S. HRG. 109–460

MISCELLANEOUS WATER BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSIONQ08

ON

S. 1577
S. 1962
S. 2028
S. 2035
S. 2054
S. 2205
H.R. 3812

MARCH 30, 2006

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THURSDAY, MARCH 30, 2006

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

The subcommittee met, pursuant to notice, at 2:37 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. Call to order the Subcommittee on Water and Power. It is my pleasure to welcome you all here this afternoon. We have seven bills before the committee this afternoon.

We have S. 1577, which is sponsored by Senators Johnson and Thune, exempting a South Dakota hydropower project from FERC licensing requirements. We have S. 1962, sponsored by Senators Roberts, Brownback, Nelson, and Hagel. This authorizes an extension of Reclamation repayment contracts. S. 2028, sponsored by Senators Byrd and Rockefeller, reinstates a FERC hydropower license, extending the time for construction commencement. S. 2035, sponsored by Senators Craig and Crapo, reinstates a FERC hydropower license. S. 2054, sponsored by Senator Jeffords, authorizes a water resources study for the State of Vermont. S. 2205, sponsored by Senators Thune and Johnson, authorizes the reconveyance of Reclamation land in South Dakota. And H.R. 3812, coming from Congressman Pombo, authorizes a Mokelumne River feasibility study.

Senator Thune, you have joined the subcommittee here this afternoon. We welcome your comments.

I will note, for those that will be here this afternoon, we're scheduled to have a vote at 3 o'clock, from what I understand, so we're going to try to do this in an expedited manner.

With that, Senator Thune, I will invite you to provide whatever comments you may have on your legislation, and then you, Senator Craig, for your comments, as well, before we go to the witnesses.

Senator Thune, welcome.

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Madam Chairman, Senator Craig, fellow subcommittee members. I appreciate very much the opportunity to appear before your committee to speak in support of a bill

that I have advocated since my service in the House of Representatives.

This noncontroversial legislation is something that Senator Johnson and I have supported for a number of years. The Senate Energy Committee reported out an identical bill last Congress, and the full Senate approved the legislation by unanimous consent. However, it ultimately died, because the House did not act before the end of the 108th Congress.

I'm here today to ask for your assistance in seeing that this legislation is again reported out of your committee so it could be passed by the Senate and ultimately signed into law.

For those who may not know, S. 2205, the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2006, would provide a long-overdue remedy to a failed Federal irrigation project in my home State of South Dakota. The Flood Control Act of 1944, otherwise known as the Pick-Sloan Project, authorized the creation of the 750,000-acre Oahe Irrigation Project in central South Dakota. This project never became a reality. Therefore, the bill before the committee today seeks to de-authorize the Blunt Reservoir and Pierre Canal features. This would allow the original landowners the option of purchasing the land they lost to the Blunt Reservoir and Pierre Canal Project, thereby putting the land back onto the local tax rolls.

This legislation also seeks to transfer to the State of South Dakota some parcels of land as partial mitigation for the 536,875 acres of wildlife habitat that were permanently flooded in South Dakota. This flooding occurred to allow downstream States the benefits of flood-control navigation and municipal and industrial water supplies.

Madam Chairman, as you can imagine, there are a number of original landowners who would like their land back. It's been roughly 30 years since landowners either sold their land to the Federal Government or had it taken, through condemnation. My bill addresses the roughly 20,000 acres of land that are currently owned by the Federal Government and managed by the Bureau of Reclamation.

While this legislation is widely supported by landowners and the Governor of South Dakota, I do want to point out that a minor modification may need to be made to the purchase-option section of the bill. This is largely due to the fact that the State of South Dakota and landowners reached an initial agreement in 2001 regarding how the 20,000 acres currently owned by the Federal Government would be repurchased. As Darla Pollman Rogers will testify following my remarks, since 2001 there's been a noticeable increase in land valuations in Sully and Hughes Counties in South Dakota. Nevertheless, even with this recent development, I am confident that this issue can be dealt with before S. 2205 goes before the full committee.

Madam Chairman, I appreciate the opportunity to appear before your committee this afternoon. With your help, I'm hopeful that we can work together to expedite passage of this long-overdue bill.

And I might just say, last and not least, I would also like to welcome Mayor Jerry Krambeck, of Spearfish, South Dakota. He will be testifying, on another bill that you referenced earlier, before

your subcommittee this afternoon, and that's S. 1577. This is a bill of which I am a cosponsor, along with Senator Johnson, that would transfer the Spearfish Hydroelectric Plant No. 1 to the city of Spearfish, South Dakota.

I appreciate this committee's interest and commitment to this issue. And, again, I thank you, Madam Chairman, for the opportunity to testify before your committee this afternoon.

Senator MURKOWSKI. Thank you. I appreciate you being here with us, and thank you for your comments.

With that, Senator Craig.

And Senator Johnson, if you want to speak to any of the bills that are before us, you'll be invited after Senator Craig.

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

Senator CRAIG. Madam Chairman, thank you very much for holding this hearing and covering the issues that are before you in bill form.

I'm here today to speak in support of S. 2035, the Arrowrock Hydro Project, and to help the committee understand the need for this legislation.

The purpose of this legislation is to provide the irrigation districts of Arrowrock Dam with an extension of the original license in order to initiate construction. Respectfully, I feel that FERC is lost in a bureaucratic maze regarding the construction license of the Arrowrock Project.

The Energy Policy Act of 2005 contained several provisions that encourage the development of projects which meet both the requirements of being a hydro project built at an existing dam and a hydro project that is a conduit.

In Idaho, the Arrowrock Hydroelectric Project fits squarely within these frameworks. The irrigation districts have finalized a power sales agreement with the Clatskanie PUD to take all of the power of that plant. The irrigation districts have engaged in productive consultation with the U.S. Fish and Wildlife Service to evaluate and protect threatened species in the vicinity of the project, primarily bull trout. They have engaged an engineer of national reputation to design and build the contract. Last, they have financed—they have financing lined up to build the project. In short, the project is literally ready to go forward.

This project was unable to meet the March 20, 2005, start-of-construction deadline, because—guess what?—the U.S. Fish and Wildlife Service would not begin consultation on the project until after it completed consultation on all of the Reclamation projects in the Upper Snake River Basin. The Upper Snake River consultation was a direct outgrowth of the requirements of the Snake River Water Rights Act of 2004. So, it was simply a matter of lining up and timing.

This project has been given an extension in the past, and another is needed to—because of the circumstances out of the control of the Arrowrock people. Without this amendment, the irrigation district would have to completely start the FERC licensing process over; thus, spending and wasting unnecessary resources of the agency

and the irrigation district because of all the required collaboration and consultation needed that is, in part, already completed.

So, I look forward to working with my colleagues to see if we can't move this legislation to keep this project on track. Thank you for its consideration, Madam Chairman.

[The prepared statement of Senator Craig follows:]

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

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The irrigation districts have engaged in productive consultation with the Fish & Wildlife Service to evaluate and protect threatened species in the vicinity of the project, primarily bull trout. They have engaged an engineer of national reputation to design and build the contract. Last, they have financing lined up to build the project.

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This project has been given an extension in the past and another is needed because of circumstances out of their control. Without this amendment, the irrigation districts would have to completely start the FERC licensing process over. Thus, spending and wasting unnecessary resources of agencies and the irrigation districts because all of the required collaboration and consultation is complete and the project is ready to move forward.

I look forward to working with my colleagues to pass this legislation.

Senator MURKOWSKI. Thank you, Senator Craig.

Senator Johnson.

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

Senator JOHNSON. Thank you, Senator Murkowski.

I've just come from a Banking Committee markup, and I'm told to anticipate a vote on the floor at around 3:00, so this may turn out to be more disjointed than we would like, but I appreciate your chairing this and your working with us on these key issues.

I want to thank my colleague, Senator Thune. I know he has an intensely busy schedule. So, if there reaches a point where you've got to get back to your office, we understand that, as well.

I appreciate, Madam Chairman, your working with me, along with the committee staff, to include two bills in today's agenda that are important to South Dakota.

Before I describe the bills, I want to recognize a few folks from back home in South Dakota. Obviously, my colleague Senator Thune, who is sponsoring both of these bills in today's agenda. Traveling from South Dakota today is the mayor of Spearfish, South Dakota, Jerry Krambeck, who will outline for the committee

how the city is working to balance a basket of multiple uses in operating a century-old hydroelectric facility in the northern Black Hills. And, Mayor, I want to thank you for traveling a good deal of distance to present your testimony today.

I'm also pleased that Darla Pollman Rogers could provide testimony in a powerful narrative on behalf of South Dakota landowners affected by the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2006. Darla, welcome back to Washington, DC, as well.

The historic Spearfish Hydro Plant Unit No. 1 in Spearfish, South Dakota, has operated continuously since 1912. In 2004, the city acquired the facility from the Barrick Mining Company, and intends to continue operation of the hydroelectric plant for the benefit of that community.

Prior to the Federal Energy Regulatory Commission's order asserting jurisdiction to license the power plant, the project has been operating for more than 90 years under a 1909 right-of-way permit allowing the project to occupy U.S. Forest Service land in the Black Hills National Forest. The 1909 right-of-way permit was granted through a 1905 Act of Congress providing use for municipal or mining purposes.

Over the past 90 years, the city of Spearfish has literally grown up around the hydroelectric plant, with the historic D.C. Booth Fish Hatchery drawing water through the facility's diversion pipe. With a vibrant tourism and recreation economy, along with traditional ranching and timber enterprises, the northern Black Hills is also working to capture the potential of the historic Homestake Mine through a world-class research laboratory. As the northern Black Hills economy diversifies and grows, clean sources of energy generation, such as the Spearfish Hydroelectric Plant, can meet these energy requirements.

The city and the Spearfish Canyon homeowners have recognized the value, also, of protecting water resources in the Spearfish Creek. As the stream from which the city takes its name, it is incumbent on all residents to ensure the continued balance of uses and values of the creek. Accordingly, I have encouraged the city, the Spearfish Canyon homeowners, and other stakeholders to continue work over managing waterflows along Spearfish Creek. Solving the question of apportioning waterflows in the creek is as important as providing the community with certainty over operation of the hydroelectric facility. We need to make sure that those values are protected through balanced streamflows and a commitment to environmental protection. Spearfish Canyon is one of the natural wonders of our State—in fact, of our Nation—drawing visitors and binding lifelong residents to the stunning beauty of the northern Black Hills. Accordingly, we need to ensure regulatory continuity while also enhancing stream flows and recreational values.

The second bill coming before the subcommittee, the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2006, is emblematic of the historic circumstances challenging South Dakota since the construction of the large-scale Missouri River reservoirs in Montana and the Dakotas. Through the Flood Control Act of 1944, the Corps of Engineers executed a massive flood-control and water-resources plan commonly referred to as the Pick-Sloan Missouri

Basin Program. Stretching from Missouri to Montana, the Corps of Engineers and the Bureau of Reclamation permanently altered the pace and direction of what had been one of the longest freeflowing rivers in the United States. In exchange for flooding hundreds of thousands of acres of valuable riverbottom lands and sacred tribal sites in Montana and the Dakotas, producers in rural communities would receive the benefits of irrigation and productive farmland.

The Blunt Reservoir and Pierre Canal are two chapters in the Pick-Sloan master plan of reservoirs, levees, and canals. Envisioned in Hughes, Stanley, and Sully Counties was a 190,000-acre irrigation project surrounding portions of Lake Oahe. As Darla will further explain, in the 1970's that vision did not become a reality, and the Bureau of Reclamation, the State, and local residents have grappled with a proper and fair solution ever since.

The Blunt Reservoir and Pierre Canal Land Conveyance Act of 2006 provides a mechanism for preferential leaseholders, the original landowners who leased their land from the Bureau of Reclamation, to purchase back their property. Many of these landowners and their direct descendants have paid tens of thousands of dollars in lease payments over the past 30 years to the Federal Government. Significantly, the South Dakota Department of Game, Fish, and Parks will acquire a second smaller set of lands through nonpreferential leaseholders. This provision is an important component to the bill, as South Dakota continues efforts required by Federal laws to mitigate for damage to fish and wildlife habitat from the Missouri River impoundments.

In 2001, former Senator Tom Daschle and I introduced a similar version of the bill, and, in 2003, during the 108th Congress, the U.S. Senate passed the bill, only to have the clock run out in the House of Representatives.

In the course of the past 5 years, farm-ground land values throughout South Dakota have increased markedly. Increased land valuations should be taken into account in judging whether preferential landowners can afford to acquire their lands. This is an issue that the subcommittee could resolve prior to full-committee consideration of the bill, and an issue that I do not feel will impede timely action.

In conclusion, I look forward to the testimony of all the assembled witnesses, and hope that the committee can make significant progress on these bills in a very timely manner.

Thank you, Madam Chairman.

Senator MURKOWSKI. Thank you, Senator Johnson.

Now let's go ahead and turn to our witnesses today. I'd like to welcome the administration witness, Mr. John Keys, the commissioner of Bureau of Reclamation; Ms. Catherine Hill, from the USGS; and Mr. Mark Robinson, from the Federal Energy Regulatory Commission.

I want to also note that this subcommittee has received some written testimony on several of the bills that will come before the subcommittee today, and that will be made part of the official record.

I also want to take just a quick moment to recognize you, Commissioner Keys. I understand it's been 34 years that you've been with the Bureau of Reclamation. And we're told that this is the last

time that you will appear before this committee in your capacity as commissioner before you retire in, apparently, a couple of weeks. You have done a terrific job out there. It's tough work. We recognize that. Your performance as a commissioner during some pretty tough times is a testament, truly, to your talent and your dedication. We certainly appreciate it. I have certainly enjoyed the opportunity to work with you, and wish you the best of luck in the future.

With that, go ahead with your testimony, your final swan song here before the committee.

Mr. KEYS. In other words, "Do good your last time."

[Laughter.]

Senator MURKOWSKI. We have no doubt.

Mr. KEYS. It's been my pleasure to work with you. The 34 years is what I had before. It's almost 40, now. So, it's time to go do something else.

Senator MURKOWSKI. Wow.

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

Mr. KEYS. Madam Chairman and members of the subcommittee, I am John Keys, commissioner of the Bureau of Reclamation. We appreciate the opportunity to appear here today and talk about these bills.

I have submitted testimony that I would appreciate being made part of the permanent record.

Senator MURKOWSKI. It will be made part of the official record.

Mr. KEYS. Thank you.

Madam Chairman, the administration supports S. 1962. Four water districts—the Kansas Bostwick Irrigation District No. 2 and the Webster Irrigation District No. 4, both in Kansas, and the Bostwick Irrigation District and the Frenchman-Cambridge Irrigation District, both in Nebraska—are served by Reclamation projects of the Pick-Sloan Missouri Basin Program.

Despite the recent prolonged drought in the West and a continually declining water supply, the district's contracts require that they continue to pay operation-and-maintenance costs and construction obligations to the United States. These districts have sought, and have been granted, annual deferments to their payments under Reclamation law.

When an annual payment is deferred, it's rescheduled, to be repaid later. It's just spread out longer, at a higher level, during the accepted repayment period.

The deferments have helped the districts to weather the drought in the short run, but have also caused the distribution-work payments to be substantially longer over the remaining terms of the contracts.

The participating districts have done an exemplary job of communicating with Reclamation. They contacted us early in 2005 to explore opportunities where—available to them under existing law to address their financial concerns. None existed.

The legislation would spread the distribution-works repayment over a longer period, coinciding with the water-supply works repayment term. In addition, slated increases in the reserve-fund pay-

ments under the existing contracts would be delayed for about 10 years.

This legislation would provide needed financial relief to the districts, while not erasing their financial obligations to the United States. The districts' continued economic viability is important because of what they produce for the U.S. economy and to ensure that repayment will ultimately be possible. Therefore, the administration is pleased to support this legislation.

S. 2205 directs the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal to the State of South Dakota for the purpose of mitigating lost wildlife habitat or to preferential leaseholders, which are original landowners of the acquired land. The administration supports the intent of the bill, but we have some concerns with a few of its—pieces of its content.

The basic concept of S. 2205, to allow original landowners to regain title to lands that Reclamation purchased in anticipation of a project that was never built, is straightforward and fair. Further, the sponsors of S. 2205 have addressed many of the technical issues that were raised in past related—in the past, related to liability, land descriptions, return of land-sale proceeds back to the Federal Treasury, and reimbursement of Federal implementation costs.

However, the Department still finds the bill fails to adequately protect taxpayers' interest, for a number of reasons outlined in my testimony.

There's also a constitutional issue. The bill would require South Dakota to agree to accept specified lands and act as an agent for the Secretary. Requiring States to take actions to administer Federal regulatory programs may not be constitutional. We suggest amending the bill to clarify that South Dakota may voluntarily choose to accept or reject the land conveyance and associated responsibilities.

We appreciate the work done by the sponsors to address several technical issues that had been raised in the past, and we look forward to working with your committee and those sponsors and the local people to address those outstanding issues and make this happen.

H.R. 3812 would authorize a feasibility study of the Mokelumne Regional Water Storage and Conjunctive Use Project, an initiative to provide additional water supply within the San Joaquin Valley. The focus would be on new water storage and conjunctive-use programs.

In fiscal year 2005, Congress appropriated $300,000 for an appraisal investigation of the project. The appraisal report is in draft form at this time, and it is our hope to have it completed soon.

It is unusual for a feasibility study to be authorized before the appraisal-level work is completed. The $3 million authorized for feasibility work would be matched, 50-50, by non-Federal cost sharing. In H.R. 3812, the time allowed for completing the work is 2 years. Typically, feasibility studies that include environmental-impact statements require about 3 years to complete.

Therefore, the administration recommends the bill be amended to extend the study period to a minimum of 3 years for completing the feasibility study.

Notwithstanding this change, the administration cannot support H.R. 3812, because the bill authorizes the feasibility study prior to the appraisal process being complete, and the authorization would compete with already scarce budget resources.

Madam Chairman, that completes my testimony, and I would certainly stand to any questions that you and the panel may have.

[The prepared statement of Mr. Keys follows:]

PREPARED STATEMENT OF JOHN KEYS, III, COMMISSIONER OF RECLAMATION, DEPARTMENT OF THE INTERIOR

ON S. 1962

Madam Chairman and Members of the Subcommittee, I am John Keys, Commissioner of the Bureau of Reclamation. I am pleased to be here today to give the Administration's view on S. 1962, a bill to revise certain repayment contracts of four irrigation districts that are part of the Pick-Sloan Missouri Basin Program.

The Irrigation Projects Reauthorization Council (IPRC) represents four member irrigation districts in support of this legislation. The districts—the Kansas Bostwick Irrigation District No. 2 and the Webster Irrigation District No. 4, both in Kansas, and the Bostwick Irrigation District in Nebraska and the Frenchman-Cambridge Irrigation District (also in Nebraska), are served by Reclamation projects built as part of the Pick-Sloan Missouri Basin Program. Webster Irrigation District No. 4 is located in the Solomon River basin; the others are in the Republican River basin, both tributaries to the Kansas River.

The districts recently renewed their contracts with Reclamation. The contract renewal addressed repayment of a portion of the water supply works construction cost over a 40 year term. Webster Irrigation District No. 4 renewed its contract in 2002; the others renewed their contracts in 2000. However, each District's repayment of the distribution works construction cost obligation remained unchanged during contract renewal. Thus, the remaining term for repayment of the distribution works is, in each case, significantly less than that remaining for the water supply works. Under Reclamation law, the irrigation districts repay irrigation capital costs without interest charges.

As discussed above, currently each of these districts' contracts has two different repayment periods: a water supply works repayment term which extends until 2040 or 2042 (40 years from when the respective district's contract was renewed) and a distribution works repayment period which extends 40 years from their first payment for the distribution works (to sometime between 2009 and 2015 depending on the particular district). This legislation would allow the repayment periods for the distribution works to be extended to match the repayment period for the water supply works, and allow for equal annual payments over that period. Additionally, reserve fund payments were slated to increase significantly in about 5 years, following scheduled completion of repayment of the distribution works construction costs obligation. Anticipating that this time horizon is too short for the districts to ensure financial recovery sufficient to make the increased reserve fund payments, this bill delays these increases for an additional 10 years.

Drought conditions in southwest Nebraska and northwest Kansas have significantly impacted inflows to reservoirs providing a water supply to Kansas Bostwick Irrigation District, Bostwick Irrigation District in Nebraska, Frenchman-Cambridge Irrigation District and Webster Irrigation District. Annual inflow into reservoirs providing these districts' water supplies has reached new historical lows in the last three years. Four of the five canals in the Bostwick Irrigation District in Nebraska did not divert water the past two years. The Kansas Bostwick Irrigation District has not delivered a substantial amount of water to acres above Lovewell Reservoir the past two years. Three of the four canals in the Frenchman-Cambridge Irrigation District have not diverted any water the past three years. The Webster Irrigation District did not divert water into Osborne Canal this past year.

Despite the declining water supply available to these Projects, the districts' contracts require that they pay a portion of annual operation and maintenance costs for the water supply works and repay construction cost obligations to the United States. This payment obligation to Reclamation is in addition to the districts' responsibility for 100 percent of the operation and maintenance costs of the distribu-

tion works and those water supply works that have been transferred to the districts. Even with no water or a diminished supply, the need for maintenance of these facilities continues.

The districts assess their irrigators in order to pay the districts' annual expenses and repayment obligations. These irrigators have received a diminished or no supply in recent years. For the last couple of years most of these districts have sought and been granted annual deferments to their payments under Reclamation law (the Act of September 21, 1959, 73 Stat. 584). In order to grant a deferment, Reclamation requires a determination that payment of the installments will cause an undue burden on the water users and that there is no alternative source of funds available to pay the installments. When an annual payment is deferred, it is rescheduled to be repaid as quickly as possible within the remaining term of the contract. The deferments have helped the districts to weather the drought in the short run, but have also caused the annual distribution works payments to be substantially larger over their remaining repayment period, because deferments do not extend the total time period allowed for repayment.

For example, Kansas-Bostwick Irrigation District #2 would, after execution of the annual deferment currently being processed, have annual distribution works payments of $421,353 due through 2015, with annual water supply works payments of $21,841 through 2015, increasing to $96,512 for 2016 and 2017, then decreasing to $85,591 from 2018 through 2040. This results in an annual repayment total for this district of $443,194 through 2015 when the distribution works are scheduled to pay out in the absence of this legislation. If S. 1962 becomes law, the district will have consistent annual payments of $188,387 from 2006 through 2040, thus providing relief to help the district through the current financial crisis.

The total repayment obligation for the distribution works and water supply works for all four districts together is $12,442,447. This legislation does not change the dollar amount of this repayment obligation. However, because Reclamation law provides that irrigators do not pay interest on capital costs, this bill would reduce the present value of expected Treasury receipts. The difference between the present value of the payout stream of the contracts as they currently exist and as they would be amended by this bill is $1,620,637. This assumes that, in the absence of this legislation, the districts would pay the minimum payments due on time over the life of these contracts.

The IPRC and the participating districts have done an exemplary job of communicating with Reclamation as they sought this legislation. They contacted us in early 2005 to explore what opportunities were available to them under existing law to address their financial concerns. Other than the deferments discussed above, none existed. Reclamation also very much appreciates the manner by which IPRC has kept us informed and worked with us to identify issues. They addressed the possible effect to power repayments through "aid to irrigation" early on by working closely with Midwest Electric Consumers Association and with Reclamation. It is our understanding that "aid to irrigation" is not affected by this legislation.

The legislation would provide needed financial relief to the districts by rescheduling their financial obligations to the United States. Extension of the repayment period will not be a permanent solution to the water scarcity facing these districts. However, taking this action will provide needed relief for the districts and increase the likelihood that they will be able to attain long-term financial viability and fulfill their repayment obligation to the United States. Therefore, the Department supports this legislation.

I am happy to respond to any questions.

ON S. 2205

Madam Chairman and Members of the Subcommittee, I am John Keys, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to testify on S. 2205.

