum Herald* as follows:

> *"Domenici, whose subcommittee is an offshoot of the Senate Appropriations Committee, said he has been a longtime supporter of expanding the bureau to take on more duties, but is having second thoughts about supporting that expansion because of the A-LP cost overruns, "I am not very impressed, and I'm not going to continue down that path," Domenici told [DOI Assistant Secretary Bennet] Raley. "I don't know if the bureau is going to be growing. If they can't do this, I'm going with the Corps of Engineers. I won't look for projects of this magnitude going to the bureau for a while."*

At the same time, Chairman Domenici said in a press release that Federal taxpayers will need to ante up "more than a few billion dollars in a revolving fund" for rural water supplies because "we can no longer get by with programs that are too miniscule to do any good." Obviously, the Senator's Bills would involve significant, long-term annual appropriations to the BOR for the planning construction., operation and maintenance of projects involving a substantial amount of infrastructure. Needless to spry, the Bills would only complicate the challenge of reducing the escalating Federal budget deficit.

The Bills fly squarely in the face of the Senate's laudable commitment to fiscal responsibility as evidenced by the brave and wise initiative known as "pay-as-you-go". We may once have had reason to believe that Chairman Domenici could exercise restraint in the expenditure of public funds, but no more. Efforts by the Federal Government—such as those in the Domenici Bills—to freely fund regional rural domestic water supply distribution systems in low density areas is idiocy that encourages rampant sprawl. The blight of sprawl is well-recognized as one of the most pressing public concerns in the Rocky Mountain States. Runaway growth, is jeopardizing quality of life, while posing a. dire threat to the environment. Provisions in the Bills would make it more difficult—not easier—to control sprawl and would inhibit the States' powers to take necessary steps to regulate and limit growth within their borders.

Language in the Bills opens wide a whole new arena of subsidy—namely Municipal & Industrial ["M&I"] water. Again, the ALP Project provides a case study in the costly, appalling pitfalls faced by Federal taxpayers when the Federal Government gets into the business of providing enormous subsidies for M&I water supplies. The Bills actually allow for the costs of planning and constructing projects for rural water treatment and distribution systems to be 100% non-reimbursable to the Federal Government. That is to say that, at the discretion of the Secretary of the Interior, project participants could be released from all, obligations to share in any costs associated with their benefits.

In fact, the proposed legislation seems to us to be no more than a backdoor ploy to subsidize water to developers looking for the ways and means to underwrite rural water distribution systems and divvy up marginal, high-desert farmland in southwest Colorado and Northwest New Mexico into 35-acre subdivisions for trophy homes, McMansions, ranchettes, and the like, Unfortunately, the testimony which Mr. Dunlap's presented to you does not speak directly to any personal interest he may have in the BOR's spending $72 million to construe: an unauthorized, feature of the original ALP boondoggle with a water treatment plant in Colorado and hundreds of miles of Dry Side piping for the delivery of industrial-use water to the La Plata Conservancy District of New Mexico [LPCD]. That LPCD water, contrary to Mr. Dunlap's assertion, is neither adjudicated nor under contract,

Our Four Corners Area has been aptly characterized in the press as a National Sacrifice Area, and the Bills—if enacted—would only exacerbate this deteriorating situation.

STEVE CONE,
For "electors concerned about Animas Water".

PREPARED STATEMENT OF ANITA WINKLER, EXECUTIVE DIRECTOR, OREGON WATER RESOURCES CONGRESS

Re: S. 2218, S. 1085, S. 1732 and S. 993—RURAL WATER DEVELOPMENT

As Executive Director for the Oregon Water Resources Congress (OWRC), I appreciate this opportunity to discuss rural water issues. The OWRC represents organized agricultural interests in the State of Oregon. Its members include irrigation districts, water control districts, drainage districts, ports, cities, individual farmers, and agribusiness associates. With our broad base of representation around the State, OWRC has the experience and expertise to comment on this issue.

The Oregon Water Resources Congress supports Bureau of Reclamation involvement in issues that affect the Arid West. The Bureau of Reclamation has a proven ability to plan, construct and provide contract management for large scale projects serving multiple interests.

While OWRC supports the Bureau's efforts as evidenced in S. 2218 and S. 1085 and the testimony of John W. Keys, III, Commissioner of the Bureau of Reclamation, we are concerned that a core component of rural water is left off the table by not addressing the needs of agricultural water. For a program to fully address rural water needs, it should include solutions to water issues that address the full range of concerns facing rural communities, agriculture, and tribes. For that reason, we ask the committee to consider S. 993, the Small Reclamation Loan Program, as a supporting piece of legislation to S. 2218, S. 1732 and S. 1085.

As Oregon moves to address its rural water issues, we've done so in a comprehensive approach. Environmental issues, water quality issues, and water supply issues are all integrated management and delivery of rural water in Oregon whether it be for domestic use, agricultural use or a combination of uses. As most rural communities have an agricultural base, any effort to address rural water needs must include agricultural needs along with M&I needs. Safe drinking water issues are im-

portant, but agricultural interests have a need to access funding and development as well in order to assure the sustainability of the rural communities.

OWRC sees S. 2218, S. 1085, S. 1732 and S. 993 as a real opportunity to link rural communities together in a partnership program if the concepts in each bill can be formulated into a more comprehensive program. Reclamation's expertise can assist rural communities by addressing the full range of interests and facilitate a program that will have real benefit to the rural communities and tribes of Oregon.