S. 2205 directs the Secretary of the Interior (Secretary) to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal—features of the Oahe Irrigation Project in South Dakota—to the State of South Dakota for the purpose of mitigating lost wildlife habitat, or to the original land owners of the acquired lands or their descendants (preferential leaseholders). The bill directs that the proceeds of sales of preferential lease lands be deposited as miscellaneous funds in the treasury and that such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill. The Administration supports the intent of the bill but has some concern with its content, as I will discuss later.

The basic concept of S. 2205—to allow original landowners to regain title to lands that Reclamation purchased in anticipation of a project that was never built—is straightforward and equitable. Further, the sponsors of S. 2205 have addressed, in whole or in part, a number of the technical issues that were raised in the past related to liability, land descriptions, return of land sale proceeds back to the Federal treasury, and reimbursement of Federal implementation costs. However, the Department still finds that the bill fails to adequately protect taxpayers' interests for four reasons. First, the bill directs Reclamation to sell the land to preferential leaseholders for less than fair market value. Second, it directs Reclamation to convey to the State the non-preferential lease parcels and the preferential lease parcels that current lessees choose not to purchase without compensation for the initial taxpayer investment in those lands. Third, after conveyance Reclamation would still be responsible for administrative costs associated with the acquisition of those lands, such as curation of project archeological collections. Finally, the bill provides that parcels may be swapped for other land elsewhere in the State, which may alter the potential environmental mitigation benefits of the land, potentially undermining one of the purposes of the Act.

Background

As background, Reclamation purchased approximately 19,292 acres of land between 1972 and 1977 in preparation for building the Blunt Reservoir and the Pierre Canal. In many cases, Reclamation leased the land back to the seller. Currently, Reclamation is leasing some 13,000 acres of Blunt Reservoir lands to 18 preferential leaseholders and about 1,100 acres of Pierre Canal lands to 11 preferential leaseholders. Although not reflected in title documents, the sellers expected they would be able to purchase their lands back if they were not needed for the project.

Nearly three decades later, construction has not commenced for the Blunt Reservoir, although some earth-moving has been done for the Pierre Canal. Because it is unlikely this project will be built, Reclamation no longer needs to hold title to the acquired lands. Under S. 2205, the preferential leaseholders (the original landowners or their descendants) would be offered an option to purchase the land they currently lease within 5 years of enactment. Section 2(d) of the bill provides that the land could be sold to preferential leaseholders for 10% less than fair market value for agricultural purposes of the land. Purchases would be from the South Dakota Commission of Schools and Public Lands, acting as an agent for the Secretary of the Interior. If a preferential leaseholder declines to purchase the land, the Commission is to convey the parcel to the South Dakota Department of Game, Fish, and Parks for wildlife habitat mitigation. Reclamation's interest in the 5,000 acres currently unleased or leased to parties who are not preferential leaseholders would be conveyed to the State of South Dakota Department of Game, Fish, and Parks to be used in mitigation of wildlife habitat lost as a result of Pick-Sloan development.

Valuation and Payment

S. 2205 directs that proceeds of sales of land under the Act be deposited as miscellaneous funds in the Treasury and such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill. While this partially addresses the Administration's previous concerns (stated in testimony provided on S. 1028 in the 107th Congress) about recovering the taxpayer investment in these lands, the Administration remains opposed to the transfer of unleased or non-preferential leased lands to the State without compensation to Treasury. Furthermore, the Administration believes that all lands conveyed under this bill should be sold for no less than fair market value. In this situation we agree that equitable considerations support offering preferential leaseholders the right of first refusal to purchase these lands, which their families have been using for many years, at appraised fair market value. We do not agree with the provisions of the bill effectively subsidizing this sale. Moreover, we note that the best practice for determining market value and ensuring that the lands are used for their highest and best use is to sell the parcels at an auction, and this would be our preferred way to dispose of Federal lands in situations that do not present the circumstances that exist here.

Constitutional Concern

We have an additional concern about the constitutionality of the bill as currently written. The bill contains mandatory language stating that South Dakota "shall agree to accept" specified lands and "act as an agent for the Secretary." Provisions of Federal law that require States to take actions to administer Federal regulatory programs are unconstitutional. This could be addressed by amending the bill to clar-

ify that South Dakota may voluntarily choose to accept or reject the land conveyance and associated responsibilities.

Conclusion

We appreciate work done by the sponsors to address several technical issues that have been raised in the past. We look forward to working with the sponsors and the Committee to address any outstanding issues that remain.

I would be pleased to answer any questions.

ON H.R. 3812

My name is John Keys, and I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on H.R. 3812, a bill to authorize the Secretary of the Interior to prepare a feasibility study for the Mokelumne River Regional Water Storage and Conjunctive Use Project (known as the MORE WATER Project), San Joaquin County, California. The Administration cannot support this bill because it is premature, and given scarce Federal budgetary resources, an expansion of the Federal role in the Mokelumne River cannot be justified.

Specifically, this bill would authorize the Secretary to study the feasibility of constructing a project to provide additional water supply and improve water management reliability through the development of new water storage and conjunctive use programs. The bill would authorize an appropriation of $3,300,000 for the Federal cost share of the study, with the proviso that the Federal share shall not exceed 50 percent of the total cost of the study. Clearly there are many water supply issues in the San Joaquin Valley and in San Joaquin County in particular. I am proud of the work our people in the Mid-Pacific Region have done to understand the issues, the local interests and the role Reclamation might play in solving problems.

I would like to provide some background relative to current investigations of Mokelumne River water supplies and planning investigation costs. In Fiscal Year 2005, Congress appropriated $300,000 for the initiation of an appraisal investigation of the Mokelumne River Regional Water Storage and Conjunctive Use Project. The Appraisal Report is in draft form at this time. It is our hope to have it completed soon.

H.R. 3812 directs the Secretary, not later than 2 years from date of enactment, to complete a feasibility study and provide copies to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate. Feasibility studies, which integrate National Environmental Policy Act compliance documentation, and are completed in conformance with the Principles and Guidelines for such studies, require a minimum of 3 years to complete. The Administration recommends the bill be amended to extend the study period to a minimum of 3 years for completing the feasibility study and to providing the copies to the appropriate Congressional committees.

The Mokelumne River is tributary to the Sacramento-San Joaquin Delta. There is no clear justification for expanding federal involvement into the Mokelumne River. Although this broad area is impacted by the Central Valley Project and CALFED, the Mokelumne River does not have a Bureau of Reclamation water project.

It is premature to authorize a feasibility study before the appraisal study has been completed and reviewed. Moreover, this study would compete for funding with other currently authorized projects, including several authorized storage feasibility studies authorized under CALFED. I should also note that Reclamation did not seek funding for this project in the President's Fiscal Year 2006 or 2007 budgets.

The Administration appreciates local efforts to address future water issues. However, in light of the concerns expressed above, we cannot support this bill authorizing Reclamation participation in a feasibility study. That concludes my prepared remarks. I would be pleased to answer any questions.

Senator MURKOWSKI. Thank you. I appreciate your comments, Commissioner Keys.

With that, let's go to Mr. Robinson, with the Federal Energy Regulatory Commission.

STATEMENT OF J. MARK ROBINSON, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. ROBINSON. Madam Chairman, Senator, I am Mark Robinson, and I appreciate the opportunity to speak today on S. 1577, which would exempt the Spearfish Project from the licensing requirements under the Federal Power Act that the Commission administers.

Just as a matter of background, I'm the director of the Office of Energy Projects. We authorize the siting of liquified natural gas facilities, interstate natural gas pipelines, and, more significantly here today, the licensing, administration, compliance of, and dam safety of hydroelectric projects, some 1,700 hydroelectric projects across the country.

Our jurisdiction for hydroelectric projects derives from the Federal Power Act, and really falls into four areas. If a project exists on Federal lands, then it falls under the Commission's jurisdiction; or if it's on navigable waters, or if it's on waters that Congress exerts Commerce Clause jurisdiction over, or the fourth rationale is if they are at Federal dams. Any of those bring hydroelectric projects under the Federal Energy Regulatory Commission's jurisdiction, pursuant to the Federal Power Act.

The standard we use, found in the Federal Power Act—and actually it was originally in the Federal Water Power Act of 1920—that we use to license projects is that the project has to be found to be consistent with comprehensive development of the basin. We take into consideration all of the public-interest issues associated with that project. More directly, we must give equal consideration, as required by Congress, to both the developmental and nondevelopmental values of the—of these projects. By "developmental values," I mean power generation, irrigation, flood control, things of that sort. By "nondevelopmental values," they're mostly environmental issues—fish and wildlife issues, recreation, public safety, things of that sort.

Specific to the Spearfish Project, our history on this project started in April 2000, when we received a complaint that the Spearfish 1 and 2 developments, which both had about 5-mile bypass reaches on the Spearfish—Creek, I believe it's called—were not releasing water, and there were trout, fish kills associated with it. That's typically what prompts us to look into an operating, nonlicensed hydroelectric project; it's a complaint from someone else that the project is not being operated consistent with public-interest values.

We did look into this project, and found that it—part of the project, at least, existed on Federal lands. And, for that reason, the Commission, in August 2001, concluded that the project was jurisdictional and ordered that it become—that they apply for a license.

In March 2002, however, a new piece of information came to the Commission, and the Commission reversed itself, in that the project—that portion of the project that existed on Federal lands was actually permitted by a pre-1920 Federal authorization. So, the Commission concluded, at that point, that, as long as that Federal authorization was active, that it did not require to be licensed. Unfortunately, that authorization expired shortly thereafter, so in

about 2 months, in June 2002, the Commission reestablished that the project needed to be licensed again.

And then, in May 2002, the Commission, trying very hard to work with the operator of the project, granted a 3-year extension for the operator to defer starting the active licensing, which, in itself, was going to be a 3-year grant, to allow them to do the necessary work to bring it under license. But they granted a 3-year extension at that point. And then we find ourselves here today with S. 1577.

In passing the Federal Power Act, Congress decided that the method of licensing projects prior to 1920, the—I'm sorry, the Federal Water Power Act, in 1920, did not give a consistent review for hydroelectric projects, and didn't ensure the protection of the public interest, and they vested that power in the Commission to ensure that, in fact, projects were licensed and authorized consistently across the country to protect all the public interest—not just power production or other aspects, but all public interests.

I know of nothing about this project that would separate it from the other 1,700 projects that we have under license or exemption. And we have looked. It just doesn't seem to be there.

Licensing a project does ensure that we give equal consideration to those developmental and nondevelopmental values—the fish and wildlife resources and power production. And, therefore, I would recommend that this project undergo that same scrutiny to ensure that it is operated to the full benefit of the public.

Thank you very much.

[The prepared statement of Mr. Robinson follows:]

PREPARED STATEMENT OF J. MARK ROBINSON, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Madam Chairman and Members of the Subcommittee: I appreciate the opportunity to comment on S. 1577, a bill to exempt the Spearfish Project, located in South Dakota, from the otherwise applicable licensing requirements of the Federal Power Act (FPA). My name is J. Mark Robinson, and I am the director of the Office of Energy Projects at the Federal Energy Regulatory Commission. Our office is responsible for non-federal hydroelectric licensing, administration, and safety; certification of interstate natural gas pipelines and storage facilities; and, authorization and oversight over the construction, operation, and safety of Liquefied Natural Gas (LNG) terminals. I appear today as a Commission staff witness speaking with the approval of the Chairman of the Commission. The views I express are my own and not necessarily those of the Commission or of any individual Commissioner.

Under Part 1 of the Federal Power Act, the Commission issues licenses to non-Federal interests authorizing the construction, operation and maintenance of water power projects on navigable waters of the United States, on federal lands and on streams over which the Congress has jurisdiction. Licenses are also required to utilize surplus water or waterpower from government dams.

Licenses may be issued under the FPA only if, in the judgment of the Commission, the proposed project is best adapted to a comprehensive plan for the development and utilization of the water resources of the river basin involved for all public purposes. The licenses are issued for terms up to 50 years and contain terms and conditions that are designed to ensure that the comprehensive development standard is met. The terms and conditions reflect consideration of all environmental and developmental aspects of the project, including such factors as the effect of project construction and operation on fish and wildlife resources, irrigation, flood control, water supply, recreation, and the safety of the public.

LEGISLATIVE BACKGROUND

Prior to passage on June 20, 1920, of the Federal Water Power Act, the responsibility for licensing and overseeing hydroelectric facilities was dispersed among several arms of government. The construction and operation of dams in navigable wa-

ters, in non-navigable tributaries whose flows affected such waters, and on federal lands were regulated under four general statutes: Section 7 of the River and Harbor Act of 1890, as amended; sections 9 and 10 of the River and Harbor Act of March 3, 1899; the General Dam Act of 1906; and, the General Dam Act of 1910.

If a hydroelectric project was located on a navigable water of the United States, it needed Congressional authorization. In addition, if the project was located on public lands of the United States, it required authorization from the Secretary of the Interior. If the project was located on federal forest reserves (i.e., National Forest lands), it required authorization from the Secretary of Agriculture.

The passage of the Federal Water Power Act of 1920 (FWPA) superseded prior statutes. The FWPA created the Federal Power Commission and made it unlawful to operate a hydroelectric project in navigable waters or on federal lands without a license from the Federal Power Commission. The Federal Water Power Act established firmly the principle of federal regulation of water power projects and established a national policy in the use and development of water power projects on public lands and navigable streams.

Section 23(b) of the FPA requires either a Commission license or a valid pre-1920 federal permit for a hydropower project covered by Part I of the statute. Such permits were issued before the FPA was passed. They were grandfathered by Section 23(b), under which the permittee could either operate under the permit until it expired or apply for a license under the FPA. Although most of these permits have expired or been converted into licenses, the problem of determining what constitutes a valid permit or right-of-way still arises (as in case of the Spearfish Project). In 1935, the FPA was amended to broaden the Commission's authority and jurisdiction over water power projects to include projects that are located on commerce clause waters and which would also affect the interests of interstate or foreign commerce.

SPEARFISH PROJECT

S. 1577 would exempt the Spearfish Project, located in South Dakota, from the otherwise applicable licensing requirements of the FPA. As noted previously, under Part I of the FPA, hydropower projects are required to be licensed, if, among other things, they are located on the public lands or reservations of the United States.

In September 2000, following receipt of an environmental complaint, the Commission began a review of the jurisdictional status of the Spearfish Project, operated by the Homestake Mining Company (Homestake). The complaint concerned the alleged dewatering of the Spearfish Creek downstream of the Spearfish Project, especially in the summer, to the detriment of resident trout. In August 2001, the Commission found that the project was required to be licensed, because it was located on federal lands, within the Black Hills National Forest.

However, the Commission subsequently reversed this finding on March 1, 2002 (Order Granting Rehearing and Denying Late Intervention) because Homestake had demonstrated that it held a valid right-of-way under a 1905 Act that permitted rights-of-way in National Forests for projects, such as Spearfish, that operated for mining purposes (at the time of the Commission order, the project's power was being used for mining operations). The Commission therefore concluded that the project need not be licensed.

In April 2002, Homestake informed the Commission that it had ceased mining operations as of December 31, 2001, but that it interpreted the FPA as allowing it to continue generating for activities associated with mine reclamation. In an order issued June 17, 2002, the Commission ruled that the 1905 Act made no reference to reclamation, and that since mining operations had ceased, Homestake or any successor could not generate electricity at the project without a Commission license. Homestake did not seek judicial review of this order. To date, the Spearfish Project is still operating. It is my understanding that for several years the City of Spearfish has been exploring the possibility of acquiring and operating the project.

In passing the FPA, Congress made the decision that, to protect public resources, projects located on federal lands and reservations must be licensed by the Commission. The Spearfish Project, being located in part on National Forest lands, meets this criterion. I am aware of no reason why this project should be treated differently than others that are similarly situated. Exempting the project from the requirements of the FPA would set a precedent for exempting individual projects from the otherwise applicable requirements of the FPA. Congress has charged the Commission with examining thoroughly all of the environmental and developmental aspects of projects such as the Spearfish Project, and of licensing those projects with appropriate conditions to ensure that they are best adapted to the comprehensive development of affected waterways. In the absence of the Commission's licensing jurisdic-

tion, there is no guarantee that there will be any consideration of the resources that the Commission is charged with weighing and protecting.

Exempting this project would also remove Commission oversight for dam safety. Therefore, Homestake would not need to comply with Part 12 of the Commission's dam safety regulations. Currently, Homestake has an approved Emergency Action Plan and is inspected by the Commission every three years. Conformance with the Congressional intent expressed in the Federal Power Act requires that the Spearfish Project be licensed.

As a result of these concerns, I do not support S. 1577.

I appreciate the opportunity to present my views to the Subcommittee. Thank you.

Senator MURKOWSKI. Thank you, Mr. Robinson.

And next, let's go to Ms. Catherine Hill, from the United States Geological Survey.

STATEMENT OF CATHERINE L. HILL, NORTHEAST REGIONAL HYDROLOGIST, U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Ms. HILL. Madam Chairman and Senator Johnson, I'm Catherine Hill, northeast regional hydrologist for the U.S. Geological Survey. Thank you for the opportunity to provide the views of the Department of the Interior on S. 2054, a bill to conduct a Vermont water resources study.

The Department of the Interior agrees that the goals of the bill are commendable and the needs that could be addressed are real. However, we note that studies similar to this have been carried out by the USGS in other States, generally carried out within the USGS Cooperative Water Program. This is a longstanding cost-share program using Federal and State dollars. Given the existing authorities for our Cooperative Water Program, we feel congressional authorization of this study is not necessary.

S. 2054 directs the Secretary of the Interior, acting through the director of the USGS and in coordination with the State of Vermont, to conduct a study on water resources in the State of Vermont. The role identified for the Department in this bill is consistent with USGS's leadership role in surveying and characterizing groundwater resources.

The bill requires a survey of groundwater supplies and aquifers available for water supply by municipalities throughout the State as part of a study to determine whether these supplies provide water of potable quality.

The USGS has a long history of conducting groundwater resources on both local and regional scales. In the 1950's and 1960's, studies were conducted across the Nation to provide a basic understanding of geologic—geohydrologic conditions at a county-level scale. In the 1980's, 25 regional aquifer systems were studied in detail, including the aquifer systems in Vermont. However, these studies provided a regional and national context for—of groundwater that are often not detailed enough for State and municipalities.

In Vermont, USGS has been actively working with the Vermont Geological Survey in the creation of a new bedrock geologic map that is scheduled to be completed soon. This new geologic map will provide a variety of information that can be used to help define groundwater availability and quality.

In 2003, USGS provided information on possible approaches for groundwater assessment and aquifer mapping to the State of Vermont for a report to the State legislature on the status of groundwater and aquifer mapping. In this report, a plan for future statewide groundwater and aquifer assessments was presented. This document provides a foundation for how work proposed by this legislation could be performed.

The USGS has extensive data bases that include geochemical characteristics of rocks, soils, stream sediments, and water, long-term groundwater levels and stream flows, and water use and well inventories. We also have a number of ongoing studies that relate to groundwater in Vermont. For example, USGS, in cooperation with the Vermont Geological Survey, is looking at radionuclide content of wells in the Barre West and Montpelier quadrangles. We are also analyzing the presence of arsenic in bedrock wells throughout New England as part of a project with the National Institutes of Health. This work will identify the probability of bedrock wells having detectable levels of arsenic. In addition, we are evaluating how radon and uranium vary from aquifer to aquifer in northern portions of the United States, including Vermont.

In New Hampshire, USGS has already performed statewide surficial and bedrock aquifer mapping and characterization. This work, conducted through the USGS's Cooperative Water Program, now serves as the benchmark for groundwater characterization in the State, and is the basis for State and local planning and resource protection programs. We envision that a statewide aquifer mapping and groundwater characterization effort in Vermont would be similar in many respects to the New Hampshire effort.

The proposed legislation also requires an assessment of how groundwater recharges and interacts with surface water. This is critical, because groundwater can be a major source of water for streams. Vermont's rivers and streams provide habitat for its trout and other fisheries, and supply flows to its many lakes and ponds. A better understanding of groundwater aquifers, the areas that contribute to both ground- and surface-water systems, and how current and future water demands could influence these systems will help decisionmakers ensure that sufficient supplies are present for the multiple uses of Vermont's water.

USGS concurs with the goals of S. 2054. Such an effort will help ensure long-term water supplies for Vermont's citizens, businesses, industries, and natural features. However, we feel that such a proposed study would take 5 or more years to complete, rather than the 2-year timeframe. We recommend that studies of this type be conducted under USGS's Cooperative Water Program.

We look forward to working with the State of Vermont, particularly the Vermont Geological Survey, in future groundwater resource and aquifer studies.

Thank you, Madam Chairman, for the opportunity to present this testimony. I look forward to any questions.

[The prepared statement of Ms. Hill follows:]

PREPARED STATEMENT OF CATHERINE L. HILL, NORTHEAST REGIONAL HYDROLOGIST, U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR, ON S. 2054

Madam Chairman and Members of the Subcommittee, I am Catherine L. Hill, Northeast Regional Hydrologist for Water for the U.S. Geological Survey (USGS).

I thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 2054, a bill to conduct a Vermont water resources study.

The Department agrees that the goals of the bill are commendable but has concerns with the bill. We note that studies similar to this have been done by USGS in other States, generally carried out within the USGS Cooperative Water Program, which is a long-standing cost-sharing program using Federal and State funds. Given the existing authorities for our Cooperative Water Program, congressional authorization of this study is not necessary.

S. 2054, VERMONT WATER RESOURCES STUDY

S. 2054 directs the Secretary of the Interior, acting through the Director of the USGS and in coordination with the State of Vermont, to conduct a study on water resources in the State of Vermont. The role identified for the Department in this bill is consistent with USGS's leadership role in surveying and characterizing ground-water resources.

The bill requires a survey of ground-water supplies and aquifers available for water supply by municipalities throughout the State, as part of a study to determine whether these supplies provide water of potable (drinkable) quality.

The USGS has a long history of conducting ground-water assessments on both local and regional scales. In the 1950s and 1960s, studies were conducted across the Nation to provide a basic understanding of geohydrologic conditions at a county-level scale. In the 1980s, 25 regional aquifer systems were studied in detail, including the aquifer systems in Vermont. However, these studies provide a regional and national context of ground water that are often not detailed enough for State and municipal needs.

As stated, the goals of the S. 2054 can be met through existing authorities, and many related activities are being implemented on the ground in Vermont. USGS has been actively working with the Vermont Geological Survey in the creation of a new bedrock geologic map that is scheduled to be completed in the next few years. This new geologic map will provide a variety of information that can be used to help define ground-water availability and quality. Map information will include bedrock types that may be correlated with high yield wells or bedrock types that may be associated with natural contaminants (for example arsenic or radon). In 2003, USGS provided information on possible approaches for ground-water assessment and aquifer mapping to the State of Vermont for a report to the State Legislature on the status of ground-water and aquifer mapping. In this report, a plan for future statewide ground-water and aquifer assessments was presented. This document provides a foundation for how work proposed by this legislation could be performed.

The USGS has extensive databases that would provide useful information in evaluating potential ground-water resources in Vermont. These databases include the location and characteristics of most mineral occurrences throughout the United States; geochemical characteristics of rocks, soils, stream sediments, and water; long-term ground-water level and stream flows; and water-use and well inventories.

The USGS also has a number of on-going studies that relate to ground water in Vermont. USGS, through the Mineral Resources Program and in cooperation with the U.S. Environmental Protection Agency, is determining the water quality effects of three abandoned mines on local streams and ground water. Another USGS study, in cooperation with the Vermont Geological Survey, is looking at the radionuclide content of wells in the Barre West and Montpelier quadrangles. USGS is also analyzing the presence of arsenic in bedrock wells throughout New England as part of a project with the National Institutes of Health. This work will identify the probability of bedrock wells having detectable levels of arsenic. In addition, through the USGS National Water-Quality Assessment Program, we are evaluating how radon and uranium vary from aquifer to aquifer in the northern portions of the United States, including Vermont.

In New Hampshire, USGS has already performed statewide surficial and bedrock aquifer mapping and characterization. This work, conducted through the USGS Cooperative Water Program, occurred in the 1980s and 90s and now serves as the benchmark for ground-water characterization in the State and is the basis for State and local planning and resource protection programs. We envision that a statewide aquifer mapping and ground-water characterization effort in Vermont would be similar in many respects to the New Hampshire effort.

Ground water is the source of water for two-thirds of Vermont's residents. From 1950 to 2000, the amount of ground water used in the State is estimated to have increased by at least 60 percent. While Vermont is blessed with a major surface-water supply source in Lake Champlain to serve its largest cities, most commu-

nities, businesses, and homes away from the Lake rely on ground water for their water supply.

The proposed legislation also requires an assessment of how ground water recharges and interacts with surface water. This is critical because ground water can be a major source of water for streams, especially in headwater areas. Vermont's rivers and streams are an important natural resource—providing habitat for its trout and other fisheries and supplying flows to its many lakes and ponds. As stated previously, USGS is currently working with the States to provide a better understanding of ground-water aquifers, the areas that contribute to both ground-and surface-water systems, and how current and future water demands could influence these systems, will help decision makers ensure that sufficient supplies are present for the multiple uses of Vermont's water resources.

CONCLUSION

In conclusion, the USGS concurs with the goals of the bill to meet Vermont's need for a detailed ground-water assessment and aquifer mapping program, but notes that there are already ongoing efforts to address these goals. Such an effort would help ensure long-term water supplies for its citizens, businesses, industry, and natural features. However, we feel that such a proposed study would take 5 or more years to complete and that the 2-year time frame for completing the study would not yield comprehensive results. We recommend that studies of this type be conducted under the USGS Cooperative Water Program, through a cost-share arrangement. The USGS looks forward to working with the State of Vermont, particularly the Vermont Geological Survey, in future ground-water resource and aquifer studies.

Thank you, Madam Chairman, for the opportunity to present this testimony. I will be pleased to respond to questions you and other Members of the Subcommittee may have.

Senator MURKOWSKI. Thank you, Ms. Hill.

I haven't been told that we've got a vote yet, so we'll keep going for as long as we can here.

Commissioner Keys, S. 2205, the Blunt Reservoir and the Pierre Canal Land Conveyance, you've indicated that the Bureau supports the intent of this legislation. Just in understanding some of the background, I have been led to believe that the preferential leaseholders here have paid rent on what was originally their land over these past 30 years. Does this warrant or suggest a reduced sales price because of these rental payments that have gone on prior to this point in time?

Mr. KEYS. Chairman Murkowski, no, it does not. All of our transactions there would be based on fair market value.

Senator MURKOWSKI. So, what has been paid, historically, in terms of rent, has nothing to do with fair market value at today's time and date?

Mr. KEYS. No, ma'am, it does not.

Senator MURKOWSKI. Okay. I also understand that some of the leaseholders claim that there was a commitment made by the Federal Government to sell back the land at the same price that it was purchased at 30 years ago. Is that your understanding? Or, again, do you still go back to, "We've got to operate on—based on what's fair market value today"?

Mr. KEYS. Madam Chairman, I have no knowledge that there were any promise made to sell it back at the price that it was paid before.

Senator MURKOWSKI. You still would have been commissioner back then.

[Laughter.]

Mr. KEYS. Madam Chairman, I worked on the project before, when I was working for a living.

[Laughter.]

Mr. KEYS. That didn't sound right, did it?

[Laughter.]

Senator MURKOWSKI. We understand.

Mr. KEYS. When Reclamation purchased that land for the construction of the canal and the reservoir, we paid fair—at least fair market value for it in all cases. In some cases, where we had to condemn it and it went into court, we paid more than fair market value, within the limits allowed by the law.

And what we're suggesting in the current legislation is the same thing apply now, that when we sell it back to them, it be at fair market value.

Senator MURKOWSKI. Okay. With S. 1962, to revise the repayment contracts, do you anticipate that the irrigation districts will be able to meet this proposed new repayment schedule if, in fact, this is enacted? You've cited the hardship faced in the districts by the drought; will they be able to make these repayments?

Mr. KEYS. Madam Chairman, we think so. In the discussions that we've had with all four of those districts, it appears that stretching it out would give them the opportunity to recover their reserve funds, and then keep up with their payment schedule. Of course, none of us can predict the drought. The drought in some of those areas has lasted 6 years, up to now, and, if it continues, that same hardship would be there. But everything that we see now is that, if it gets back to some normal precipitation situation, that they would be able to meet that schedule.

Senator MURKOWSKI. Okay. Then the last question for you—and this is as it relates to the Mokelumne River feasibility study—at this point, is it your belief that this proposed project is the best alternative for alternate water—or additional water for the San Joaquin Valley?

Mr. KEYS. Madam——

Senator MURKOWSKI. I heard your concerns that you have expressed on the record, but is this the best project?

Mr. KEYS. Madam Chairman, in that portion of the San Joaquin Valley, it's a good project. Our preference is to finish the appraisal study that's underway. The funding is there. The plans are to have it done at the end of this fiscal year. And certainly we would like to finish that so that we know what to spend our feasibility-study money on. But it's a good project. And certainly we would look forward to working with you for additional legislation later, and working with the project sponsors.

Senator MURKOWSKI. Okay.

Mr. Robinson, as it relates to the Spearfish Hydropower Project, if the city did go though this licensing process, can you estimate how long that might take, and how much it might cost the city? What are you looking at?

Mr. ROBINSON. It's hard to put a precise estimate on it, but we typically allow about 3 years to develop a license application. That allows a couple of sample seasons, which is not unusual for developing information on fish and wildlife issues, and then about a year to prepare the application.

Depending upon the issues that kind of drive the costs—here I don't think there's any issue associated with fish passage facilities,

which can be very expensive—there would be—I think the main focus would be on what flow regimes are necessary. There's a very long bypass reach between the dam itself and the powerhouse. It's 5 to 6 miles long. How much water you have to leave in that section of the stream to provide for fish and wildlife, versus putting it through the tunnel, the penstock, and the turbines, would probably occupy most of everyone's attention, and the costs associated with it. I just—I don't have a real estimate on that.

Senator MURKOWSKI. Does that extend the time period involved, as well?

Mr. ROBINSON. No, I don't think that would extend the time period. I think that could easily be done within that 3 years. It's just the type of study that you do, typically. It's called an instream flow study, an IFIM, instream flow incremental methodology. Those studies can run a couple of hundred-thousand dollars to perform, to determine what type of habitat exists and what water levels are necessary to protect that habitat.

Senator MURKOWSKI. Does the U.S. Forest Service administer the right-of-way that we're talking about here?

Mr. ROBINSON. Yes, for the transmission line.

Senator MURKOWSKI. And did—has the Forest Service determined, then, that the right-of-way is valid, and is transferable, then, to the city?

Mr. ROBINSON. That, I can't answer, ma'am. I just don't know.

Senator MURKOWSKI. Okay. All right. That's something that we had wanted some clarification on.

Just so that you're aware of these buzzers in the background, we are in the midst of a vote. Senator Johnson is going to do his duty. And when he returns, I will escape quickly and go cast my vote, as well.

Ms. Hill, with regard to the Vermont groundwater study, I guess I'm trying to determine what it is that USGS is suggesting would help the people of Vermont in more fully understanding their water resources. You've indicated that you support the goals, that they're commendable, but you've indicated that this particular legislation, as it's drafted, you don't believe is needed. What kinds of studies—and you've mentioned the USGS Cooperative Program is the way to go; is there anything else that can be done, in terms of providing the assistance that the people of Vermont are looking for in understanding what the water resource is? Is there something legislatively that we can do more—I guess I'm trying to understand whether or not you believe that this legislation, or any aspect of it, should move forward.

Ms. HILL. Let me—I'm not trying to be evasive, but we have done a similar study in New Hampshire. Typically it's a wonderful project, and I think it definitely is needed, but we like to put it in something such as the Water Co-op Program, so that you have a Federal share and a State share.

Senator MURKOWSKI. Does that dilute the—excuse the pun, but does that dilute an individual State's ability to get focus to their resource, when it is part of an entire cooperative program?

Ms. HILL. No, I don't believe that it does, because you're in a partnership, and we have strong partnerships with the State. So, I don't think it would dilute it. It would be a joint partnership that

you would develop the scope together, which has already been done, in fact.

Senator MURKOWSKI. And so, then, to push a little bit further as it relates to S. 2054, are there any aspects of the legislation that we should be working to advance?

Ms. HILL. Well, Vermont would be in the forefront of any legislation that would help move forward a comprehensive study of groundwater resources. That just hasn't been done very often, nationwide.

Senator MURKOWSKI. Is there an appropriate non-Federal cost share for a study of this kind that's being proposed in this legislation?

Ms. HILL. I don't think there's one being proposed. Well, I shouldn't say that. I guess I would have to get back to you on that. I'm not sure.

Senator MURKOWSKI. Okay. All right.

Well, I'm going to—that is the extent of the questions that I have for the panel. If I can just ask that you stay a few more minutes, until Senator Johnson comes back, we will take a brief recess, and I'll let him assume the gavel, so that we don't miss a beat here. He'll have a chance to ask his questions of the panel, and then, when I return from the vote, we will take up the second panel.

So, with that, we'll just stand in brief recess. Thank you.

[Recess.]

Senator JOHNSON [presiding]. The committee will be back in session while Chairman Murkowski takes care of her vote on the floor. And she'll be returning, I'm certain, but in order to move things along—and, obviously, this is all on the record—we'll proceed here from this point.

Again, Mr. Keys, I want to commend you, and thank you, for your years of great service to America through the Bureau of Reclamation. And I know that you've been of great service and cooperation to my office and my State on numerous water projects and other BOR initiatives in South Dakota. And we wish you the very best on your future plans.

And I have a statement here from Senator Jeffords that I'll put in the record. This is an opening statement from Mr. Jeffords relative to S. 2054. And, without objection, it is accepted into the record.

[The prepared statement of Senator Jeffords follows:]

PREPARED STATEMENT OF HON. JIM JEFFORDS, U.S. SENATOR FROM VERMONT, ON S. 2054

I want to thank the Energy and Natural Resources Committee for holding today's hearing on my legislation, S. 2054, which would direct the Secretary of Interior, through the U.S. Geological Survey, to conduct a study of Vermont's groundwater resources.

This is a critical issue for Vermont. Vermont's population is relatively small—just over 600,000 people. But, about two-thirds of our population's drinking water comes from groundwater, both from public water systems and from private wells.

We have our share of contamination and supply issues. Naturally—occurring contaminants like uranium threaten the viability of local water supplies. Proposals for increased withdrawals raise the ire of locals who fear for the long-term impact on water supplies.

A groundwater map is step one in the process of figuring out how to address these issues. Without the basic data that will be provided by the groundwater study, it is difficult to make informed decisions about Vermont's groundwater.

Today you'll be hearing from Larry Becker, Vermont's State Geologist, who will be speaking more about the state's commitment to addressing its need for a groundwater map during the hearing. Mr. Becker has worked for the State of Vermont since 1981 serving as Technical Services Chief for the Vermont Geological Service, and as a hydrogeologist, groundwater planner, and geology consultant for the Vermont Department of Environmental Conservation. He is the Chair of the Association of American State Geologist's Earth Science Education Committee. His Master's Degree from the University of Vermont focused on shoreline dynamics and sediment transport in Lake Champlain's Appletree Bay in Vermont. He received his B.S. Geology degree from the State University of New York at Buffalo.

S. 2054 would authorize the U.S. Geological Survey to create a groundwater map that could be used as a decision-making tool in the state of Vermont. With the state as a partner, USGS brings technical expertise and financial assistance to this project that Vermont could not duplicate on the state level alone. This effort is consistent with other similar projects completed by USGS in the northeast and other proposals moved through this committee and the full Senate in recent months. I look forward to working with you to move this bill through the full Senate, and I thank the Committee again for holding this hearing today.

Senator JOHNSON. Commissioner Keys, how much does the Bureau of Reclamation spend to manage the lands acquired for the Pierre Canal and Blunt Reservoir?

Mr. KEYS. Mr. Johnson, currently we spend about $282,000—I'm sorry, that's how much we get. We spend about $151,000 a year to manage those lands.

Senator JOHNSON. Okay. In your testimony you stated that the Bureau will be still responsible for some administrative fees even if the Blunt Reservoir bill is enacted. Could you elaborate on the nature of those fees, and do you have an estimate of the total amount of those costs?

Mr. KEYS. Mr. Johnson, the one feature that we would still have to take care of with provisions of the bill is to take care of the historic—the cultural resources that are there. We would have to do those surveys, and then take care of the curation of whatever artifacts were found.

I am thumbing my notes to see how much that would cost. I would certainly provide that figure for the record.

Senator JOHNSON. Yes, if you could take a look at that and then provide that quickly, it would be very helpful.

Mr. KEYS. I'd be glad to.

Senator JOHNSON. Could you tell the committee the difference between the BOR's cost to manage these lands today versus the cost if H.R. 4301 was enacted? Excuse me, S. 2205—the cost between management of the lands today versus if we were to enact 2205?

Mr. KEYS. Mr. Johnson, I would assume that's the cost between 2001 and 2006. I would have to provide that for the record, also. I don't have those numbers at my fingertips.

Senator JOHNSON. Well, I think what that would come down to is the difference between the $151,000 of management expenditures, less what you are investing in historic and cultural resources. So, again, that would depend on your getting back to us on that number, I suppose.

When lands are taken out of Federal ownership, are they always disposed of at fair market value? And, if not, what exceptions are there to those rules?

Mr. KEYS. Mr. Johnson, certainly, any transfer like that is subject to whatever bill is passed to make it happen.

Senator JOHNSON. Right.

Mr. KEYS. In most cases—and I know of no exceptions now—when we dispose of land, it's done at fair market value.

Senator JOHNSON. And so, it's really the discretion or the judgment of the Congress to determine whether there's any special circumstances that might justify a different rule; essentially, that is what you're saying?

Mr. KEYS. Senator, that's correct. I would take it back to the original purchase of the land. There, fair market value was offered to the people that we were purchasing the land from. If they didn't like that, they didn't take it, and we had to condemn it and go into court. And, in some cases, they got more for it, whatever the court allowed them.

Senator JOHNSON. Right.

Mr. KEYS. And certainly the action of the Congress would prevail here.

Senator JOHNSON. All right. Well, we look forward to working with you, and with the BOR, as we try to come to a satisfactory and equitable resolution of that particular aspect of the bill. And we look forward to working with you in good faith in that regard.

Mr. KEYS. Senator Johnson, I might just add, our goal is the same as yours and the same as the project sponsors here, and that's to get that land back onto tax rolls, back into the hands of those people that purchased it. I think it's—we will work with you on the details to get that done.

Senator JOHNSON. Yes. And we'll also work with you relative to the constitutional issues you raised pertaining to the State of South Dakota's Game, Fish, and Parks Department on what we need to do to make sure that BOR is satisfied with the legal basis for that transfer, as well.

Mr. KEYS. Okay.

Senator JOHNSON. And we'll be sharing language with you, and work with you closely on that.

Relative to Mr. Robinson, first let me start out by stating that I do believe that the licensing and administrative of our Nation's public hydroelectric plants is an important regulatory tool to balance the often competing multiple uses of the Nation's water resources. Several Senators on the Energy Committee have devoted a good deal of time toward improving the Federal license process for non-Federal hydropower plants. That being the case, I believe that the set of circumstances surrounding this small—very small—hydroelectric plant in Spearfish are unique, and therefore provides for a re-examination, in this instance, of the Federal license requirements.

So, my first question, Mr. Robinson, is that it's my understanding that FERC is asserting jurisdiction to require a license on the basis that certain right-of-way grants and permits which were issued by the Federal Government prior to the enactment of the 1920 Federal Power Act had expired. Is that your argument, the basis for your jurisdictional claim?

Mr. ROBINSON. Well, the basis is the existence of the transmission lines on Federal lands. Those particular lands were covered by a pre-1920 Federal authorization, which the Commission, in its last order, found had expired, and, therefore, no longer pro-

vided that exemption from the Federal Water Power—the Federal Power Act.

Senator JOHNSON. Now, I've learned that these right-of-way grants and permits were not issued by the FERC, or that the rights-of-way are administered by the FERC. In fact, the rights-of-way permits are administered exclusively by the U.S. Forest Service, which recently found that they had not expired, and, in fact, were validly transferred from the Homestake Mining Company to the city of Spearfish. In light of these sets of circumstances, isn't it fair to believe that the FERC is overreaching in asserting jurisdiction, particularly in light of the long-held administration of the rights-of-way by the U.S. Forest Service?

Mr. ROBINSON. I think the Commission would always be in a posture of reviewing any of their findings if new information was provided to them. What you just mentioned, about the Forest Service making a finding, is something that doesn't exist, I don't believe, in our record right now. The Commission, when they made their determination that the pre-1920 permits had expired, based that on the statute, itself, and its language, which went to power being produced for mining purposes. And the mining operation has ceased to function there. There's no argument on that. The Commission concluded from that that—therefore, that those permits were no longer valid. But we would always be interested in seeing any new information that anyone had on it.

Senator JOHNSON. All right. I want to ask you a question about the time and cost of licensing this project. I understand that the median amount of time for a hydro relicense applicant is about 64 months, from the beginning to the end, and that, under the traditional process, costs average about $2.3 million. Who bears the costs for the license? And, in proportion to other hydro projects, what could the city of Spearfish expect, in terms of cost and time, to license this very small, century-old hydro plant?

Mr. ROBINSON. To answer your first question, the proponent, or the applicant, bears the cost for that. Agencies and others bear their own costs for participating. NGO's—nongovernmental organizations—and private citizens all bear their own costs. As far as the timeframe for licensing, it's our objective—and we just modified our licensing process with the integrated licensing process—it's our objective to license all projects within 2 years after the application is filed. Not 64 months, but 2 years. I think some of those numbers that you're quoting go back to the 1990's, prior to two iterations of improvements in the licensing process, the 64 months.

The $2.5 million, I have not heard that number before, but we certainly have projects that go well beyond that, in terms of their costs. We license projects up to the size of the 1,800-megawatt Priest Rapids project in the mid-Columbia system. And it's very expensive to authorize—or to license large projects like that. And it tends to skew the average cost associated with it. But it doesn't mean that it's cheap to license even a small project like this. It would be a significant investment to go through licensing.

Senator JOHNSON. Yes.

Mr. ROBINSON. That's indisputable.

Senator JOHNSON. And you could understand, from the community-of-Spearfish perspective, the electricity production here is a

secondary and incidental issue, and that the real issue is the water flow and the water access into the community of Spearfish.

Mr. ROBINSON. I've been involved with licensing projects for 28 years, and, during that 28 years, the shift from power being the significant factor that we looked at to nonpower values being the overwhelming aspect of licensing projects is across the country.

Senator JOHNSON. Well, thank you, Mr. Keys, Mr. Robinson, Ms. Hill. And I would presume that, in the case of the South Dakota projects, that Mr. Keys and Mr. Robinson would be willing to accept any written questions that we may—that the committee may submit——

Mr. ROBINSON. Absolutely.

Senator JOHNSON [continuing]. After the conclusion of this hearing.

Mr. KEYS. Yes, we would.

Senator JOHNSON. Well, thank you very much.

And I'll turn it back over to Chairwoman Murkowski.

Senator MURKOWSKI [presiding]. Thank you for helping out with the tag team there. It makes it work a little bit better.

I want to thank the witnesses for your time this afternoon, for coming in and helping out on these issues of importance within the region.

With that, let's call up the second panel here. Welcome to the committee this afternoon. And I think what we will do is, we'll start with you, Mayor Krambeck, and just go down the line in the order that you are seated.

So, with that, welcome. I appreciate the fact that several of you have come from a relative distance to be here this afternoon. We appreciate your willingness to appear and the time that you are giving to us on these respective issues. So, thank you, and welcome.

Mayor Krambeck.

STATEMENT OF JERRY KRAMBECK, MAYOR, CITY OF SPEARFISH, SD

Mr. KRAMBECK. Thank you. My name is Jerry Krambeck. For the past 6 years, I've served as the mayor of Spearfish, South Dakota, a municipality of approximately 9,000 people located in the heart of South Dakota's Black Hills.

I'm here today to testify in support of S. 1577. I would like to submit for the record letters from some elected officials, public agencies, and water user groups in South Dakota that support this legislation being championed by Senators Johnson and Thune.*

When visiting our city, one cannot help but appreciate the scenic beauty of Spearfish Canyon. Frank Lloyd Wright said it best during his 1935 visit to Spearfish Canyon when he declared that it's the best, the most magnificent canyon in the West. We're proud of this heritage, and take seriously our responsibility to preserve it for the future generations to enjoy and appreciate.

The city is located at the base of Spearfish Canyon, through which Spearfish Creek runs. Spearfish Creek is the lifeblood to the many farms and ranches that operate in our area. Farmers have

*The letters have been retained in subcommittee files.

been irrigating the fields for nearly 150 years in Spearfish, with some water rights dating back to the mid-19th century. Our community also has a rich mining history. For years, many citizens in our community were employed by the Homestake Mine, in Lead, South Dakota.

These values prompt our city, in 2004, to purchase the small 4,000 kilowatt Spearfish Hydroelectric Plant No. 1 from Homestake Mining Company. At that time, Homestake was closing its gold mine in Lead, and no longer needed the hydropower from this plant to supports its operations. The project had been in continuous operation since 1912, and had been meticulously maintained and preserved. The city saw an opportunity to preserve this historical landmark, which stands as a reminder of resilience, ingenuity that was required of those early settlers in the West.

This project is important for more than its historical value. And for a very real way, it supports these deeply held values in—of our community. For example, the hydro facility bypasses a significant sinkhole in Spearfish Creek where surface waters are lost to the underlying aquifer. By diverting flows around the sinkhole, the project provides additional water for recreation, irrigation, fire protection, and the National Historic D.C. Booth Fish Hatchery. In addition, since acquiring the hydro facility, the city has worked to develop an agreement with the Spearfish Canyon Howeowners Association to provide for additional water to be left in Spearfish Creek for aesthetic and environmental benefit.

The reason I'm here today is that the multiple benefits provided by this project are in danger of being forever lost. In the series of orders issued in 2001 and 2002, the Federal Energy Regulatory Commission ruled that this hydroelectric facility, which, at the time, had been operating for about 80 years, falls under its mandatory licensing jurisdiction under the Federal Power Act. The statute was enacted about a decade after Homestake started generating electricity at the facility. FERC justified its claim of jurisdiction over the project by finding that certain right-of-way grants issued by the Federal Government for the project in the early 20th century had expired.

These grants are currently administrated by the U.S. Forest Service. FERC issued its rulings without even consulting with the Forest Service. In fact, the Forest Service is on record that right-of-way grants continue to be valid, even after the hydro facility was conveyed from Homestake to the city of Spearfish. Despite the urging of the entire South Dakota congressional delegation, FERC refuses to change its jurisdictional rulings.

The city does not oppose the goals of the Federal Power Act, making sure that our Nation's waterways are best managed for multiple public interests such as power development, energy conservation, the protection of fish and wildlife resources, recreation, and flood control. We believe that we have already accomplished this in Spearfish Creek.

Our objection is that FERC's licensing of this facility would be an unnecessary exercise, at a tremendous cost. As this committee well knows, the FERC licensing process is an enormous undertaking. Studies conducted by FERC find that even small projects

like this one can take over 6 years to license, at a cost that could approach millions of dollars.

Costs of this magnitude alone would require that the city mothball the project and shut it down. The city does not believe that policies and goals of the Federal Power Act support this result, discriminating against a source of clean, renewable energy that is already operated in a manner that best balances public interest considerations, through the sheer imposition of overwhelming administrative costs.

Thank you very much for letting me testify today.

Senator MURKOWSKI. Thank you.

Mr. Becker.

STATEMENT OF LAURENCE R. BECKER, STATE GEOLOGIST AND DIRECTOR, VERMONT GEOLOGICAL SURVEY, VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION, VERMONT AGENCY OF NATURAL RESOURCES

Mr. BECKER. Thank you, Madam Chairman and members of the subcommittee. I'm Laurence Becker, Vermont state geologist, and I direct the Vermont Geological Survey. That's part—a division of the Vermont Department of Environmental Conservation.