S. 993 is an amendment to the Small Reclamation Projects Act of 1956. OWRC strongly supports S. 993 as it assists our members with funding of the rehabilitation of aging infrastructure of existing water deliver systems, development and implementation of water conservation projects, and development of new projects to meet rural water needs. The bill will enable entities to construct water quality, drought, and ESA related projects as well as make improvements for public safety.

Examples of partnership programs that can be developed are:

- Existing reservoirs providing wholesale untreated water to communities and tribes for multiple use:
  - many reservoirs provide untreated water now
  - others have space as irrigation water is conserved
- Water conservation projects providing conserved water to communities.
- Joint projects between agriculture, Tribes and communities addressing:
  - water quality
  - water supply
  - fisheries needs
  - drought needs

OWRC agrees that cost to the benefiting entities should be apportioned on the ability to pay. This is an important component of any project being considered by a rural community. S. 2218 speaks to this issue quite adequately, with a 35% minimum. S. 993 has a 25% minimum with a 25-year payback. These terms will enable the benefactors to address their long-term problems and maintain their economic viability.

For these reasons, OWRC supports S. 993 and certain concepts in S. 2218, S. 1732 and S. 1085, when considered together as a package. The three bills jointly provide resources which will enable rural communities to meet water needs, allow the renovation of existing projects, and facilitate water improvement programs. S. 2218, S. 1732 and S. 1085, on the merits of the individual bills, do not by themselves provide the necessary tools to encompass rural water development.

S. 993 establishes a process and a timeframe for considering proposals, processes and timeframes for things to be considered that are left out of the other bills. This is part of a necessary framework that should be considered as the package of bills moves forward. Thank you for this opportunity to comment.

PREPARED STATEMENT OF NATIONAL CONGRESS OF AMERICAN INDIANS

INTRODUCTION

Chairman Domenici, Senator Bingaman, and members of the Committee, please consider the following comments on two bills before your committee: S. 1085, the "Reclamation Rural and Small Community Water Enhancement Act" and S. 1732, "The Reclamation Rural Water Supply Act of 2003".

WATER SUPPLY IN INDIAN COUNTRY

In Indian country, nearly 7% of tribal homes continue to lack running water, a figure that is 14 times higher than the national average. In EPA Region 9 alone, which encompasses the westernmost Indian tribes, an estimated 68,000 tribal homes lack access to safe drinking water (including 40% of the families on the Navajo Nation that must haul or otherwise obtain their drinking water from unregulated sources), and there is only a 50% certainty that a tap turned on in a tribal home will consistently produce water in compliance with bacteriological monitoring and testing requirements. Based on the EPA Needs Survey, it is estimated that drinking water system construction and rehabilitation and upgrade needs in Indian Country have been estimated to be approximately $350-$550 million.

Lack of funding for operations and maintenance for the continuing health and welfare of the tribal public water system is also a major concern for Indian tribes. To make this problem worse, the western drought puts pressure on resources available to public water systems, thus implicating the funding for tribal water infra-

structure needs. Routine water quality monitoring and operation and maintenance activities are absolutely essential to ensure the continued safety of drinking water in Indian country. Additionally, the absence of financial, managerial, and technical capacity often results in violations of the Safe Drinking Water Act and puts the public health at risk.

New federal requirements for drinking water protection, solid waste control, nonpoint source pollution abatement, and hazardous waste have affected Indian reservations. Tribes have been charged with implementing these legislative regulations and rules with inadequate federal funding. The tribes stand ready to take the lead in the development of these codes and regulations, but need the critical skills to carry out these programs pursuant to federal laws. Such skills include sound technical capabilities and administration, policy, and managerial skills.

In short, we welcome bills such as S. 1085 and S. 1732 to provide for tribal water supply programs. Please consider the following comments and recommendations on each bill.

SENATE BILL 1085: "RECLAMATION RURAL AND SMALL COMMUNITY WATER ENHANCEMENT ACT"

In the purposes section of the bill, we believe you should include "Indian tribes" among the entities that the program is designated to assist.

In Section 5(b) and 6(b), the considerations for appraisal investigations and feasibility studies should include consideration of cultural and historic resources, such as Native American sacred rites.

SENATE BILL 1732: "THE RECLAMATION RURAL WATER SUPPLY ACT OF 2003"

In Section 3(c), we believe that the bill should provide a waiver for federally recognized Indian tribes for the cost-sharing requirements. Although tribes sometimes voluntarily agree to assist in the costs of water projects, the federal government has treaty and trust responsibilities to provide for the water needs of Indian tribes, and cost-sharing requirements are inappropriate. This combines with the fact that nearly all rural western tribes for whom this legislation is intended are not in a position to provide cost-sharing. We are concerned that the cost-sharing requirement could become a way of discriminating against tribal projects.

In Section 5(b), considerations for feasibility studies should include consideration of impacts on cultural and historic resources, such as Native American sacred sites.

In Section 5(c)(1), the Secretary's report should describe how her recommendation takes into consideration the views expressed during consultation with appropriate Federal, state, tribal, regional, and local authorities during the conduct of the leasability study.

CONCLUSION

Thank you for this opportunity to provide these comments and recommendations on the bills. Please feel free to contact the National Congress of American Indians if you need further information. We look forward to working with your Committee in the future.

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