Thanks for the opportunity to represent the State of Vermont in response to S. 2054, the Vermont Water Resources Study. And thanks to Senator Jeffords for recognizing the importance of groundwater through his sponsorship.

The State of Vermont understands that groundwater is a fundamental resource. We strongly agree that characterizing the resource to support sound water supply and protection decisions is a necessary step to plan for the future. We strongly support this bill and urge this body to move this authorization forward.

Coordination with Vermont in the proposed language is a necessary step to create a meaningful partnership between the State and the Federal Government. Local control is an important element of the Vermont ideal, and the State can work best with USGS to bring the operational considerations and results of the study to our towns and municipalities. It is recognized that such a study will take financial resources and personnel to complete.

Sixty-six percent of Vermont's population depends on groundwater for their drinking-water supply, including municipalities, fire districts, agricultural, industrial, commercial users, and homeowners. Fisheries habitat is supported by groundwater discharge to surface waters.

For future supplies, the State has little knowledge of the location of potential high-yield aquifers. Natural contamination in well water from uranium, radium, and arsenic that exceeds public health standards is an issue in a number of geologic settings in Vermont. Information on where these contaminants can be found is needed statewide.

Vermont has seen well-interference problems in tight geologic formations, made worse by periods of drought. These areas need characterization. Resource vulnerability can vary, depending on the nature of the geology overlying groundwater resources, and this is little characterized in relation to aquifers.

In Vermont, the primary aquifers are saturated sand and gravel, and water in fractured bedrock. The State's geology comprises the vessel that contains Vermont's groundwater. Surface water and groundwater are connected. Wells in saturated sand and gravel can meet larger municipal demands, 500 to 1,000 gallons per minute in our State. Domestic users often obtain water from drilled wells in bedrock that can supply as little as 2 gallons per minute to meet family demand.

In recent years, with some town partners, the Vermont Geological Survey has focused on characterizations of the surficial and bedrock geology to derive groundwater planning maps at a town scale. These town-by-town studies are progressing slowly, as limited resources are available to complete the work. The Vermont Geological Survey has completed some localized detailed research and mapping in radioactivity, arsenic, and radon, also in radioactivity in cooperation with USGS. Comprehensive investigations are needed to protect the public health. Nitrate in groundwater studies are underway next to a large farm to ultimately provide best—information for best nutrient management practices in relation to protecting groundwater. And, as you heard, the USGS and the Vermont Geological Survey are already cooperating to produce a new State bedrock geologic map which would apply to this issue.

A 2003 report that the Vermont legislature identifies three levels of study to develop groundwater and aquifer maps of increasing accuracy. Each level builds upon the previous level, using sophisticated tools, technical expertise and scientific evaluation. The report concludes that the most obvious obstacle to completing aquifer mapping statewide is the lack of dedicated funding sources for employing people to analyze and compile the data, and to work with partners and purchase scientific equipment.

In conclusion, the State's compelling interest is that this valuable and necessary groundwater resource be understood to protect existing uses, plan for growth, and ensure for the sustainability of the health and well-being of Vermonters. In the present information vacuum, towns in the State will be hard-pressed to balance economic needs against protection of the resource. This bill is that first necessary step to create the information template for future planning. Both the USGS and the State of Vermont bring necessary expertise to the effort. A strong partnership with USGS that takes the needs of Vermont into account is a beneficial and necessary step to meet the goals of S. 2054.

Thank you, Senator Murkowski, for this opportunity. We're glad to help in any way as you deliberate in this regard.

Senator MURKOWSKI. Thank you, Mr. Becker. I appreciate it.

Dr. Lytle, welcome.

STATEMENT OF C. MEL LYTLE, WATER RESOURCE COORDINATOR, SAN JOAQUIN COUNTY, CA

Dr. LYTLE. Good afternoon, Madam Chairman and committee members.

I'm Dr. Mel Lytle, the water resource coordinator for San Joaquin County, California. On behalf of the county and the Mokelumne River Water and Power Authority, I'm here today to

testify in support of H.R. 3812, the bill sponsored by Chairman Richard Pombo.

Historic shortfalls in surface water supply in San Joaquin County have led to an overreliance on their diminishing groundwater resources. As a result, the county, its cities, and water agencies are actively engaged in a stakeholder-supported effort to secure additional water resources to decrease groundwater overdraft, slow saline intrusion, and improve water-supply reliability and environmental protection in the region.

Recognizing the need for a regional approach, this consensus-based effort has completed significant water management planning, including recently adopted countywide water management plans, groundwater basin management plans, and will complete an integrated regional plan by the end of 2006. From this effort, the Mokelumne River Regional Water Storage and Conjunctive Use Project, locally known as the "MORE WATER Project," has been recognized as a major new element of the region's Integrated Conjunctive Use Program.

H.R. 3812 will authorize the Department of the Interior to also participate in this effort on a cost-sharing basis to complete the necessary studies and environmental protection.

MORE WATER centers on the development of new facilities to capture floodwaters from the Mokelumne River for beneficial use, including groundwater recharge in the eastern San Joaquin Basin. Through improved conjunctive management, the basin's underground storage potential of approximately 2 million acre-feet could be realized. In addition, with water banking, MORE WATER could provide greater regional benefit and permit other agencies the ability to store and use excess water from the underlying basin.

MORE WATER has gained considerable regional attention and was foundational in the formation of the Mokelumne River Forum, a California Department of Water Resources-sponsored collaborative effort comprised of nearly 20 stakeholder agencies that reach from the river's headwaters in the high Sierra Nevada Mountain range, through Alpine County, downstream to Amador, Calaveras, and San Joaquin Counties, and on out into the greater East Bay area.

The stakeholders have elected to participate in this collaborative effort to develop mutually beneficial and regionally focused projects to—and programs to meet water supply and related needs from the Mokelumne River.

Under the Department of the Interior's Water 2025 Program, MORE WATER could set the standard of success for the forward-looking focus in the water-deficient areas of the Western United States. MORE WATER is consistent with the program's key tools, including removal of institutional barriers and interagency cooperation, conservation, efficiency in markets, and improved technology.

We urge your support for the passage of H.R. 3812 in a timely manner. This effort will establish a significant working relationship between the county, the Bureau of Reclamation, and a wide range of regional stakeholders to ultimately provide new infrastructure to improve water resource management and sustainability for California's future.

Thank you. That concludes my prepared remarks.

[The prepared statement of Dr. Lytle follows:]

PREPARED STATEMENT OF DR. C. MEL LYTLE, WATER RESOURCE COORDINATOR, SAN JOAQUIN COUNTY, CA, ON H.R. 3812

LOCAL AND REGIONAL WATER RESOURCE ISSUES

San Joaquin County is located in the heart of the vibrant agricultural communities of the Central Valley of California. It is uniquely situated at the confluence of the Sacramento and San Joaquin Rivers, the Bay-Delta, the source of water for two-thirds of California's population, and several eastside rivers flowing from the Sierra Nevada Mountains (Figure 1).* Grape production, dairy products and other crops are the major agricultural commodities that come from fields surrounding the burgeoning Cities of Stockton, Tracy, Lodi, Manteca, Lathrop, Mountain House and Escalon. In all, approximately 700,000 residents call the County home. Of late, population trends are dramatically increasing and are expected to double by 2040 due principally to migration from the San Francisco Bay Area and other areas of the State.

Currently, the necessary water supplies to sustain the County's diverse population, the $1.5 billion agricultural economy, other industry, and sensitive habitats in the Delta are not adequate. Opportunities to develop new water supplies are heavily constrained by current uses and availability including water that has been developed for use out of the Region by either the Central Valley or State Water Projects. The County is currently dependent on groundwater for 60% of its supply. This dependency has impacted the vital groundwater basin, which is seriously over drafted by 200,000 acre-feet per year. The California State Department of Water Resources has designated the Eastern San Joaquin Basin a critically over drafted basin (DWR Bulletin 118). This has placed the groundwater basin and the City of Stockton's drinking water supply in jeopardy due to intrusion of saline groundwater underlying the San Joaquin River Delta. Within the Delta, water quantity and quality is often inadequate for agricultural and urban users, limiting the types of crops that can be grown and lowering crop yields of those that are grown. In addition to local threats to water supplies, the County has been adversely affected by changes in State and Federal policies, which continue to erode existing supplies and have upset longstanding plans to develop new supplies. As a result, new water supply is vital to help sustain social, economic and environmental viability in the County and surrounding Region.

REGIONAL WATER SUPPLY PLANNING

Independently, county water districts and cities have found it difficult to wield the political and financial power necessary to implement large scale water supply projects to mitigate the conditions of groundwater basin overdraft. Recognizing the need for a regional approach to water supply planning and implementation and with the aide of local, State and Federal representatives and a well represented stakeholder group consisting of over 25 agencies, the County in 2002 adopted the San Joaquin County Water Management Plan (WMP). The purpose of the WMP was to define the extent of. groundwater overdraft and identify possible solutions and strategies necessary to secure supplemental water supplies using a consensus-based collaborative process.

In addition, the Northeastern San Joaquin County Groundwater Banking Authority (GBA) was organized to employ a consensus-based approach in solving this problem and with its goal to develop ". . . locally supported groundwater banking and recharge projects that improve water supply reliability in San Joaquin County . . . ." Collaboration amongst the GBA member agencies has strengthened the potential for broad public support for conjunctive management activities, allowed members to speak with one regional voice as well as increased their ability to obtain local, state, and federal funding. Table 1 lists the member agencies of the GBA.

In 2004, the GBA adopted the East San Joaquin Basin Groundwater Management Plan (GWMP) to enhance and coordinate existing groundwater management policies and programs and to develop new policies and programs to ensure the long-term sustainability of groundwater resources in San Joaquin County. The GWMP establishes four basin management objectives (BMO) that relate to groundwater levels, groundwater quality, surface water quality and flow, and inelastic land subsidence. To meet the established BMO's, the GBA member agencies have defined the Eastern

*All figures have been retained in subcommittee files.

Basin Integrated Conjunctive Use Program including possible new supply from the Delta, Calaveras, Stanislaus, American and Mokelumne Rivers together with Stockton East Water District and the U.S. Army Corps of Engineers—Farmington Groundwater Recharge Program, in order to develop new and affordable surface water supplies for beneficial use and groundwater recharge of the underlying groundwater basin.

Table 1.—MEMBER AGENCIES OF THE NORTHEASTERN SAN JOAQUIN COUNTY

- Groundwater Banking Authority
- City of Stockton
- City of Lodi
- Woodbridge Irrigation District
- North San Joaquin Water Conservation District
- Central San Joaquin Water Conservation District
- Stockton East Water District
- Central Delta Water Agency
- South Delta Water Agency
- San Joaquin County Flood Control and Water Conservation District
- California Water Service Company
- San Joaquin Farm Bureau Federation

The *Mokelumne River Regional Water Storage and Conjunctive Use Project* (MORE WATER) is a major new supply component of both the WMP and the GWMP development efforts. Fundamentally, conjunctive use and groundwater recharge is the major focus of the MORE WATER Project. Under a proposed project alternative, the Project could develop a new off-stream storage facility to capture flood waters from the Mokelumne River and regulate those flows to an integrated system of groundwater banking and recharge projects to help meet San Joaquin County water demands (Figure 2). In addition, there is a potential for MORE WATER to provide substantial regional benefits because of its strategic proximity to the Delta and East Bay Municipal Utility (EBMUD) facilities. This conjunctive use program could be utilized to provide critical year flows to enhance water supply reliability, fisheries and maintain water quality standards to help meet CALFED Bay-Delta Program objectives.

MORE WATER PROJECT BACKGROUND

In 1990, San Joaquin County acting as the Mokelumne River Water and Power Authority (MRWPA) filed a water right application with the California State Water Resources Control Board (SWRCB) for unappropriated wet year flows (flood waters) on the Mokelumne River. The application cited three project concepts including a reservoir at Middle Bar, an off-stream reservoir at Duck Creek or direct diversions off the lower Mokelumne River between Camanche Reservoir and Interstate 5. In addition, the MRWPA obtained a Federal Energy Regulatory Commission (FERC) Preliminary Permit for the proposed Duck Creek Reservoir, which allows the Authority to study the power generation potential at the proposed project site.

Initial Studies—in 2003, the MRWPA conducted an initial review of historic project concepts together with several other project alternatives that included a wide array of ideas ranging from a new on-stream reservoir, to desalinization, conservation and wastewater recycling. Additionally, the Authority began work to devise a regulatory strategy that would satisfy the requirements of the SWRCB, CEQA, NEPA, and all applicable permits to develop a preferred project alternative. By capturing flood flows, studies have shown that substantial supplies could be made available from the Mokelumne River.

Thus far, efforts to complete the initial project investigations have been accomplished through local cost-sharing agreements between the Authority and the Cities of Stockton and Lodi. Other local and regional support for the MORE WATER Project has come from the GBA member agencies and others.

Next Steps—at present, Interior's Bureau of Reclamation Mid-Pacific Region (Bureau) is nearing completion of the initial MORE WATER Appraisal Study. The MRWPA welcomes the Bureau's involvement in the development of the preferred MORE WATER alternative that will help meet the needs of the Region while being sensitive to the rights of other water users and ensuring that the Mokelumne River will provide a source of pride and joy for years to come. The principal goal of feasibility analysis for MORE WATER will be to identify opportunities to capture flood flows from the Mokelumne River for groundwater storage and beneficial use consistent with objectives identified in the WMP, GWMP and the requirements devel-

oped for the Department of the Interior. On a parallel track to the feasibility analysis, the MRWPA in association with. the Groundwater Banking Authority will complete a programmatic environmental impact report (EIR) to support the East Basin Conjunctive Use Program. Subsequently, a project specific EIR and environmental impact statement (EIS) will be prepared for the MORE WATER preferred alternative. The approach is indicative of the MRWPA's commitment to satisfying the California Environmental Quality Act, the National Environmental Protection Act, and the Federal Clean Water Act.

REGIONAL COOPERATION

MORE WATER has gained considerable regional attention and was foundational in the formation of the Mokelumne River Forum, a collaborative effort comprised of 16 stakeholder agencies that reach from the River's headwaters in Alpine County downstream to San Joaquin County and the greater East Bay Area. The stakeholders have elected to participate in this collaborative process to develop mutually beneficial and regionally focused projects to meet water supply and related needs from the Mokelumne River. Stakeholder input is genuinely welcomed in all phases of MORE WATER and is the backbone of regional planning efforts undertaken in San Joaquin County.

MORE WATER BENEFITS

MORE WATER will provide water to decrease groundwater overdraft, prevent saline groundwater intrusion, and to improve water supply reliability and environmental protection for the Region. MORE WATER is an integral component to the Eastern Basin Integrated Conjunctive Use Program as a supply and groundwater recharge element.

Consistency with CALFED and Department of the Interior's Water 2025 Program Objectives—while not a component of the CALFED Program, MORE WATER is consistent with CALFED objectives and will provide information important to water resource and environmental protection efforts being conducted under the CALFED aegis. The CALFED Record of Decision outlines a myriad of program elements intended to implement the goals and objectives of the CALFED Program. MORE WATER is consistent with the following Program elements:

- *Water Storage*—Conjunctive use programs hinge on the ability for entities to capture surface water when available for direct use and groundwater recharge. Groundwater recharge is an integral part of the success of MORE WATER.
- *Ecosystem Restoration*—The Mokelumne River system is a source of pride for the San Joaquin County Community. Stakeholder led efforts such as the Lower Mokelumne Restoration Project to replace the aging Woodbridge Irrigation District Diversion Dam with anadromous fish friendly fish screens and ladders and the completion of a new fish hatchery at Camanche Reservoir by EBMUD and the California Department of Fish and Game are major successes for the Region. MORE WATER will be developed to maximize enhance or create ecosystem restoration benefits like these examples where feasible.
- *Watershed Management*—The Mokelumne River Watershed is represented by water agencies, irrigation districts, grass roots organizations, interest groups, and authorities such as the Mokelumne River Forum and the Mokelumne River Authority. The MRWPA will continue to promote MORE WATER to these groups and will coordinate formal consultation with federal and State fisheries and resources agencies and other non-governmental organizations.
- *Water Transfers*—Groundwater banking in San Joaquin County has the potential to provide regional and statewide agencies the ability to store excess water in the underlying basin. San Joaquin County's proximity to the Sacramento-San Joaquin Delta would facilitate water transfers and exchanges of banked water to areas served by the East Bay, State Water Project and the Central Valley Project. Banked groundwater could also be used for fisheries needs under the CALFED Environmental Water Account. The underground storage potential of Eastern San Joaquin County is estimated at approximately 1.5 to 2 million acre-feet, enough to supply 12 million people for one year. MORE WATER would provide the necessary infrastructure and improvements necessary to utilize a portion of this resource.
- *Flood Control*—The capture of flood flows is a major objective of MORE WATER. Through the use of a new off-stream reservoir on Duck Creek, the effects of flooding locally and in the Delta could be lessened during periods of high water.

Under the Department of the Interior's Water 2025 Program, MORE WATER could be a new standard of success for the "forward-looking focus" in water deficient areas of the Western United States. MORE WATER is consistent with the following Program Key Tools:

- *Removal of Institutional Barriers and Inter Agency Cooperation*—MORE WATER is a high priority project for the Region. Extensive public outreach is a major component to the success of MORE WATER. Thus far, MRWPA staff has met with numerous State and Federal regulatory agencies and are also participants in numerous stakeholder led watershed group efforts like the Mokelumne River Forum to resolve differences and find mutual benefit in the Mokelumne River watershed.
- *Conservation, Efficiency, and Markets*—MORE WATER is currently being developed as part of a regional conjunctive use project to enhance urban, agricultural, and environmental water supplies. MORE WATER will use affordable approaches to capture, use, and recharge water as part of the Eastern Basin Integrated Conjunctive Use Program. MORE WATER infrastructure and improvements will help the Region to secure more reliable water supplies through the restoration of the underlying basin and potentially the establishment of a regional groundwater bank that is accessible to water markets throughout the State and in particular The East Bay and South of Delta Water Users.
- *Collaboration*—MORE WATER and other regional planning efforts undertaken by San Joaquin County employ a consensus-based approach to water supply planning and development. Recently, successful collaborative efforts in the County include the Water Management Plan and the Groundwater Management Plan that involved over 40 local, State and Federal agencies. Stakeholder input is welcome during all phases of the MORE WATER process.
- *Improved Technology*—MORE WATER and other similar conjunctive use projects will require extensive knowledge of the underlying Basin. San Joaquin County is committed to establishing a science program for Basin research and monitoring. Groundwater Banking Authority stakeholders are currently working together with the California Department of Water Resources and the U.S. Geological Survey on a $2.5 million, 5-year joint study to determine the source and extent of saline intrusion in the Basin.

Should the Senate support the passage of H.R. 3812, the MRWPA would work with the Department of the Interior to complete feasibility studies together with the necessary environmental documentation and permitting support documents for the MORE WATER Project.

Senator MURKOWSKI. Thank you, Dr. Lytle.

And now, let's go to Ms. Pollman Rogers.

Ms. POLLMAN ROGERS. Thank you.

STATEMENT OF DARLA POLLMAN ROGERS, RITER, ROGERS, WATTIER & BROWN, LLP, PIERRE, SD, ACCOMPANIED BY JOHN COOPER, SECRETARY, SOUTH DAKOTA DEPARTMENT OF GAME, FISH, AND PARKS

Ms. POLLMAN ROGERS. Madam Chair, Senator Johnson, good afternoon.

My name is Darla Pollman Rogers. I am an attorney engaged in the private practice of law in Pierre, South Dakota. And I am here today to testify on behalf of preferential leaseholders who live in the Pierre Canal and Blunt Reservoir parts of South Dakota.

I'm also privileged to introduce to you today the secretary of the South Dakota Game, Fish, and Parks, John Cooper. We have worked very hard together in negotiations to present you with the language in S. 2205, and we are both here to answer any questions and give any assistance we can to this committee to promote this cause.

My job today, though, is to urge you to focus for a minute on the preferential leaseholders and to correct what I perceive to be an ongoing injustice that has occurred to these leaseholders as a result

of the Government's actions, not only in acquiring private land, but also in their prolonged ownership of private land for a public project that is now dead, and actually has been for many years. And I am here to urge you to correct the injustices by passage of S. 2205, or something similar thereto.

Before I describe these injustices to you a little—in a little more detail, I would like to point you to the map that I have on the easel here, because I think sometimes a picture is worth a thousand words. The picture on the—or the map on the easel now, the red portion, depicts the Pierre Canal. And, as you can see, it extends from the Oahe Dam—the water was to go down that red canal, traverse all that way, and then go over to the other map that's on the floor in front of you, which depicts the Sully County—or the Blunt Reservoir Project. And the Blunt Reservoir, then, is where the—at least part of where the land was to actually be—the reservoir was to be on that land, and then the land from—or the water from there would be pumped out for irrigation purposes.

The Oahe Project was actually authorized by Congress in 1968, and from 1973 to 1977 is when the Bureau of Reclamation acquired these lands from the Pierre Canal owners and also the Blunt Reservoir owners. In 1977, the funds were not renewed, so the project, at that point, was dead. The Bureau acquired approximately 19,000 acres along the canal and in the Blunt Reservoir area.

The first injustice that I want to discuss briefly is the actual acquisition of the land. And I want to emphasize to you today that my clients, who owned most of that 19,000 acres of land, were not willing sellers. The land was acquired under threat of condemnation. And as part of the enticement to sell, these landowners were told, No. 1, that they could lease the land back at the same rate until the project went through, and, No. 2, that they could buy their land back for the same price if the project did not materialize. Neither one of those promises have been fulfilled.

And that leads me to the continuing injustice. We are now 30 years down the road. The preferential leaseholders have diligently tried to reacquire their land. And so, now you are faced with, How do you correct the injustice? How do you right these wrongs in this prolonged period of land ownership by a public entity?

And I would suggest to you what we have tried to provide for you in S. 2205 is a possible solution. What the bill will do, bottom line, is, No. 1, it will give the preferential leaseholders an option to buy back the land. And that's approximately 14,000 acres of this land. It will give the rest of the land, the nonpreferential lease land, to the Department of Game, Fish, and Parks for purposes of wildlife mitigation.

I would remind you, however, that the terms of S. 2205 were negotiated back in 2001, and land prices have doubled between 2001 and 2006. The goal here is to give the preferential leaseholders a meaningful option to buy back the land, so it needs to be affordable so that they can do so.

I would like to just quickly wrap up with a personal example. My father, who is 83 years old, sold his land—some of his land to the Bureau in 1973. And, even at his age, he's still very intricately involved in our farming operation. He is still waiting for an opportunity to buy back his land. Time is running out for him. It's run-

ning out for all of the preferential leaseholders. I would urge you to act now to correct this injustice.

Thank you for allowing me to testify. I would ask that my written testimony and exhibits be made part of the record. And we would be happy to answer any questions. Thank you.

[The prepared statement of Ms. Pollman Rogers follows:]

PREPARED STATEMENT OF DARLA POLLMAN ROGERS, RITER, ROGERS, WATTIER & BROWN, LLP, REPRESENTING PREFERENTIAL LEASEHOLDERS WITHIN THE BLUNT RESERVOIR AND PIERRE CANAL, ON S. 2205

Members of the Subcommittee, my name is Darla Pollman Rogers. I am an attorney in private practice in Pierre, South Dakota, and I represent preferential leaseholders in the Blunt Reservoir and Pierre Canal areas. Thank you for the opportunity to present testimony to you on behalf of the preferential leaseholders.

The preferential leaseholders strongly support S. 2205. Since becoming aware of legislative proposals concerning the Pierre Canal and Blunt Reservoir lands, as a group, the preferential leaseholders have spent many hours negotiating for and providing input into S. 2205 and its predecessors. Please allow me to give you a brief background of the history surrounding the long struggle this small group of landowners has had in attempting to regain ownership of their land.

The Blunt Reservoir land and the Pierre Canal land were originally part of the Oahe Unit, James Division, of the Oahe Irrigation Project (hereinafter called the "Oahe Project"), which was authorized as a component of the Pick-Sloan Plan to provide multi-purpose use of the Missouri River water in South Dakota. The Oahe Project was authorized and funded by Congress nearly 30 years ago, but the project never materialized. The government did, however, acquire approximately 19,000 acres of land in Hughes and Sully Counties for construction of the Pierre Canal and Blunt Reservoir. All of these acres have been removed from county property tax rolls since 1977, as the land has literally been in federal "limbo." Of the 19,000 acres, approximately 13,700 acres are preferential lease acres (approximately 25 original landowners or descendants who still operate the land as preferential leaseholders) and 5,300 are nonpreferential lease acres (original land-owners subsequently relinquished their rights to lease the land, which is now operated by approximately 9 nonpreferential leaseholders).

I used the word "acquire" deliberately, because the circumstances of the acquisitions were, at best, misleading. The landowners did not want to give up land that was an integral part of their operations. (See Exhibit 1,* one map of Pierre Canal; two maps of Blunt Reservoir area.) The original landowners were in fact "enticed to sell their land." (See Exhibit 2, May 27, 2005, letter of Governor Rounds.) They were told that they could sell their land to the Government voluntarily, or it would be condemned. If they sold voluntarily, they could lease the land back from the Bureau of Reclamation (which administered and managed the land), at a lease rate that would not increase, until the project was completed (thus the term "preferential" leaseholders). These landowners were also told that if for some reason the project was not completed, they would be able to purchase their land back at the same price they were paid for it.

You may ask how I know what representations were made to the original landowners. I know because they have told me, and I know because I was personally involved. My father, Leonard Pollman, was an original landowner, and we are preferential leaseholders today. In fact, my father's case is a good example of the unfulfilled promises made to the original landowners at the time they gave up their land. My father did not want to go through costly condemnation litigation, so he reluctantly agreed to sell his land to the government, after he was told he could lease it back at the same lease rate until his land was needed for the project. (See Exhibit 3.) In the event the land was not used, he was told he could buy it back for the same price for which he sold it. He asked the representative from the Bureau to please put that assurance in writing. See Exhibit 4, which is a copy of the written "assurance" of the Bureau representative, Arthur E. Mischke, that the lease rate would remain the same. The original lease, dated December 19, 1973, was for $3,700.00. The "maximum rate" of $3,700.00 has steadily increased over the years, and today is nearly double that amount. (See Exhibits 5 and 6.)

Similar representations were made to other landowners at the time of sale. See Exhibit 7, which is another "assurance" made by a Bureau representative to Duane

*All exhibits have been retained in subcommittee files.

and Barb Winkler, landowners in the Blunt Reservoir area. As in the case of Mr. Pollman, the annual leaseback rate has more than doubled over the years, yet their Land Purchase Con-tract has not become null and void.

It is important to know the sincere and honest intentions of these landowners. They did not wish to be uncooperative, but they wanted to protect their interests, for as long as possible, in the land they were in essence being forced to sell. (See Exhibit 8, letter of preferential leaseholder Aubrey R. Smith.)

That is still the intent of these same landowners today. After all these years, they are still trying to reacquire their land. While most of them have leased the land since the government acquired it, the lease rates have not remained the same, but have increased dramatically over the years. And to date, these landowners have still not had the opportunity to buy back their land, as promised.

As early as 1981, deauthorization of the Oahe Project was considered, and these same landowners testified at a hearing in front of the Subcommittee on Water and Power of the Committee on Energy and Natural Resources, United States Senate, as follows:

> Their (the original landowners') position is that they should have the first chance to buy back their land . . . This dispositional scheme must be written into the deauthorization legislation itself.

The landowners were supported in their position by the South Dakota Legislature, which passed a Concurrent Resolution in 1980 favoring disposing of the land acquired for the Oahe Project by first offering it to the original landowners. Unfortunately, the matter was not resolved in 1981.

The issue of deauthorization of the Oahe Project resurfaced again in January of 1998, in the form of S. 1341. In that bill, all the land was to have been transferred to the State of South Dakota for wildlife habitat mitigation (See Exhibit 9). John Cooper, the Secretary of the South Dakota Department of Game, Fish and Parks, sent a letter to the preferential leaseholders (among others) concerning deauthorization of the Pierre Canal and Blunt Reservoir features of the Oahe Project and transferring those lands in Fee Title to the State of South Dakota for wildlife mitigation. (See Exhibits 10 and 11.) The landowners were invited to a public hearing in late January of 1998, and many landowners attended the meeting. They were told, in essence, that acquisition of the Pierre Canal and Blunt Reservoir by South Dakota Game, Fish and Parks was part of a much larger effort to re-store wildlife habitat that was destroyed by the construction of the Missouri River Dam. The ultimate effect of S. 1341 would have been that these preferential leaseholders would have lost their land, probably within a ten-year period. Preferential leaseholders ex-pressed their strong opposition to S. 1341, as did then Representative John Thune. (See Exhibits 12 through 16.)

So the struggle began all over again. The preferential leaseholders had numerous meetings with each other, with Game, Fish and Parks, and with their South Dakota Congressional delegates. Senator Daschle understood the long struggle of these landowners and their unique situation and agreed to champion their cause. S. 1178 was the result of said meetings, and it was introduced to you in October of 1999. We supported S. 1178, but unfortunately, it did not survive the political process.

Since the defeat of S. 1178, the meetings have continued among landowners, Game Fish and Parks, South Dakota Congressional delegates, the Commissioner of School and Public Lands, and the Bureau of Reclamation. With Secretary John Cooper acting as facilitator, we stayed in touch intermittently in 2000, and then held a series of working sessions in 2001. The result of these efforts was S. 1028. Under S. 1028, the Blunt Reservoir feature of the Oahe Project would have been deauthorized. The preferential lease land was to have been transferred to the South Dakota Commission of School and Public Lands, and the preferential leaseholders in the Blunt Reservoir and Pierre Canal areas would have had the opportunity to buy back the land that was acquired from them for a project that never materialized. Nonpreferential lease parcels, unleased parcels, and preferential lease parcels that were not repurchased by the original landowner (or his or her descendants) were to have been conveyed to Game, Fish and Parks for the purposes of wildlife habitat mitigation.

S. 1028 was a better bill than its predecessors, because in this round of negotiations, the interested parties tried to resolve all concerns and questions that were articulated with the introduction of S. 1178. For example, the terms "nonpreferential leaseholder" and "preferential leaseholder" were redefined to make sure there were no arguments or questions about who fit into the categories. The issue of liability was addressed in S. 1028, in response to concerns raised by the Bureau. The Bureau participated in the working sessions and submitted the liability language included in the bill. Revisions were made in response to concerns of county

officials. Funding clarifications were made in response to concerns of the Commissioner of School and Public Lands. A perpetual easement along the Pierre Canal land for future water development was added to appease water development concerns.

Unfortunately, S. 1028 did not pass. What you have before you today, however, is S. 2205, which is in essence identical to S. 1028. Preferential leaseholders have the option to buy back their land. Long-term funding mechanisms are included in an attempt to make the buy-back a viable option for landowners. Non-preferential leaseholders also have a "trade" opportunity, if the land they currently lease is an integral part of their home or business.

I would point out, however, that the preferential leaseholders have concerns about the valuation provisions of the bill. As currently drafted, Section 2(d)(4) of S. 2205 provides that the purchase price will be based upon a fair market value appraisal of the land for agricultural use. The preferential leaseholders agreed to that provision in 2001, when all the parties sat at the table and negotiated the terms of this bill's predecessor. From 2001 to the present, the value of farmground in Hughes and Sully Counties has nearly doubled. Farmground located in the Blunt Reservoir vicinity sold for $400.00 to $450.00 per acre in 2001; in 2005, similar property sold for $750.00 to $844.00 per acre. Because of the lapse in time in getting this issue resolved, use of 2001 valuations, or granting preferential leaseholders a discount on the fair market value, may be the only way to make the buy-back option meaningful for some of the preferential leaseholders who lost thousands of acres of land to "public use."

Many injustices have occurred to the preferential leaseholders throughout this agonizing process. First, their land was taken from them based upon false promises and misrepresentations. The misrepresentations continued through the leasing process that transpired over the next 30 years. But perhaps an even greater injustice is the prolonged period of time for which government held this private land, even though the public project for which the land was originally acquired has been dead for years. And now, despite the fact that representatives from the Bureau participated in the negotiations of the language of this bill and agreed to the terms, the Bureau appears to oppose the return of the land to the preferential leaseholders.

S. 2205 is a compromise. Game, Fish and Parks wanted all the land for wildlife mitigation; leaseholders wanted all the land returned to private ownership. This compromise is the end result of countless hours of drafting and redrafting, which has come about as the result of input, negotiations, and compromise of all parties directly affected by deauthorization of the Blunt Reservoir feature of the Oahe Project. A true consensus has been reached in this bill. My clients, this small group of preferential leaseholders who have struggled all these years to have the opportunity to repurchase their land, support S. 2205. It is an appropriate resolution of a long-standing situation.

I will add this. My father is now 83 years old. He is still actively involved in our family farming operation. While he has had many promises made to him and broken, his dream is to reacquire his land during his lifetime.

On behalf of my father and the other preferential leaseholders of the Blunt Reservoir and Pierre Canal, I urge your support and passage of S. 2205.

Thank you for the opportunity to present this testimony. I am happy to try to answer any questions you may have.

Senator MURKOWSKI. Thank you. And, yes, all the exhibits you've mentioned, and your full testimony, will be included, as well as that of any of the rest of you.

Just a few very quick questions for the members of this second panel here, starting with you, Mayor Krambeck. Both Senator Johnson and I brought up the question to Mr. Robinson, in terms of the anticipated cost to the city if you did have to go through a licensing process. You indicated in your comments that it could theoretically approach millions of dollars. Do you have anything more specific, in terms of what you anticipate that cost might be? Have you looked at that? Or are we just, kind of, estimating that it's going to be a considerable amount?

Mr. KRAMBECK. From everything that I can gather from all the information that we have with the FERC licensing, it could most definitely get into the millions of dollars.

Senator MURKOWSKI. And for a community like yours, what does that mean to you?

Mr. KRAMBECK. It would be very much a hardship for us, and, as the testimony stated, a possibility of having to mothball the project.

Senator MURKOWSKI. Thank you.

Mr. Becker, you've indicated in your comments that there's a fair amount of cooperation working with the USGS on a groundwater study and analysis within the State. What would you intend to identify as a priority area of study in cooperation, or in conjunction, with USGS if you're able to move forward with this groundwater study?

Mr. BECKER. Well, I mentioned local control in my testimony, and I think that we would—if we did come up with a program for the State, driven by this bill, that we would need to check back with our citizens and set up a kind of a protocol or maybe a priority system by which we could go through that system, certainly near growth areas, issues like that, where we would see growth with potential conflict—looking for water, for growth in economic development, as well as protection. So, I think that would kind of—just in a general way, how I might think about it.

Senator MURKOWSKI. Thank you.

And, Dr. Lytle, what progress have you made in acquiring the rights to the water the proposed project would provide? How far along are you in that?

Dr. LYTLE. What progress we've made? The actual feasibility study that we're proposing to work, in cooperation with the Bureau of Reclamation, is the feasibility that'll allow us to secure those water rights. But, as interest in—as far as the local and regional groups that are involved in this project, we've taken it upon ourselves to begin that process by completing the initial phase—Phase 1 reconnaissance study and a number of other additional water rights investigations. But we're looking to H.R. 3812 to provide that cost share that'll allow us to complete it and move it forward.

Senator MURKOWSKI. But, at this point, you're still in the preliminary phases?

Dr. LYTLE. That's correct.

Senator MURKOWSKI. And, finally, to you, Ms. Pollman Roger, you mentioned the preferential leaseholders. Do you know of any nonpreferential leaseholders who would somehow be disadvantaged by the conveyance to the State Game and Fish Department?

Ms. POLLMAN ROGERS. Yes, Madam Chair. We have tried—some of the preferential leaseholders are also nonpreferential leaseholders. And so, some of the land, the nonpreferential land, is also very much part of their operations today. We have included a provision in the bill to try to address that, and that gives nonpreferential leaseholders in that particular situation the opportunity to go somewhere else in the State of South Dakota to find land that could be used for wildlife mitigation, acquire that, and then trade the South Dakota Game, Fish, and Parks for that piece, so that they can keep their operations intact. And that would be pursuant to consent of both parties. But I am sure that the Department of Game, Fish, and Parks is willing to work with these people who have the land as part of their operations now.

Senator MURKOWSKI. Good. Thank you.

Senator Johnson, questions?

Senator JOHNSON. Well, I want to thank the entire panel for your observations on the various bills before the committee. It's all very helpful. I have just a few questions for my South Dakotans.

Mayor Krambeck, the project at Spearfish has been in continuous operation since 1912. During these past almost 100 years, the project has been a clean source of renewable energy and assured a stable water supply to the city of Spearfish, created recreational opportunities within the city, and supplied water to the D.C. Booth National Historic Fish Hatchery. Although these multiple uses clearly strike a balance in the public interest, in the event that S. 1577 becomes law, do you foresee any operational changes at the project?

Mr. KRAMBECK. Yes, Senator Johnson. I feel—under public ownership, I think that there could be many positive changes. And one positive change is the agreement that I referred to in my testimony with the Spearfish Canyon Homeowners Association. This was one of the groups that I met with that basically are one of the stakeholders within the canyon, and we have a potential agreement basically signed with them to allow more water flow in some of the lower reaches of the canyon when the water flows are at certain levels. And so, this would be a positive thing. And I think under private ownership, when it was under Homestake, that they wouldn't allow this so the studies could be done. And our city council also, in 2004—I don't remember the resolution number, but we did a resolution basically saying that we agree that this aquifer recharge area should be studied, and we will agree to study it.

In fact, I was on vacation last spring, and received a phone call from my public works director, and she said, "Jerry, we've got about 120 cubic feet per second in the creek, and USGS wants to do some studying this week." I said, "Go for it." I said, "Turn the gates open and let some water down, and let the—let's do what we can do."

So, I feel, under public ownership, yes, that these things could be accomplished.

Senator JOHNSON. Now that the city of Spearfish has assumed ownership of the hydroelectric facility, how has it made certain that the project is operated and maintained in a safe and efficient manner? And does the city have the expertise to run this facility?

Mr. KRAMBECK. We were able to, fortunately, hire two of the operators that Homestake Mining Company had for years. One of them was about a 35-year employee, and he's retired now and working part time for us. And the other one was actually the foreman of the whole mine operation, their electrical foreman. So, we brought expertise in with us, and they are actually operating the power plant, the same folks.

And as for any safety issues, or anything like that, that may come up with the dams and so forth, I would just like to say that we're very much aware of these types of issues, and if either one of the dams broke—one, we refer to as the Maurice Dam—that water would just go down Spearfish Creek, and that's not a flood situation; the other one is referred to as Forebay, and that water

also, if that dam would breach, would actually end up back into Spearfish Canyon. So, there aren't any issues there with safety.

Senator JOHNSON. Well, thank you, Mayor Krambeck.

And, Madam Chairman, I have a statement from the Spearfish Canyon Society that I'd like to submit for the record to the committee.

Senator MURKOWSKI. Absolutely. It'll be included.

[The statement of the Spearfish Canyon Society follows:]

SPEARFISH CANYON SOCIETY,
Spearfish, SD, March 26, 2006.

Hon. TIM JOHNSON,
U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSON: On behalf of the board of trustees of the Spearfish Canyon Society, we thank you for the opportunity to submit our attached comments on Senate Bill 1577 contained within Miscellaneous Water and Power Bills to the Water and Power Subcommittee of the Senate Energy and Natural Resource Committee.

If you have any questions, please feel free to contact us.

The very best,

JERRY J. BOYER,
President & Trustee.

[Enclosures.]

WRITTEN STATEMENT TO THE WATER AND POWER SUBCOMMITTEE OF THE SENATE ENERGY AND NATURAL RESOURCE COMMITTEE

INTRODUCTION

My name is Jerry J. Boyer. I am president and trustee of the Spearfish Canyon Society. The Society is a not-for-profit public charity whose mission is to establish a legacy of Spearfish Canyon through conservation partnerships for preservation and enhancement of the canyon landscape, and its heritage. Through conservation of land, water, biological and cultural resources, sustainable programs and projects including public access, and charitable fundraising activities, the Society promotes effective and balanced solutions between ecology and economy.

On behalf of the Society's board of trustees, we thank the Subcommittee for this opportunity to share its 6-page summary views and attachments by this written statement.

STATEMENT

The Society received an invitation from Senator Johnson's office to review the purpose of S. 1577 and its impacts on the local community, and examine its national public policy ramifications.

Although we do not support this bill, we applaud the efforts by Senator Johnson to achieve a streamflow balance in S. 1577 by inviting the city to meet with the Society and adopt the "win-win" streamflow plan. We regret the city declined the Senator's invitation.

The Society advances a "win-win" streamflow-sharing plan that reflects national public policy . . . economic development enhanced by common sense natural resource management. The plan contains a "shared pain-shared gain" streamflow feature that acknowledges the dramatic hydrological cycles typically experience in Spearfish Canyon (see attached chart). The plan allows 50cfs through the hydro diversion and 15cfs to flow downstream to increase and enhance the canyon's aesthetics and natural resource values. The 15cfs downstream flow is then collected at an existing pipeline 3-miles downstream at the old Spearfish Intake (the pipe will have to be enlarged) and diverted around the aquifer recharge zone before merging with the hydro diversion flow at the City Park. *Contrary to the City's position, the Society's plan also only affects the streamflow for the hydro operation, and does not affect any flow through the city or to downstream irrigators. (See Map illustration.*)*

The Society views S. 1577 as regressive from established national procedure that engages all public interests. The City understood the requirements and associated costs when it acquired the hydroelectric facility. Further, the City may be encum-

*All illustrations have been retained in subcommittee files.

bering significant other costs by circumventing an open public process that alienated other interested parties, and are now seeking relief through S. 1577. The City, without consideration for other cumulative public economic and environmental benefits, chose not to share the stream flow, but to seek all stream flow for its local revenue needs. While the Society supports the City's acquisition and use of the hydroelectric facility, the Society believes it is inappropriate for the Congress to reward the municipality for its self-serving and economically stifling choice in demanding all streamflow for hydro generation.

S. 1577 will eliminate the possibility for the competing parties to develop a better public resolution involving the Spearfish Canyon streamflow. The FERC permit review process provides an opportunity to objectively catalog the competing values, and facilitate a public policy choice that provides a balance between ecology and economy. The City position manifests a very local revenue benefit based on an unenlightened understanding of the Canyon streamflow. The Society, in contrast, supports a streamflow plan that increases the total public economic and environmental values involving tourism, 3-miles of new fisheries, and wildlife habitat including the American Dipper, to name a few. The Society's "win-win" sharing of the streamflow provides a balance between ecology and economy. FERC's jurisdictional decision in 2001, re-affirmed on appeal in 2002, provides a public process opportunity to resolve the conflict between competing parties. This conflict exemplifies the exact congressional purpose for FERC's existence.

The Society maintains that S. 1577 is not reflective of contemporary national values. An enlightened public trust doctrine, supported by nearly a century of technical research, has demonstrated a much greater aggregate economic value for our nation's stream resources rather than those narrowly focused and often destructively consumptive uses of streams in the past, like Spearfish Creek. This contemporary value applied locally demonstrates that a hydro constructed in 1914 to create jobs in the mining industry to foster western Frontier development in the early 20th Century is not the same national necessity as a hydro to be operated for mere municipal revenue in the 21st Century.

The Society maintains that S. 1577 is not even reflective of local values. The City leadership has chosen an extreme position that is not reflective of the citizens of the city, the state's population centers, or the one million annual visitors to the canyon. No local public meetings regarding the contentious streamflow issue were conducted. Local values manifest an admiration of both the community and the picturesque canyon, and a desire that all entities benefit from the streamflow. Spearfish Canyon is a national and state scenic byway. The public's affection and high value placed on the canyon landscape is best illustrated by the words of Frank Lloyd Wright in his visit of 1935: "I may be branded as a heretic, but how is it that I've heard so little of this miracle and we, toward the Atlantic, have heard so much of the Grand Canyon when this is even more miraculous. All the better eventually . . . that the Dakota are not on the through line to the Coast . . . My hat is off to South Dakota treasures."

Finally, S. 1577 establishes a harmful policy precedent that will further erode FERC's jurisdictional authority as other U.S. congressional representatives seek similar resolve for their appropriate states.

We urge the Congress to resist S. 1577, and allow the people, through established public policy and process, the opportunity to increase the aggregate public benefits by first cataloging the competing values, and then, develop a science-based stream management plan that better meets the public needs.

Senator JOHNSON. Okay.

And to Ms. Pollman Rogers, under our bill, if a preferential leaseholder decides to exercise their right to repurchase the land, what price would they pay?

Ms. POLLMAN ROGERS. Section 2(d) of the bill, as it's currently drafted, really contains the terms of the purchase option. And what happens under that section, again, as currently written, is, the value of the land would be determined by an appraiser, who would appraise it at fair market value for agricultural purposes. Then the manner of the purchase or buyback would be at the option of the landowner, as long as that value was over $10,000. If it's over $10,000, the preferential leaseholder can either exercise the option to purchase that land for cash, in which case that preferential leaseholder would get a 10-percent discount, because you don't

have the carrying costs of a contract. If the preferential leaseholder chose to purchase it under a contract or the installment plan, he or she would have 30 years in which to purchase it. They'd have to pay 10 percent down, 30 years to purchase it, at 3 percent interest.

Now, I would say, however, I think you've really placed your finger on the real issue and the concern that some of the preferential leaseholders have at this point, and that is, again, when we negotiated the terms of this bill, land prices were much, much less than they are now. And the whole point is to make this purchase—repurchase option meaningful. Some of these people have lost thousands of acres, and they—in order to give them a meaningful opportunity to buy it back, it has to be at a price where they can, in fact, exercise their option and reacquire it. Land prices in Hughes and Sully Counties have escalated dramatically since 2001.

Senator JOHNSON. What are some of the specific benefits from the wildlife mitigation plan that will accompany the lands conveyed to the State?

Ms. POLLMAN ROGERS. With all due respect, Senator Johnson, I would like to defer that question to Secretary Cooper, if you would—

Senator JOHNSON. Well, if I may, Madam Chairwoman, because we do have the South Dakota secretary of Game, Fish, and Parks here, if I may call the secretary to the table to respond to just a couple of questions I have.

Senator MURKOWSKI. I absolutely have no objection to that. I do have another commitment at 4 o'clock, but I am happy to let you continue your line of questioning, Senator Johnson. And if you want to just wrap up the panel at that time.

Senator JOHNSON. I'd be honored to do that. And we only have just a few minutes more, I think, really.

Senator MURKOWSKI. Well, with that, I will thank each and every one of the panel members again for coming the distance and providing your testimony. Know that the committee will be working on these matters with the bill sponsors. But I do appreciate the level of background that you've been able to provide us. And thank you.

And, with that, Senator Johnson, I'll pass the gavel back to you and you can wrap it up.

Senator JOHNSON. Thank you.

Senator MURKOWSKI. Thank you.

Senator JOHNSON [presiding]. Secretary Cooper, I think you heard the question. Would you care to respond to it? What is in this for the wildlife circumstances in the State of South Dakota?

Mr. COOPER. Yes, sir. Thank you, Senator Johnson.

As you mentioned in your opening testimony, the Pick-Sloan Plan provided for the construction of mainstem dams on the Missouri River, four of which we have in South Dakota. Two of those dams—the Big Bend Dam backs up Lake Sharpe, and that's down by the Lower Brule Reservation, the Crow Creek Reservation; and the Oahe Dam backs up Oahe Reservoir. When we lost, though, the floodplain and the cottonwood bottoms, we lost a significant amount of wildlife habitat in the State of South Dakota. And the 1958 Wildlife Coordination Act required the Federal Government to

mitigate that loss of acres on a one-to-one basis. Part of the whole Pick-Sloan—or the Oahe Diversion Project was also involved with not only supplying water and benefits as a result of the Pierre Canal and the Blunt Reservoir, but also to do wildlife mitigation projects.

We have never received any wildlife mitigation projects as a result of the Pick-Sloan Program in the State of South Dakota. In order to solve that, or at least try to address it, we recognized we were going to have to compromise somewhat and try to come up with something that worked with our various Indian tribes and the State to go back in and try to mitigate terrestrial habitat. We did receive benefits as a result of the construction of those reservoirs for fisheries, but the terrestrial issues have never been solved.

Your support for title VI of the Water Resources Development Act in 1999 was an attempt to compromise and to work with South Dakota's need for that mitigation. As a part of that title VI legislation, we worked with our various Indian tribes to put together a compromise solution that required the Federal Government to put forth a trust fund, a $108 million trust fund, for the State of South Dakota, and various amounts of trust funds for the Lower Brule Sioux Tribe and the Cheyenne River Sioux Tribe.

As a part of this turnover, if we could compromise on this with—which Darla Pollman Rogers talked to you about, is a compromise. We would have the opportunity in this defunct project, which no longer is needed by the Federal Government, to provide the opportunity to return those preferential leaselands to the landowners who rightfully should have them back. And there is a sum of 4,000 acres—a little over 4,000 acres, that would be able to come to the Department of Game, Fish, and Parks and utilized as a game production area in accordance with our mitigation plan under title VI. That title VI mitigation plan requires us to look for 27,000 acres that are already in State or Federal control, so that we don't have to go out and purchase productive ag lands, and be able to do what we could to mitigate those losses on terrestrial habitat. You're not going to ever mitigate the losses for the flooding of those two reservoirs, to the tune of 385,000 acres, but it's an opportunity for us to move forward. And that 4,000 acres would go toward the 27,000-acre bank that we have been able to construct under title VI.

We have plans for those, for those acres. And they basically are involved with going back in with grass plantings and small shrubbery plantings, and the opportunity to have local farmers become our tenant to work with us on the development of those lands into wildlife habitat.

Senator JOHNSON. Mr. Secretary, you may have heard Commissioner Keys make some observation about a constitutional concern he had about imposing this land on the State of South Dakota, and the need to make those a voluntary provision for South Dakota. I'm fine with that. But my assumption is that the State of South Dakota is very much inclined to take possession of these 4,000 acres.

Mr. COOPER. Absolutely. And we're more than willing to work with the Bureau of Reclamation on trying to construct language that would help them.

And I might also point out that Commissioner Keys talked about the Bureau's responsibility, continuing responsibility, on cultural

resource issues in Section 106 of the Historic Preservation Act. Right now, in our programmatic agreement with all of the tribes in South Dakota on the Missouri River corridor, the responsibilities under title VI for the State is to assume responsibility with the Corps of Engineers, and any other Federal agency, for the protection of all those cultural-resource sites. We do it every day in the course of our work on the Missouri River.

So, from the standpoint of the Bureau of Reclamation being able to transfer some of its concerns on their cultural resource, and/or whatever else they need to have done, we do have a process right now for being able to help them do that. They would not need anyone specifically from the BOR to be able to do that.

Senator JOHNSON. Ms. Pollman Rogers, how many landowners are we talking about? How many people are involved that would have preferential——

Ms. POLLMAN ROGERS. There are approximately 25 preferential leaseholders.

Senator JOHNSON. Okay.

Well, I want to thank all of you.

Relative to the Blunt Reservoir issue, it seems to me that this is a win-win solution we're trying to lay out. The Government gets out from underneath the obligations for its annual maintenance costs, which is in the hundreds of thousands of dollars. The landowners are belatedly, but somewhat made whole. We also wind up with some extraordinarily valuable wildlife property being managed for those purposes, as at least partial mitigation. And so, I think the Government saves money, we serve the public better, and we also serve the private sector better. So, again, I appreciate your contributions to this hearing.

Thank you, Mayor Krambeck, for your patience and your tenacity of the community to work through these issues.

And, again, Mr. Becker and Dr. Lytle, thank you for your testimony here. It's going to be very valuable to the committee, as a whole.

So, with that, this hearing is adjourned.

[Whereupon, at 4:12 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, May 25, 2006.

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

DEAR MADAM CHAIRWOMAN: Enclosed are responses prepared by the Bureau of Reclamation to questions submitted following the March 30, 2006, hearing regarding the following bills: S. 1962, S. 2205, and H.R. 3812.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosures.]

RESPONSES TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. S. 1962/H.R. 4000—Do you feel that the loss of revenues to the Treasury if this bill were authorized is justified considering the recent hardship faced by the irrigation districts as a result of the drought?

Answer. The Districts are unable to fulfill their repayment obligations as currently established. If the Districts are unable to meet their repayment obligations, repayment will shift to Pick-Sloan Missouri Basin Program (PSMBP) power customers. These customers do not benefit as directly from the facilities in question. The loss to the Treasury if this bill is enacted will be in the present value of the repayment obligation; the loss to the Treasury in the case that the Districts are unable to make their payments will depend on the way that the PSMBP allocates the additional financial obligation imposed by the failure of the Districts. Given that the Districts are being financially squeezed by a drought over which they have no control, extending their repayment period is a justified response that increases the chances that the Districts will regain financial viability and that costs will not be shifted to power customers unnecessarily.

Question 2. H.R. 3812—How is the proposed project's appraisal-level study progressing and when do you anticipate it will be complete?

Answer. The appraisal study is in the final draft stage. We anticipate the study being completed by July, 2006.

RESPONSES TO QUESTIONS FROM SENATOR BINGAMAN

Question 1a. S. 1962/H.R. 4000—Your testimony establishes that Reclamation has the authority to grant deferments with respect to the repayment schedules established by contract, but that those deferments do not extend the total time period for repayment.

What are the types of situations where Reclamation has historically granted deferments?

Answer. Deferment of annual repayment obligations has occurred due to conditions such as (1) severe or adverse weather conditions that cause a partial or total loss of crops, such as hailstorms, floods, severe windstorms, and drought; and (2)

damage to project facilities where the repair cost to the District exceeds the District's available reserve funds.

Question 1b. Should the deferment authority be amended so that Reclamation has the authority to extend the total time period for repayment?

Answer. Reclamation recently completed a review of its deferment policy. This policy review resulted in the issuance of new Directives and Standards in 2006 for "Deferment Contracts—Delegation of Authority," and "Deferment Contracts." The existing authority has provided Reclamation the necessary authority to deal with the vast majority of hardship cases experienced by our Districts or contractors. Additional authority to extend the total time period for repayment is not necessary at this time.

Question 2a. S. 1962/H.R. 4000—Over the past 20 years, how often has legislation similar to S. 1962 been enacted which provides relief to water users from an existing repayment contract?

Answer. It is our understanding that legislation similar to S. 1962 has been enacted only once in the last 20 years. Public Law 108-231, enacted on May 28, 2004, authorized the Secretary of the Interior to revise the repayment contract with an irrigation district in Texas by extending the period authorized for repayment of reimbursable construction costs from 40 to 50 years.

Question 2b. Will this bill create a unique precedent, likely to be followed by many similar requests?

Answer. P.L. 108-231 already created a precedent that S. 1962 is following. S. 1962 could encourage others to follow suit.

Question 3a. H.R. 3812—Your testimony indicates that a feasibility study requires the completion of NEPA compliance documents.

Does Reclamation have a new policy requiring NEPA compliance to be an integral part of its feasibility studies?

Answer. Reclamation's policy on integrated feasibility studies has been in place since the early 1980s. The most current version—*Directives and Standards CMP 05–02*—(5/01/00) states, "Feasibility studies will normally be integrated with compliance under the National Environmental Policy Act (NEPA), Fish and Wildlife Coordination Act, Endangered Species Act, National Historical Preservation Act (NHPA), and other related environmental, and cultural resource laws. These activities will proceed concurrent with the feasibility study and culminate in an integrated planning report/NEPA compliance document (PR/NEPA Document)." The analysis generated from the NEPA process provides significant worthwhile information to inform the decision process as to whether a project should go forward, and advantages and disadvantages to different project configurations.

Question 3b. If so, is it an efficient use of limited resources to require a full environmental review while still assessing the technical and financial feasibility of a project?

Answer. Integrated feasibility studies are normally considered the most efficient planning approach from a time and resource perspective. Information developed during an environmental review process could have a direct influence and bearing on technical and financial feasibility. Current Reclamation policy does provide some flexibility in the preparation of feasibility studies. The feasibility study processes established through the Principles and Guidelines and the NEPA processes described in Reclamation's NEPA Handbook have similar preparation and documentation requirements.

Question 4. H.R. 3812—According to testimony, the San Joaquin County area is not within the CALFED project area.

Is it possible, however, that some of the regional water supply projects being reviewed by the CALFED program could address the water supply issues in San Joaquin County?

Answer. The testimony commented only on the lack of a Federal role along the Mokelumne River. San Joaquin County is included within the CALFED project area; CALFED, through the State's Proposition 13 grant program, has funded several groundwater projects within the County. Stockton East Water District received a $1,341,000 grant for a groundwater storage pilot project in FY01, and $3,700,630 for a pipeline construction project related to its groundwater storage project in FY02. In addition, through the State's Proposition 50 grant program, San Joaquin County is preparing an integrated regional water management plan.

RESPONSES TO QUESTIONS FROM SENATOR JOHNSON

Question 1. S. 2205—How much does the Bureau of Reclamation spend to manage the lands acquired for the Pierre Canal and Blunt Reservoir?

Answer. Management and O&M costs specific to the Pierre Canal lands are currently approximately $10,000 per year. Management and O&M costs for Blunt Reservoir lands are currently approximately $60,000 per year for land resource management activities related primarily to weed control, lease administration, fencing, and erosion control. Additionally, Reclamation spends approximately $130 per year in curation costs at the South Dakota State Archaeological Research Center (SARC) in Rapid City, South Dakota, for the storage of artifacts collected during cultural resource surveys in the mid 1970s.

Question 2. S. 2205—In your testimony, you state that the Bureau will be still responsible for some administrative fees even if the Blunt Reservoir Bill is enacted. Could you elaborate on the nature of these fees? Do you have an estimate on the total amount of these fees?

Answer. The Blunt Reservoir archeological collections include artifacts collected from Federal and private lands, both prior to and after the definition of boundaries of the proposed Blunt Reservoir, under the authority of the National Historic Preservation Act. The collections are currently curated at the South Dakota State Archaeological Research Center (SARC) in Rapid City.

The fees referenced in the testimony are, in part, those related to curation of the archeological collections. The volume of artifacts collected from surveys and excavations associated with Blunt Reservoir Project activities is approximately 6.5 cubic feet, out of approximately 100 cubic feet of Reclamation collections from South Dakota. A Fiscal Year 2004 cooperative agreement with SARC funds curatorial services, including the collection of accession and catalog data, temporary storage costs, and a percentage of the new compact storage shelf units. Approximately $5,300 has been spent to date on these activities. Future annual expenditures for collection curation and storage are estimated to be $20 per cubic foot or approximately $130 per year in perpetuity, not accounting for inflation. If authorized by law, SARC would potentially accept a donation of archeological collections made from Federal lands, given a rigorous process of evaluation and approval by both Reclamation and the State of South Dakota. Such a congressional authorization could release the Federal government from its ongoing curation obligation.

In addition to curation, Reclamation may face additional costs associated with protection and preservation of cultural properties located on lands that would be conveyed back to preferential lease holders. Transfer of historic property out of Federal ownership without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historical significance, regardless of the mechanism used to do so (title transfer, quit claim deed, donation, etc.), is defined in 36 CFR 800 as an adverse effect on the historic property and therefore subject to consultation with the State Historic Preservation Office (SHPO), Advisory Council on Historic Preservation (ACHP) and other interested parties. Protection of sites that leave Federal ownership is usually achieved through preservation easements or covenants. The ACHP and SHPO expect that a responsible entity will hold the easements or enforce the terms of the covenants. If Reclamation retains this responsibility, costs may be incurred if land use changes are made and/or resources of historic/cultural value are discovered on the land. The amount of these costs would be situationally dependent.

Question 3. S. 2205—Can you tell me the difference between the BOR's cost to manage these lands today versus the cost if H.R. 4301 is enacted?

Answer. Aside from the cultural resource work necessary for transfer of the lands, Reclamation's costs of an estimated $70,000 per year would be eliminated if H.R. 4301 were enacted. Unless Reclamation is relieved of the post-conveyance obligation to enforce preservation easements and covenants (by statute, these obligations could be transferred to Tribes, universities, tribal colleges, or the State of South Dakota), Reclamation would incur annual costs of $130 per year, adjusted for inflation, for curation and storage, as well as undeterminable intermittent costs related to the continued historical significance of the transferred lands. (From 1997 to 1999, Reclamation paid the University of North Dakota $40,000 for a cultural resources survey of 4,106 acres and for relocation and re-documentation of 84 previously recorded cultural resource sites. This may be indicative of possible future costs.)

The other cost savings to the United States Treasury would be elimination of the annual payment in lieu of taxes (PILT), currently estimated at $27,600, to Sully and Hughes Counties in South Dakota. The bill proposes establishment of a trust fund for the use of the State to pay county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill. However, the bill also indicates that the use of sales proceeds for the establishment of this Trust Fund would be subject to authorization of appropriations for this purpose. If funds are appropriated in accordance with this provision, some potential PILT savings would effectively be lost to the Federal government and transferred to the State.

Question 4. S. 2205—When lands are taken out of Federal ownership, are they always disposed of at fair market value? If not, what are the exceptions?

Answer. The General Services Administration Surplus Real Property Disposal Regulations contained in 41 CFR 102-75.350 allow disposal agencies to make surplus real property available to local governments and certain non-profit institutions or organizations at up to a 100 percent discount. Discounts in the fair market value of the lands are available only for public benefit purposes such as education, health, parks and recreation, public airports, highways, correctional facilities, etc.

Additionally, 41 CFR 102-75.990 allows a Federal agency to donate to public bodies any Government-owned real property (land and/or improvements and related personal property), or interests therein in cases where the estimated cost of the property's continued care and handling exceeds the estimated proceeds from its sale.

Outside of these exceptions, Reclamation is not aware of any regulations or laws that allow Reclamation to dispose of lands at less than fair market value.

FEDERAL ENERGY REGULATORY COMMISSION,
OFFICE OF ENERGY PROJECTS,
Washington, DC, April 18, 2006.

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

DEAR CHAIRMAN MURKOWSKI: Thank you for your letter of April 3 enclosing questions from Senator Tim Johnson for the record of your Subcommittee's March 30, 2006 hearing on S. 1577, a bill to facilitate the transfer of Spearfish Hydroelectric Plant Number 1 to the city of Spearfish, South Dakota, and for other purposes.

Enclosed are my responses to Senator Johnson's questions. If you have further questions or need additional information, please let me know.

Sincerely,

J. MARK ROBINSON,
Director.

[Enclosure.]

RESPONSES TO QUESTIONS FROM SENATOR JOHNSON

Question 1. First, let me start out by stating that I do believe the licensing and administration of our nation's public hydro-electric plants is an important regulatory tool to balance the often competing multiple uses of the nation's water resources. Several Senators on the Energy Committee have devoted a good deal of time toward improving the federal license process for nonfederal hydropower plants. That being the case, I believe that the set of circumstances surrounding the small hydroelectric plant in Spearfish are unique and, therefore, provide for a re-examination in this instance of the federal license requirements.

It is my understanding that FERC is asserting jurisdiction to require a license on the basis that certain rights-of-way grants and permits, which were issued by the federal government prior to the enactment of the 1920 Federal Power Act, had expired. Is this your argument?

Answer. Yes, the FERC is asserting jurisdiction over the Spearfish Project based on the fact that certain pre-1920 rights-of-way and permits had expired. When a pre-1920 permit expires, the authorization once provided by the permit must be obtained from the Commission. [*See Scenic Hudson Preservation Conference* v. *Callaway,* 370 F. Supp. 162, 166 (S.D.N.Y. 1973), *affd, Scenic Hudson Preservation Conference* v. *Callaway*, 499 F.2d 127 (4th Cir. 1974)); *Wisconsin Power and Light Company,* 55 FERC ¶ 61,169 (1991).

Question 2. Now, I've learned that these rights-of-way grants and permits were not issued by the FERC or that the rights-of-way are administrated by the FERC. In fact, the rights-of-way permits are administrated exclusively by the U.S. Forest Service, which recently found that they had not expired, and in fact, were validly transferred from the Homestake Mining Company to the City of Spearfish. In light of these sets of circumstances, don't you believe that FERC is overreaching in asserting jurisdiction, particularly in light of the long-held administration of the rights-of-way by the U.S. Forest Service?

Answer. Pursuant to section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. § 817, a non-federal hydroelectric project must, unless it has a still-valid pre-1920 federal permit, be licensed if it occupies lands of the United States. The Spearfish project occupies federal land, so the inquiry turns to whether it has a still valid pre-1920 federal permit. If not, the FPA requires that the project be licensed.

By way of further background, Section 4 of the Transfer Act of February 1, 1905 (1905 Act) [Ch. 288, 33 Stat. 628] states:

> Rights-of-way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the national forests of the United States, are granted to citizens and corporations of the United States *for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of their beneficial use,* under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.
> [Emphasis added.]

The 1905 Act also transferred from the Secretary of the Interior to the Secretary of Agriculture authority over the forest reserves, together with authority over hydroelectric facilities on those reserves [*Homestake Mining Company,* 97 FERC at p. 61,832 n. 18]. It is this Act that allowed the project to be operated, for mining purposes, without a license from the Commission.

By Commission order issued November 9, 2001 [*Homestake Mining Company,* 97 FERC ¶ 61,180], as amended by our order of March 1, 2002 [*Homestake Mining Company,* 98 FERC ¶ 61,236], the Commission found that the Spearfish No. 1 Project had a valid right of way pursuant to the 1905 Act for those parts of the project's water transmission conduits and pipelines that occupy National Forest lands. The right of way was still valid in 2001 because, in compliance with the 1905 Act, the Spearfish project was built and was still operated for mining and ore-milling purposes, in that all the power it generated was being transmitted to and used by Homestake's mining operations in the town of Lead, South Dakota.

On April 15, 2002, Homestake confirmed that it ceased mining operations as of December 31, 2001, but argued that the pre-1920 permit was still in effect, because it permitted "all requisite mine reclamation operations." However, section 4 of the 1905 Act makes no reference to mine reclamation, which in 1905 was presumably of less regulatory concern than it is today. Nor has a search for references to the 1905 Act in the administrative decisions of the Departments of Agriculture or the Interior uncovered any suggestion that mine reclamation should be considered an element of "mining purposes" under the 1905 Act. In these circumstances, the Commission concluded that, since Homestake had ceased mining operations, its pre-1920 permit did not authorize continues project operation and Homestake or its successor must, if the projects is to continue generating, apply for a license pursuant to Part I of the FPA.

The pre-1920 permit issued under the 1905 Act for the project's water pipes and conduits is distinct from the Forest Service right-of-way for the project's transmission line facilities. The latter permit was not issued under the 1905 Act but rather under the Act of February 15, 1901, or the Act of March 4, 1911. While that permit may have been a valid pre-1920 permit, it ceased to be so when the Forest Service replaced it in 1969 with a new permit.

Since the Spearfish project no longer has valid pre-1920 permits, a license from the Commission is required for the project's continued operation.

Question 3. Mr. Robinson: I want to ask you a question about the time and cost of licensing this project. I understand that the median amount of time for a hydro re-license applicant is about 64 months from the beginning to the end, and that under the Traditional Process costs average $2.3 million. Who bears the costs for the license? And, in proportion to other hydro projects, what could the City expect in terms of cost and time to license this small, century-old hydro plant?

Answer. According to the Commission's "*Report on Hydroelectric Licensing Policies, Procedures, and Regulations Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000*," completed in May of 2001, the range for the amount of time for a hydro relicense applicant to prepare a license application is 32 to 40 months and from application filing to Commission action is 18 to 43. The report also found the average application preparation cost to be about $2.3 million. This average cost includes some license applications for very large projects that incurred very large costs. The application preparation costs are borne by the license applicant.

Since 2001, the Commission has issued and implemented the Integrated Licensing Process (ILP). The ILP was designed to reduce the time and cost of licensing by providing a predictable and efficient licensing process. The benefits of the ILP come from early issue identification and study plan development, better coordination with other stakeholder processes, established time frames, and early Federal Energy Regulatory Commission staff assistance. Commission staff estimates that licensing will be completed in no more than 18 months after an application is filed and costs will

be reduced 30 percent. No projects using the ILP have been filed yet, so staff has not yet been able to verify these projections. Results so far from the 14 projects using the ILP look promising. All projects have met all deadlines.

For the Spearfish No. 1 Project, Commission staff estimates that the total time from the beginning of pre-filing consultation to application filing is 36 months and from application filing to Commission action would be about 18 months. Based upon data contained in several recently filed license applications for small projects of similar scope, staff would estimate an application preparation cost of about $84.2 per kilowatt (kW) of installed capacity or about $338,000 for the 4,000-kW Spearfish No. 1 Project. These values of cost and time are estimates and they will vary due to the facts of the specific case.

CITY OF SPEARFISH, SD,
Speafish, SD, April 14, 2006.

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

DEAR CHAIRWOMAN MURKOWSKI: It was my pleasure to appear before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006, to give testimony on S. 1577, to facilitate the transfer of Spearfish Hydroelectric Plant Number 1 to the City of Spearfish, South Dakota, and for other purposes. The City of Spearfish and its citizens appreciated the opportunity to convene a hearing on S. 1577, which continues to be a matter of primary importance to our community. We look forward to working with the Subcommittee, Senator Tim Johnson, and Senator John Thune, as this bill progresses through the legislative process.

In your letter dated April 3, 2006, you provided a set of questions that has been submitted and requested the City's response. As requested, the City has prepared its response, which is attached to this letter.

Should you have any further questions regarding this matter, please do not hesitate to contact me. We again thank you and the Subcommittee for this opportunity to fully vet all views and interests associated with S. 1577 and believe that the bill strikes the appropriate balance between developmental and conservational interests, while preserving the historic Spearfish Hydroelectric Plant Number 1.

Sincerely,

JERRY A. KRAMBECK,
Mayor.

[Enclosure.]

RESPONSES TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. S. 1577 expresses the sense of Congress that the City should: (I) uphold a 2004 MOA with the Spearfish Canyon Landowners Association and (2) ensure the release of an additional 5-10 cubic feet per second between the Intake Dam and the Spearfish Division. Please explain the significance of this sense of Congress.

Answer. The City believes that the significance of this sense of Congress is the acknowledgement that the operation and maintenance of the Spearfish Hydroelectric Plant Number 1 concerns not only the generation of emissions-free, renewable energy, but also the public's interests in aesthetic flows, fisheries protection, irrigation, water supply, and recreation. As Mayor Krambeck testified during the March 30 hearing, the City understands its role to appropriately balance these interests—which, at times, may be competing—as illustrated by his recounting of a recent event where the City, in response to a request by the United States Geological Survey, authorized the release of additional flows into the bypassed reach of Spearfish Creek for the purposes of studying the geomorphology and geology of Spearfish Canyon.

In reaching the 2004 Memorandum of Agreement, the City and Spearfish Canyon Landowners Association worked tirelessly to investigate historical flow data of Spearfish Canyon, as well as downstream water uses, in order to strike a scientifically-supported compromise that would allow for additional flows in the bypassed reach, while protecting downstream senior water rights and other public uses of Spearfish Creek. Should S. 1577 preclude Federal Energy Regulatory Commission involvement in this matter, the City fully intends to execute and uphold the 2004 MOA, which would satisfy the sense of Congress expressed in the bill.

Question 2. You testified that the U.S. Forest Service has determined that the right of way in question remains valid and is fully transferable to the City. Do you

have the Forest Services assessment in writing so we could make that part of the hearing record?

Answer. While the City was in the process of acquiring Spearfish Hydroelectric Plant Number 1 from Homestake Mining Company, it sent an inquiry to the United States Forest Service (USFS) regarding the then-current status of right-of-way grant, as well as whether the right-of way grant would be affected by the conveyance to the City. The City's inquiry cited orders of the Federal Energy Regulatory Commission holding that the right-of-way grant at issue would expire upon the cessation of extraction activities at the Homestake Mine in Lead, South Dakota.

The USFS's response, which is attached, confirmed that "the 1905 easement transfers automatically upon sale of the pipeline facilities" and that "the right-of-way is unaffected by the conveyance unless there is a change of use of the easement."

U.S. FOREST SERVICE,
NORTHERN HILLS RANGER DISTRICT,
Spearfish, SD, July 30, 2004.

E. JAMES HOOD,
City Attorney, City of Spearfish, SD.

DEAR JIM: Thank you for your draft letter of July 14, 2004 concerning the status of acquisition of Spearfish Hydro Plant No. 1 and the transfer of right-of-way grant 08861. I appreciate you keeping me informed as to the City's efforts in acquiring the Hydro Plant.

In your letter, you ask that the USFS confirm that the right-of-way remains in effect and will be unaffected by the conveyance. I note that under your footnote #4 on page two of your letter, you state that the Federal Energy Regulatory Commission (FERC) believes that the right-of-way expired once Homestake ceased its extraction activities in Lead. Our position is that the 1905 easement transfers automatically upon sale of the pipeline facilities. We asked that we be notified upon sale and transfer of ownership, which you have done. It is also our position that the right-of-way is unaffected by the conveyance unless there is a change of use of the easement. In that case, an environmental analysis and Special Use Permit may become necessary.

The position of the Forest Service in our ability to regulate the 1905 easement is that we may administer projects as long as that administration does not diminish or reduce any vested right granted by the 1905 right-of-way. Because of the subsurface nature of the use of National Forest land, the impact on the National Forest is minimized. We have the authority under the Organic Act for general resource protection; and therefore, the Forest Service has authority under 36 CFR 251 to require information from the holder, stop resource damage, require that the project be maintained in good repair and require rehabilitation of the project area upon abandonment of the projects.

I have obtained copies of recorded Assignment between Homestake and the City of Spearfish. If there is other information that I need I will let you know.

Again, thank you for keeping me informed of your progress with the acquisition of Hydro Plant No. 1. If you need other information from me, please let me know.

Sincerely,

PAMELA E. BROWN,
District Ranger.

RESPONSES TO QUESTIONS FROM SENATOR JOHNSON

Question 1. Mayor Krambeck, this project has been in continuous operation since 1912. During these past nearly 100 years, the project has been a clean source of renewable energy, ensured a stable water supply to the City, created recreational opportunities within the City of Spearfish, and supplied water to the D.C. Booth National Historic Fish Hatchery. Although these multiple uses clearly strike a balance in the public interest, in the event that S. 1577 becomes law, do you foresee any operational changes at the project?

Answer. While the City would continue to operate Spearfish Hydroelectric Plant Number 1 for generational purposes, certainly some changes could occur at the project in the event of enactment of S. 1577. First, the 2004 MOA between the City and the Spearfish Canyon Landowners Association calls for additional instream flows through the reach of Spearfish Creek that is bypassed for the operation of the project. Second, the City's interest in acquiring and operating the project is not to

simply maximize power generation. To the contrary, the City understands its responsibilities to balance between developmental and conservational interests, such as aesthetics, fisheries protection, irrigation, water supply, and recreation. While the City cannot encroach upon perfected senior water rights, it would work with its constituencies to best balance among these important public interests.

Question 2. Mayor Krambeck, now that the City has assumed ownership of this hydroelectric facility, how has it made certain that the project is operated and maintained in a safe and efficient manner? Does the City have the expertise to run this facility?

Answer. The City has implemented appropriate safeguards to ensure that the hydroelectric facility is operated in a safe and efficient manner. Most importantly, the City hired former Homestake employees who operated and maintained the facility for many years. This approach allowed the City to retain years of institutional knowledge regarding the facility. At the same time, the City is investigating the feasibility of upgrading certain communications and control equipment at the facility, which would allow for a more precise and efficient operation of the facility. Finally, Federal Energy Regulatory Commission staff recently inspected the facility and found it to be in good working condition and classified it as having a low hazard potential.

RESPONSES OF C. MEL LYTLE TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. In your testimony, you mention State and Federal policies that "erode existing supplies" and have "upset new supplies". To which policies are you referring?

Answer. Historically, as the Department of the Interior's Central Valley Project was constructed in California, San Joaquin County was directed to look to the American River through the Auburn-Folsom South Unit as a major source of the water it needed to meet its critical deficiencies and has been consistently denied a water supply from this source. At the same time, because of the planned availability of American River water for San Joaquin County, the County was denied other sources of surface water supply, principally from the San Joaquin, Stanislaus and Mokelumne Rivers.

In significant part, the County's reliance on American River water stems from numerous state and federal actions which have foreclosed other alternatives while always directing us to the American River; however, the Folsom South Canal extension into San Joaquin County has never been constructed and San Joaquin County has never received this contemplated water supply from the American River. In this regard, we cite the following:

A. Bulletin No. 11 of the State Water Rights Board entitled, "San Joaquin County Investigation," dated June 1955, includes a description of the Folsom South Canal extending southward to provide a water supply of approximately 303,000 acre feet annually to San Joaquin County. Bulletin No. 11 indicates that this water and canal is the "probable ultimate supplemental water requirement for the San Joaquin Area."

B. In Decision 858, issued on July 3, 1956, the State Engineer found that the North San Joaquin Water Conservation District could receive water from the American River through the Folsom South Canal and that this course would be cheaper and more dependable then Mokelumne River water which flows through the District. As a result of these findings, the North San Joaquin District was granted only a temporary permit to use water from the Mokelumne River and denied a requested permanent right.

C. Four entities within San Joaquin County, consisting of the North San Joaquin Water Conservation District, Stockton and East San Joaquin Water Conservation District (now Stockton East Water District), City of Stockton, and the California Water Service Company, all filed to appropriate water from the American River. In Decision 893, adopted on March 18, 1958, the then State Water Rights Board at the request of the Bureau of Reclamation denied those permits. The Board, in granting the permits to the Bureau of Reclamation for the Folsom Project, conditioned the permit to allow time for parties desiring water within Placer, Sacramento, and San Joaquin Counties to negotiate a water supply contract. San Joaquin County interests did diligently negotiate for contracts, approved those contracts, and signed them, but they were not approved at the Washington level by the Bureau of Reclamation, as is noted below.

D. The Bureau of Reclamation report entitled "Folsom South Unit" dated January 1960 clearly identified the needs for supplemental water within San Joa-

quin County and service to the County through the Folsom South Canal. Again, this gave San Joaquin County reason to rely on a water supply from the American River.

E. In 1967 and 1971, the Bureau of Reclamation furnished draft contracts to San Joaquin County and districts within the County to deliver, in part, American River water through the proposed Folsom South Canal to San Joaquin County. Negotiations regarding these contracts resulted in the Stockton East Water District, the Central San Joaquin Water Conservation District and the North San Joaquin Water Conservation District approving contracts for execution. The contracts were approved by the regional office of the Bureau of Reclamation. Although the contracts were sent to Washington for approval, none were executed by the United States. The contracts were not executed, due to a combination of circumstances and changing policies. Disapproval was not because San Joaquin County did not need the water.

F. Following Decision 1400 issued by the State Water Resources Control Board in April 1972 modifying permits to the Bureau of Reclamation for American River water from the proposed Auburn Dam for delivery of water, in part, to San Joaquin County, San Joaquin County's agencies continued to work with the Bureau of Reclamation regarding various studies concerning the Auburn-Folsom South Unit.

G. In Board hearings on Applications 14858, 14859, 19303 and 1904, for Stanislaus River water, which led to Decision 1422 in 1973, the Bureau of Reclamation testified that the portion of San Joaquin County north of the Calaveras River would be served by the Folsom South Canal. Furthermore, at the time of adopting the New Melones Basin Allocation in 1981, the Secretary of Interior noted that the provision of only a small amount of water to San Joaquin County from New Melones was acceptable since water would be provided to Eastern San Joaquin County from the American River through the Folsom South Canal.

Contrary to these many reports, studies, policies and decisions of both the State and the Federal Bureau of Reclamation, San Joaquin County has not received water from the American River through the contemplated extension of the Folsom South Canal.

For years, the County has sought to obtain additional surface water supplies to supplement available water supplies, including efforts to obtain water from a source other than the contemplated American River. This includes expending substantial efforts and resources (in excess of 65 million dollars for infrastructure alone) to secure a reliable source of Stanislaus River water. Again, due to changes in State and Federal decisions and policies this supplemental water supply to San Joaquin County is not secure. In this regard, we cite the following:

A. As a result of State Water Resources Control Board Decision 1422 issued in 1973, the Bureau of Reclamation received conditional permits for Stanislaus River water to be diverted at New Melones Dam and Reservoir. In order to receive State permission to appropriate the water from these permits was to demonstrate "firm commitments" within the permitted four county service area, which included San Joaquin County. In part, to demonstrate such commitment, the Bureau of Reclamation entered into contracts with both Stockton East Water District and Central San Joaquin Water Conservation District in 1983 for a 155,000 acre-foot annual Stanislaus River water supply.

B. These County districts spent over 65 million dollars on delivery infrastructure. Despite the completion of these delivery facilities in 1993, the Bureau did not deliver water to the districts, but a significant amount of New Melones water was released in 1993 and 1994 for fish purposes to meet the needs of the recently adopted Federal CVPIA. Since 1993 the County districts have only received a small portion of their contracted Stanislaus River water. Instead, the Bureau of Reclamation makes discretionary releases from New Melones to meet Delta flow and salinity standards and for fish purposes that directly take water away from these County districts.

C. The Bureau of Reclamation's discretionary decision to meet Delta flow and salinity standards with this Stanislaus River water occurs despite the State Water Resources Control Board's Decision 1641 issued in 2000 indicating that these standards could be meet from other sources including: releases from other CVP reservoirs such as Friant; recirculation of water through the Delta Mendota Canal, the Newman Wasteway and the San Joaquin River; construction of a valley drain; and purchases of water from willing sellers to release to meet these standards.

D. The Bureau of Reclamation's discretionary decision to release water from New Melones Reservoir for fish purposes to satisfy provisions of the CVPIA also deprives these County districts of their contracts Stanislaus River water. Nothing within the CVPIA mandates that these releases must be made from New Melones. The releases of Stanislaus River water is completely within the Bureau of Reclamation's discretion.

These federal and state decisions are continuing to deprive County interests of water supplies. As a result, even though it is more costly, the County recognizes that surface water supplies obtained in the future for the most part will need to be on a conjunctive use basis. Any conjunctive use plan will use surface water in times of high flows and use stored groundwater in dry years. This is the basis of the MORE WATER Project where flood flows from the Mokelumne River will be captured with the construction of new infrastructure to be conveyed to groundwater recharge projects in the San Joaquin County. H.R. 3812 will authorize $3.3 million in federal appropriations for the Bureau of Reclamation to participate on a cost-sharing basis in the development of feasibility studies and environmental documentation required to complete this project.

Question 2. In your testimony, you state that groundwater recharge is the primary focus of the project. Do you plan to re-inject project water, offset groundwater depletions with project water, or both?

Answer. San Joaquin County is faced with numerous water supply challenges including critical groundwater overdraft, declining groundwater levels, diminishing surface water supplies, and impending threat of saline groundwater intrusion. The Eastern Basin Conjunctive Use Program is intended to help solve many of these challenges by creating the infrastructure necessary to facilitate both increased surface water use (in-lieu recharge) and direct groundwater recharge projects. The MORE WATER Project is an integral component to this Program. The success of the this Program could also allow regional and statewide interests to participate in groundwater banking and exchange programs due to the storage potential of the Basin estimated at 2 million acre feet or the equivalent of either Folsom or New Melones Reservoirs.

RESPONSES OF C. MEL LYTLE TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Your testimony notes that San Joaquin County has been adversely affected by changes in State and Federal policies which have upset longstanding plans to develop new water supplies. Some additional background would be helpful.

What changes in policies have occurred and how has that impacted the water supply in San Joaquin County?

Answer. Historically, as the Department of the Interior's Central Valley Project was constructed in California, San Joaquin County was directed to look to the American River through the Auburn-Folsom South Unit as a major source of the water it needed to meet its critical deficiencies and has been consistently denied a water supply from this source. At the same time, because of the planned availability of American River water for San Joaquin County, the County was denied other sources of surface water supply, principally from the San Joaquin, Stanislaus and Mokelumne Rivers.

In significant part, the County's reliance on American River water stems from numerous state and federal actions which have foreclosed other alternatives while always directing us to the American River; however, the Folsom South Canal extension into San Joaquin County has never been constructed and San Joaquin County has never received this contemplated water supply from the American River. In this regard, we cite the following:

A. Bulletin No. 11 of the State Water Rights Board entitled, "San Joaquin County Investigation," dated June 1955, includes a description of the Folsom South Canal extending southward to provide a water supply of approximately 303,000 acre feet annually to San Joaquin County. Bulletin No. 11 indicates that this water and canal is the "probable ultimate supplemental water requirement for the San Joaquin Area."

B. In Decision 858, issued on July 3, 1956, the State Engineer found that the North San Joaquin Water Conservation District could receive water from the American River through the Folsom South Canal and that this course would be cheaper and more dependable then Mokelumne River water which flows through the District. As a result of these findings, the North San Joaquin District was granted only a temporary permit to use water from the Mokelumne River and denied a requested permanent right.

C. Four entities within San Joaquin County, consisting of the North San Joaquin Water Conservation District, Stockton and East San Joaquin Water Conservation District (now Stockton East Water District), City of Stockton, and the California Water Service Company, all filed to appropriate water from the American River. In Decision 893, adopted on March 18, 1958, the then State Water Rights Board at the request of the Bureau of Reclamation denied those permits. The Board, in granting the permits to the Bureau of Reclamation for the Folsom Project, conditioned the permit to allow time for parties desiring water within Placer, Sacramento, and San Joaquin Counties to negotiate a water supply contract. San Joaquin County interests did diligently negotiate for contracts, approved those contracts, and signed them, but they were not approved at the Washington level by the Bureau of Reclamation, as is noted below.

D. The Bureau of Reclamation report entitled "Folsom South Unit" dated January 1960 clearly identified the needs for supplemental water within San Joaquin County and service to the County through the Folsom South Canal. Again, this gave San Joaquin County reason to rely on a water supply from the American River.

E. In 1967 and 1971, the Bureau of Reclamation furnished draft contracts to San Joaquin County and districts within the County to deliver, in part, American River water through the proposed Folsom South Canal to San Joaquin County. Negotiations regarding these contracts resulted in the Stockton East Water District, the Central San Joaquin Water Conservation District and the North San Joaquin Water Conservation District approving contracts for execution. The contracts were approved by the regional office of the Bureau of Reclamation. Although the contracts were sent to Washington for approval, none were executed by the United States. The contracts were not executed, due to a combination of circumstances and changing policies. Disapproval was not because San Joaquin County did not need the water.

F. Following Decision 1400 issued by the State Water Resources Control Board in April 1972 modifying permits to the Bureau of Reclamation for American River water from the proposed Auburn Dam for delivery of water, in part, to San Joaquin County, San Joaquin County's agencies continued to work with the Bureau of Reclamation regarding various studies concerning the Auburn-Folsom South Unit.

G. In Board hearings on Applications 14858, 14859, 19303 and 1904, for Stanislaus River water, which led to Decision 1422 in 1973, the Bureau of Reclamation testified that the portion of San Joaquin County north of the Calaveras River would be served by the Folsom South Canal. Furthermore, at the time of adopting the New Melones Basin Allocation in 1981, the Secretary of Interior noted that the provision of only a small amount of water to San Joaquin County from New Melones was acceptable since water would be provided to Eastern San Joaquin County from the American River through the Folsom South Canal.

Contrary to these many reports, studies, policies and decisions of both the State and the Federal Bureau of Reclamation, San Joaquin County has not received water from the American River through the contemplated extension of the Folsom South Canal.

For years, the County has sought to obtain additional surface water supplies to supplement available water supplies, including efforts to obtain water from a source other than the contemplated American River. This includes expending substantial efforts and resources (in excess of 65 million dollars for infrastructure alone) to secure a reliable source of Stanislaus River water. Again, due to changes in State and Federal decisions and policies this supplemental water supply to San Joaquin County is not secure. In this regard, we cite the following:

A. As a result of State Water Resources Control Board Decision 1422 issued in 1973, the Bureau of Reclamation received conditional permits for Stanislaus River water to be diverted at New Melones Dam and Reservoir. In order to receive State permission to appropriate the water from these permits was to demonstrate "firm commitments" within the permitted four county service area, which included San Joaquin County. In part, to demonstrate such commitment, the Bureau of Reclamation entered into contracts with both Stockton East Water District and Central San Joaquin Water Conservation District in 1983 for a 155,000 acre-foot annual Stanislaus River water supply.

B. These County districts spent over 65 million dollars on delivery infrastructure. Despite the completion of these delivery facilities in 1993, the Bureau did not deliver water to the districts, but a significant amount of New Melones

water was released in 1993 and 1994 for fish purposes to meet the needs of the recently adopted Federal CVPIA. Since 1993 the County districts have only received a small portion of their contracted Stanislaus River water. Instead, the Bureau of Reclamation makes discretionary releases from New Melones to meet Delta flow and salinity standards and for fish purposes that directly take water away from these County districts.

C. The Bureau of Reclamation's discretionary decision to meet Delta flow and salinity standards with this Stanislaus River water occurs despite the State Water Resources Control Board's Decision 1641 issued in 2000 indicating that these standards could be meet from other sources including: releases from other CVP reservoirs such as Friant; recirculation of water through the Delta Mendota Canal, the Newman Wasteway and the San Joaquin River; construction of a valley drain; and purchases of water from willing sellers to release to meet these standards.

D. The Bureau of Reclamation's discretionary decision to release water from New Melones Reservoir for fish purposes to satisfy provisions of the CVPIA also deprives these County districts of their contracts Stanislaus River water. Nothing within the CVPIA mandates that these releases must be made from New Melones. The releases of Stanislaus River water is completely within the Bureau of Reclamation's discretion.

These federal and state decisions are continuing to deprive County interests of water supplies. As a result, even though it is more costly, the County recognizes that its last chance for surface water supplies obtained in the future for the most part will need to be on a conjunctive use basis. Any conjunctive use plan will use surface water in times of high flows and use stored groundwater in dry years. This is the basis of the MORE WATER Project where flood flows from the Mokelumne River will be captured with the construction of new infrastructure to be conveyed to groundwater recharge projects in the San Joaquin County. H.R. 3812 will authorize $3.3 million in federal appropriations for the Bureau of Reclamation to participate on a cost-sharing basis in the development of feasibility studies and environmental documentation required to complete this project.

Question 2. You note that the water project contemplated in H.R. 3812 is not part of the CALFED program.

Do any of the water supply projects being reviewed as part of the CALFED program have a connection to San Joaquin County, and might they help to address some of the issues described in your testimony?

Answer. Much of the water supply development interests of San Joaquin County were not originally included in the CALFED development process. Since that time, the MORE WATER Project has developed, primarily through grass-roots efforts, into a significant conjunctive use program to correct groundwater basin overdraft with available flood waters from the Mokelumne River. Currently, it is focused primarily on the development of local supplies, whereas the focus of CALFED predominately is to improve water supply reliability for South of Delta Exporters, water quality and ecosystem restoration in the Delta as it is impacted by the State and Federal Projects. However, MORE WATER is consistent with the goals of CALFED, but has not been included as a major component in the CALFED solution to date.

While not a component of the CALFED Program, MORE WATER will provide information important to water resource and environmental protection efforts being conducted under the CALFED aegis. MORE WATER is consistent with the following Program elements:

- *Water Storage*—Conjunctive use programs hinge on the ability for entities to capture surface water when available for direct use and groundwater recharge. Groundwater recharge is an integral part of the success of MORE WATER.
- *Ecosystem Restoration*—The Mokelumne River and the Delta are a source of pride for the San Joaquin County Community. MORE WATER will be developed to maximize enhance or create ecosystem restoration benefits when feasible.
- *Watershed Management*—The Mokelumne River Watershed is represented by numerous organizations, interest groups, water right holders and authorities. The County will continue to promote MORE WATER to these groups like the Mokelumne River Forum and coordinate formal consultation with these agencies.
- *Water Transfers*—The underground storage potential of Eastern San Joaquin County is estimated at approximately 2 million acre-feet, enough to supply 12 million people for one year. Groundwater banking in San Joaquin County has the potential to provide regional and statewide agencies the ability to store excess water in the underlying basin. San Joaquin County's proximity to the Delta could facilitate water transfers and exchanges to areas served by the State

Water Project, Central Valley Project and the CALFED Environmental Water Account.

RESPONSES OF DARLA POLLMAN ROGERS TO QUESTIONS FROM SENATOR JOHNSON

Question 1. If a preferential leaseholder decides to exercise their right to repurchase the land, what price will they pay?

Answer. Paragraph (2), Page 6, of S. 2205 sets forth the terms of repurchase if a preferential leaseholder exercises his/her option to buy back the land.

A. The value of a preferential lease parcel is its fair market value for agricultural purposes, as determined by an independent appraisal.

B. If the appraised value of the land is in excess of $10,000.00, the preferential leaseholder has the option to pay cash for the land, or to buy it on an installment contract basis:

(1) If the preferential leaseholder pays cash, the purchase price is the appraised value, less a 10% discount.

(2) If the preferential leaseholder repurchases the land on an installment basis, the purchase price is the appraised value of the land.

C. If the appraised value of the land is less than $10,000.00, the preferential leaseholder must pay cash, and the purchase price is the appraised value, less a 10% discount.

Question 2. What are some of the specific benefits from the wildlife mitigation plan that will accompany the lands conveyed to the state?

Answer. The federal lands conveyed through S. 2205 to the State of South Dakota (for the use and benefit of the Department of Game, Fish & Parks) will provide the critical and essential land base on which the state can move forward with satisfying its Habitat Mitigation Plan as authorized by Section 602 of title VI of Public Law 105-277 of October 21, 1998. By providing the much needed land base for fully implementing the state's Habitat Mitigation Plan, the state can finally begin to adequately address the 30-year-old obligation to South Dakota by the federal government for wildlife habitat forever lost through inundation associated with construction of dams through the Pick-Sloan Act. It is necessary to have an accessible and productive land base on which to implement wildlife habitat mitigation plan practices such as woody cover developments, wildlife food plot and upland nesting cover establishments. Specifically, the citizens of South Dakota and its visitors will have a place to enjoy and encounter myriad wildlife species that are the direct result of habitat developments and improvements made possible by the availability of lands obtained through S. 2205 and applied to that land through an approved Habitat Mitigation Plan.

RESPONSES OF DARLA POLLMAN ROGERS TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Do you believe that, if this bill is enacted, a sales price ten percent below fair market value will compensate the leaseholders for increase in sales price and lease fees over the last 30 years?

Answer. No, a sales price ten percent below fair market value will not compensate preferential leaseholders for the increase in the value of land and lease fees over the last 30 years, for the following reasons:

1. Under S. 2205 as currently drafted, the 10% discount applies only if (a) the total purchase price is less than $10,000.00; or (b) if the preferential leaseholder pays cash to buy back his/her land. For many of the preferential leaseholders, especially in the Blunt Reservoir area where the tracts of lease land are larger, an installment purchase is the only way they will be able to exercise their option to buy back their land. Preferential leaseholders who repurchase their land via installment do not receive a discount from the appraised value.

2. The value of the land, and especially the larger tracts, has increased dramatically over the years. Farmground in Hughes and Sully County is currently worth from $750.00 to $850.00 per acre. Values in the late seventies were much, much less. In addition, preferential leaseholders have paid close to fair market value for lease rates over the years, so their lease payments have also increased considerably over the 30-year timeframe.

[Responses to the following questions were not received at the time the hearing went to press.]

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER,
Washington, DC, April 3, 2006.

LAURENCE BECKER,
State Geologist, Vermont Department of Environmental Conservation, Geology and Mineral Resources Division, Waterbury, VT.

DEAR MR. BECKER: I would like to take this opportunity to thank you for appearing before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006, to give testimony on S. 2054, to direct the Secretary of the Interior to conduct a study of water resources in the State of Vermont.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Monday, April 17, 2006.

Thank you in advance for your prompt consideration.

Sincerely,

LISA MURKOWSKI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR MURKOWSKI

Question 1. If enacted, how would the information provided by this study help address your groundwater contamination problems?

Question 2. Do you feel that you have an adequate level of understanding about your surface water resources?

Question 3. In coordination with the USGS, what will you identify as priority areas of study?

QUESTIONS FROM SENATOR BINGAMAN

Question 1. Your testimony indicates that the State of Vermont is in the process of developing an aggressive program to understand its groundwater resource to benefit future planning efforts.

- Are there areas within the State that are beginning to experience significant draw down in any of the aquifer systems? Is water supply growing as an issue or is most of the concern in the State related to water quality issues?
- Is the State able to provide sufficient funding and other resources to partner with the USGS in a joint study program?
- Does the State currently have a permit system in place to regulate access to, and pumping of groundwater?

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER,
Washington, DC, April 3, 2006.

Hon. JOHN KEYS,
Commissioner, Bureau of Reclamation, Department of the Interior, Washington, DC.

DEAR COMMISSIONER KEYS: I would like to take this opportunity to thank you for appearing before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006 to give testimony on S. 1962, S. 2205, and H.R. 3812.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Monday, April 17, 2006.

Thank you in advance for your prompt consideration.

Sincerely,

LISA MURKOWSKI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR MURKOWSKI

Question 1. S. 1962/H.R. 4000—Do you feel that the loss of revenues to the Treasury if this bill were authorized is justified considering the recent hardship faced by the irrigation districts as a result of the drought?

Question 2. H.R. 3812—How is the proposed project's appraisal-level study progressing and when do you anticipate it will be complete?

QUESTIONS FROM SENATOR BINGAMAN

Question 1. S. 1962/H.R. 4000—Your testimony establishes that Reclamation has the authority to deferments with respect to the repayment schedules established by contract, but that grant those deferments do not extend the total time period for repayment.

- What are the types of situations where Reclamation has historically granted deferments?
- Should the deferment authority be amended so that Reclamation has the authority to extend the total time period for repayment?

Question 2. S. 1962/H.R. 4000—Over the past 20 years, how often has legislation similar to S. 1962 been enacted which provides relief to water users from an existing repayment contract?

- Will this bill create a unique precedent, likely to be followed by many similar requests?

Question 3. H.R. 3812—Your testimony indicates that a feasibility study requires the completion of NEPA compliance documents.

- Does Reclamation have a new policy requiring NEPA compliance to be an integral part of its feasibility studies?
- If so, is it an efficient use of limited resources to require a full environmental review while still assessing the technical and financial feasibility of a project?

Question 4. H.R. 3812—According to testimony, the San Joaquin County area is not within the CALFED project area.

- Is it possible, however, that some of the regional water supply projects being reviewed by the CALFED program could address the water supply issues in San Joaquin County?

QUESTIONS FROM SENATOR JOHNSON

Question 1. S. 2205—How much does the Bureau of Reclamation spend to manage the lands acquired for the Pierre Canal and Blunt Reservoir?

Question 2. S. 2205—In your testimony, you state that the Bureau will be still responsible for some administrative fees even if the Blunt Reservoir Bill is enacted. Could you elaborate on the nature of these fees? Do you have an estimate on the total amount of these fees?

Question 3. S. 2205—Can you tell me the difference between the BOR's cost to manage these lands today versus the cost if H.R. 4301 is enacted?

Question 4. S. 2205—When lands are taken out of Federal ownership, are they always disposed of at fair market value? If not, what are the exceptions?

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER,
Washington, DC, April 3, 2006.

Hon. JERRY KRAMBECK,
Mayor, The City of Spearfish, SD.

DEAR MAYOR KRAMBECK: I would like to take this opportunity to thank you for appearing before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006, to give testimony on S. 1577, to facilitate the transfer of Spearfish Hydroelectric Plant Number 1 to the city of Spearfish, South Dakota, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Monday, April 17, 2006.

Thank you in advance for your prompt consideration.

Sincerely,

LISA MURKOWSKI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR MURKOWSKI

Question 1. S. 1577 expresses the sense of Congress that the City should: (1) uphold a 2004 MOA with the Spearfish Canyon Landowners Association and (2) ensure the release of an additional 5—10 cubic feet per second between the Intake Dam and the Spearfish Division.

Please explain the significance of this sense of Congress.

Question 2. You testified that the U.S. Forest Service has determined that the right of way in question remains valid and is fully transferable to the City. Do you have the Forest Service's assessment in writing so we could make that part of the hearing record?

QUESTIONS FROM SENATOR JOHNSON

Question 1. Mayor Krambeck, this project has been in continuous operation since 1912. During these past nearly 100 years, the project has been a clean source of renewable energy, ensured a stable water supply to the City, created recreational opportunities within the City of Spearfish, and supplied water to the D.C. Booth National Historic Fish Hatchery. Although these multiple uses clearly strike a balance in the public interest, in the event that S. 1577 becomes law, do you foresee any operational changes at the project?

Question 2. Mayor Krambeck, now that the City has assumed ownership of this hydroelectric facility, how has it made certain that the project is operated and maintained in a safe and efficient manner? Does the City have the expertise to run this facility?

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER,
Washington, DC, April 3, 2006.

Hon. P. PATRICK LEAHY,
Acting Director, U.S. Geological Survey, Reston, VA.

DEAR MR. LEAHY: I would like to take this opportunity to thank you for sending Ms. Catherine Hill to appear before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006, to give testimony on S. 2054, to direct the Secretary of the Interior to conduct a study of water resources in the State of Vermont.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Monday, April 17, 2006.

Thank you in advance for your prompt consideration.

Sincerely,

LISA MURKOWSKI,
Chairman.

[Enclosure.]

QUESTION FROM SENATOR MURKOWSKI

Question 1. What do you believe would be an appropriate non-Federal cost share for a study of this kind?

QUESTION FROM SENATOR BINGAMAN

Question 1. Your testimony indicates that authorization of the study contemplated in S. 2054 is unnecessary given the existing authorization of the Cooperative Water Program. The President's 2007 budget, however, would cut almost $700,000 in funding for the Cooperative Water Program.

- Without this bill and any specific appropriations that may be provided by Congress, is there any hope of getting significant resources from the USGS to partner with the State of Vermont on this study?
- Has the USGS allocated any of its Cooperative Water Program money to Vermont over the last several years?

Question 2. If S. 2054, as introduced, were enacted into law, would the USGS require a state/local cost-share? How does the USGS interpret the language in S. 1338 (a similar bill for Alaska) with respect to cost-share?

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER,
Washington, DC, April 3, 2006.

Dr. MEL LYTLE,
Water Resources Coordinator, San Joaquin County, Stockton, CA.

DEAR DR. LYTLE: I would like to take this opportunity to thank you for sending Ms. Catherine Hill to appear before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006, to give testimony on H.R. 3812, to authorize the Secretary of the Interior to prepare a feasibility study with respect to the Mokelumne River, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Monday, April 17, 2006.

Thank you in advance for your prompt consideration.

Sincerely,

LISA MURKOWSKI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR MURKOWSKI

Question 1. In your testimony, you mention State and Federal policies that "erode existing supplies" and have "upset new supplies". To which policies are you referring?

Question 2. In your testimony, you state that groundwater recharge is the primary focus of the project. Do you plan to re-inject project water, offset groundwater depletions with project water, or both?

QUESTIONS FROM SENATOR BINGAMAN

Question 1. Your testimony notes that San Joaquin County has been adversely affected by changes in State and Federal policies which have upset longstanding plans to develop new water supplies. Some additional background would be helpful.

- What changes in policies have occurred and how has that impacted the water supply in San Joaquin County?

Question 2. You note that the water project contemplated in H.R. 3812 is not part of the CALFED program.

- Do any of the water supply projects being reviewed as part of the CALFED program have a connection to San Joaquin County, and might they help to address some of the issues described in your testimony?

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
SUBCOMMITTEE ON WATER AND POWER,
Washington, DC, April 3, 2006.

J. MARK ROBINSON,
Director of the Office of Energy Projects, Federal Energy Regulatory Commission, Washington, DC.

DEAR MR. ROBINSON: I would like to take this opportunity to thank you for sending Ms. Catherine Hill to appear before the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 30, 2006, to give testimony on S. 1577, to facilitate the transfer of Spearfish Hydroelectric Plant Number 1 to the city of Spearfish, South Dakota, and for other purposes.

Enclosed herewith please find a list of questions which have been submitted for the record. If possible, I would like to have your response to these questions by Monday, April 17, 2006.

Thank you in advance for your prompt consideration.

Sincerely,

LISA MURKOWSKI,
Chairman.

[Enclosure.]

QUESTIONS FROM SENATOR JOHNSON

First, let me start out by stating that I do believe the licensing and administration of our nation's public hydro-electric plants is an important regulatory tool to

balance the often competing multiple uses of the nation's water resources. Several Senators on the Energy Committee have devoted a good deal of time toward improving the federal license process for nonfederal hydropower plants. That being the case, I believe that the set of circumstances surrounding the small hydroelectric plant in Spearfish are unique and, therefore, provide for a re-examination in this instance of the federal license requirements.

Question 1. It is my understanding that FERC is asserting jurisdiction to require a license on the basis that certain rights-of-way grants and permits, which were issued by the federal government prior to the enactment of the 1920 Federal Power Act, had expired. Is this your argument?

Question 2. Now, I've learned that these fights-of-way grants and permits were not issued by the FERC or that the rights-of-way are administrated by the FERC. In fact, the rights-of way permits are administrated exclusively by the U.S. Forest Service, which recently found that they had not expired, and in fact, were validly transferred from the Homestake Mining Company to the City of Spearfish. In light of these sets of circumstances, don't you believe that FERC is overreaching in asserting jurisdiction, particularly in light of the long-held administration of the rights-of-way by the U.S. Forest Service?

Question 3. Mr. Robinson: I want to ask you a question about the time and cost of licensing this project. I understand that the median amount of time for a hydro re-license applicant is about 64 months from the beginning to the end, and that under the Traditional Process costs average $2.3 million. Who bears the costs for the license? And, in proportion to other hydro projects, what could the City expect in terms of cost and time to license this small, century-old hydro plant?

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF G. THOMAS BARTLETT III, MAYOR, CITY OF GRAFTON, WV

Chairman Murkowski, Ranking Member Johnson, and distinguished members of the Committee: I am pleased to have this opportunity to submit testimony in support of S. 2028, a bill to reinstatement of a license for Federal Energy Regulatory Commission (FERC) project No. 7307. Reinstatement provides the City of Grafton with a renewed opportunity to move ahead on a hydroelectric power plant project at the Tygart Dam just upstream of Grafton on the Tygart Valley River. Our region is in critical need of the economic impact of this project.

I am encouraged and excited to see the critical factors, which would influence the progress of this idea, are joining together in mutual support. I feel much more confident about the prospects of success as compared with the circumstances of this same opportunity when it presented itself several years ago. National Renewable Resources Conemaugh L.P. (NRRC) is currently supported by a management team which encourages involvement in this type of project. The current successful operation by NRRC of a hydroelectric plant in nearby Pennsylvania is a positive influence. The prospect of finding a customer for the electric power produced by this project is more likely now than ever before.

I understand that flow of water during winter pool levels have been considered and NRRC engineering has considered it to be more than adequate for the sustained power levels. Therefore, no changes to the Corps of Engineers current operational procedures are needed. Current generation technology and design will provide for a 20 Megawatt output at minimum flows. This much energy would provide sufficient electricity for 10,000 homes. This project would intrude to a minimum extent on the present dam structure since it would be making use of provisions for hydroelectric power which were built into the dam 70 years ago.

The City will receive regular income from the operation of this project. We look forward to the prospect of supporting community projects with these discretionary funds. Planning responsible and innovative ways of improving our community would be a delightful challenge that I would happily undertake.

Revenues provided to the City from this project could be used to enhance local services to children and the elderly, including the expansion of our local senior citizen center. This senior center provides daily meals to Grafton's elderly but is having a difficult time extending this service to home-bound seniors. Additional funding would help them to support and expand our local meals of wheels program. Further, funds would be used to build a memorial to the Sago mine tragedy—some of the miners lived in our community. In addition, the City has a laundry list of projects that could move ahead with revenues from this project, including: preserving and promoting our International Mother's Day Shrine, preserving the B&O Railroad Station, enhancing our Taylor County Museum, maintaining the local National Cemeteries, and preserving our stately one hundred year old U.S. Post Office. With the discretionary funds that would be received by the City from this project, all these historical treasures could receive the attention that they deserve. People from everywhere would come to see and enjoy these historical treasures in restored splendor. Without this project the City's discretionary budget is minimal and many of these initiatives will go unfunded.

Therefore, I encourage you to support S. 2028 which will reinstate Grafton's FERC license; thus, providing a critical first step toward harnessing a renewable resource for the benefit of all in the region.

As I read the testimony of Jeffery Kossack, President of NRRC, I am pleased to say that I support and concur with his representation of the situation.

We invite you, one and all, to come and join us in the celebration of our 150th birthday during Memorial Day weekend 2006.

STATEMENT OF JEFFERY KOSSACK, PRESIDENT, NATIONAL RENEWABLE RESOURCES CONEMAUGH LP, ON S. 2028

Chairman Murkowski, Ranking Member Johnson, distinguished members of the Committee: I respectfully submit to you this testimony in support of S. 2028, a bill to provide for the reinstatement of a license for Federal Energy Regulatory Commission (FERC) project number 7307. This bill would allow the City of Grafton, West Virginia, to obtain an extension to their license for constructing a hydroelectric facility at the Tygart dam.

As you are no doubt aware, the City of Grafton held a FERC license to develop a plan to make use of this power tunnel for a period of time; unfortunately this license has lapsed. During the time when the City of Grafton's FERC license was valid, the project economics were very tight and it was impossible to secure utility cooperation to make the project work. Long-term interest rates are now lower and the demand for clean fuel sources is now much more robust; both of which now make the project viable. My firm is actively engaged in securing a buyer for electricity produced by the proposed facility, we are confident that such a buyer will be found.

My company, NRR Conemaugh LP, has established an agreement with the City of Grafton to build the hydroelectric facility in question. This project would open and utilize a power tunnel that was built into the Tygart Dam nearly seventy years ago. Unfortunately, the envisioned power resource has remained unused for the entire life of the dam. The dam is in fine working order and water is continually running through the facility. Unsealing the power tunnel would not disrupt the dam's ability to maintain water levels and would not compromise dam integrity. Opening the power tunnel for hydroelectric production and thereby harnessing this resource would provide a clean, safe and efficient energy resource.

The proposed 20 megawatt hydroelectric project would be located immediately below Tygart Dam. The facility would have an annual energy production of 85 gigawatts, on average, which is enough energy fuel a city the size of Grafton. This $45 million project would be completely funded by NRR Conemaugh, which has demonstrated success in hydroelectric production in Pennsylvania.

Our current plan is to finance the Tygart project with approximately 50 percent of our own capital and approximately 50 percent with long-term bank debt. We have already bid out the equipment package and have completed a number of the civil drawings. Project construction could begin within 12 months of FERC license reinstatement. Our company would commit itself to fast tracking this work in order to get the project under way as soon as possible.

My company will take on the entire financial cost of the project and will not request any financial assistance from the City of Grafton, the State of West Virginia or the federal government. In fact, each of these governmental entities would gain significant revenues as a direct result of this project moving forward.

The City of Grafton would receive an annual licensing fee of approximately $300,000 per year for the life of the facility. These funds could be used at the City's discretion. It is my understanding that this revenue source would be the sole source of discretionary spending for the City. Consequently, many City initiatives that are currently unfunded could be undertaken.

Not only would this project have local and regional benefits, but the federal government would receive an annual licensing fee of $200,000 from this project. This fee is not significant in terms of federal spending; but it is not often that Congress is confronted with projects looking to give dollars back to the Treasury.

Passage of this bill would result in approximately 200 construction jobs with a payroll of over $1 million per month during construction. This will prove to be a true economic boom for this region of West Virginia. Our company is committed to utilizing local workforce, contractors and suppliers when able. Further, this project would create a few well-paying permanent jobs at the facility in addition to providing an ongoing regional economic impact of approximately $200,000 per year for the life of the project, which is estimated at 45 years.

This project fits very well into the national energy plan that has been advanced by Congress and has substantial regional support, including that of both of West Virginia's U.S. Senators.

Further, Rep. Alan Mollohan of West Virginia has introduced companion legislation, H.R. 4417, in the House.

With your help in reinstating the City of Grafton's license, I believe that we can make this project a reality. The passage of S. 2028 is a critical first step to making this important project a success. I assure you that if the needed legislation is enacted, our company is totally committed to making this project work.

In conclusion, I respectfully urge the Committee to approve S. 2028. This project is one that will cost the federal government nothing but will have a significant positive economic impact on Grafton and will enhance West Virginia's clean fuel production capabilities.

STATEMENT OF JON GROVEMAN, DIRECTOR AND GENERAL COUNSEL, VERMONT NATURAL RESOURCES COUNCIL WATER PROGRAM, ON S. 2054

My name is Jon Groveman. I am the Water Program Director and the General Counsel for the Vermont Natural Resources Council (VNRC). Founded in 1963 by farmers and foresters, VNRC has over 4,500 dues paying members and 1,500 activists in the state of Vermont, who are dedicated to VNRC's mission of protecting Vermont's environment and our working landscape through research, education and advocacy. Thank you for this opportunity to submit written testimony on 5.2054.

VNRC strongly supports S. 2054. Groundwater protection is currently a critical environmental issue facing the state of Vermont. In a small, rural state like Vermont, most people get their drinking water from individual wells, rather than large public water supplies. For example, the most recent statistics available from the Vermont Agency of Natural Resources indicate that more than 66% of Vermonters are supplied drinking worker directly through groundwater, as opposed to surface water.

Despite the number of Vermonters that rely on groundwater as their primary source of drinking water, Vermonters know very little about the quality and quantity of their groundwater. Unlike our neighboring states of New Hampshire and Maine, Vermont has not undertaken a program to map our groundwater resources. New Hampshire and Maine have received significant assistance from he United States Geological Survey (USGS) to map its geologic and groundwater resources, including financial assistance. There is an intrinsic relationship between geology and groundwater resources. In New England, groundwater is trapped between the spaces of rocks beneath the surface. The quantity and quality of groundwater is directly linked to these geologic formations. Accordingly, federal agencies like the USGS play a key role in helping states understand and protect their groundwater resources.

As a result of their work with the USGS, New Hampshire and Maine have a much better understanding on where its groundwater is located and what the threats to its groundwater resources are than Vermont. S. 2054 would place Vermont on equal footing with its neighboring states by ensuring that the federal government will assist Vermont to inventory and map its groundwater resources. Accordingly, VNRC urges the Committee to pass S. 2054.

STATEMENT OF EARL BRIGGS, RAPID CITY, SD

My name is Earl Briggs, a retired farmer from Hughes Co. near Pierre, S. Dak. I am writing testimony in reference to the Pierre Canal and Blunt Reservoir Conveyance Act (HR-4301) (S-2205) sponsored by (Stephanie Herseth) (Sen. John Thune).

In the mid 1970's the Bureau of Reclamation acquired a strip of land (63 acres) across our farm in Section 26-111-78 (640 acres) for the defunct Oahe Irrigation Project. This was taken against our will by condemnation. The opposition in the irrigation district grew until funding on a 3 year contract (21 miles) after one year was cancelled. I have leased this land from the Bureau since the project was abandoned. All they done on ours is put in two fences and a $350,000.00 culvert across Dry Run Creek.

The Bureau in their negotiations promised us we could irrigate from the canal or they would sell it back to us at purchase price if the project was abandoned, which proved to be a ploy to get possession of the land. We. discovered there was no provisions the Master Contract for canalside irrigation,

In our case we have a strip of land in a S shape, approximately one mile long, (320 rods) and 30 rods wide going through ⅓ pasture and ⅔ farm ground. If this remnant is appraised at its actual value, I believe I could live with that and repurchase as the bill is written.

I do have a problem with the portion of the bill that turns over non-preferential, and preferential lands not purchased to the S. Dak. Game Fish and Parks. For 30 years we have made up the difference in property taxes on nearly 20,000 acres of land. In fact the BOR paid $1.39 per acre in taxes while we paid $6.16 per acre last year.

These lands were all taken by threat of condemnation in the first place, so rightfully they should be put back in private hands and tax roll by auction of non-preferential land, not yet another government entity, The S. Dak. Game Fish and Parks. They keep referring to the mitigation act of 1958 for lands taken by the reservoirs. I don't think Hughes and Sully counties should take the brunt of this ill conceived idea, as this was a whole state issue a half century ago. We raise more wildlife by accident than they do on purpose.

Being 78 years old and renting it to my neighbor for 14 years who is 100%, and rightfully the successor, I very much want to get this resolved before leaving. this earth. This would put this money back into the Gov't coffers from which it came from in the first place.

Hopefully we can get this bill tweaked and passed making me one happy farmer along with my neighbors.

Thank you.

STATEMENT OF THE BOISE-KUNA IRRIGATION DISTRICT, BIG BEND IRRIGATION DISTRICT, NAMPA & MERIDIAN IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT, AND WILDER IRRIGATION DISTRICT, ON S. 2035

SHORT STATEMENT OF NEED FOR LEGISLATION

In the last eighteen months, the Irrigation Districts have twice been poised to begin construction on the Arrowrock Hydroelectric Project. Twice, they have been stymied by the inaction and refusal to act by federal agencies. This legislation is needed so the Districts can salvage the hundreds of thousands of dollars and countless hours of time and energy invested in the Project. Without the legislation, the Project will be lost, along with the opportunity to supply clean, renewable energy from an existing dam, and the opportunity help offset water delivery costs to the farmers of the Boise River Valley. In 2005, Congress passed a landmark Energy Bill designed to encourage development of these clean, renewable power sources. Congress should not permit the agencies' bureaucratic process to thwart this benign Project. The Districts can and will deliver a final Project that meets the highest environmental standards and that coexists with all existing uses of the Boise River reservoir system, including fish and wildlife. They just need the time extension this legislation offers. The Districts are not seeking any federal appropriations for the Project. The Project is supported by a broad range of Idaho and Oregon interests, including an Oregon public power entity which has contracted to purchase the output from this plant. The time is now for this Project.

THE INTERAGENCY CONFLICTS

Five Idaho and Oregon Irrigation Districts hold the FERC license to develop a hydroelectric powerplant at Arrowrock Dam. FERC License No. 4656. In the last eighteen months, their efforts to build this Project have been stymied, not by any lack of diligence or effort on their part, but because of the interactions of two federal agencies—the Fish & Wildlife Service and the Federal Energy Regulatory Commission. The Districts first received. word in January of 2004 that the licensed start of construction deadline for this Project would be March of 2005. They immediately went to work and selected a contractor to design and build the Project. A plan was developed over the course of summer of 2004 to reduce the size of the Project and presented to FERC staff in submissions and in a meeting in FERC's offices in August of 2004. Based on this consultation with FERC staff, the Districts planned to meet the start of construction date by beginning manufacture of the component parts as permitted by Commission precedent and regulations. There was sufficient time in the schedule to meet the deadline.

The Fish & Wildlife Service had been insisting for some time that FERC consult with the Service on this Project under Section 7 of the Endangered Species Act because of the presence of bull trout in Arrowrock Reservoir.[1] FERC had taken the position that there was no new discretionary federal action that required consultation.[2] In 2004, the Service again requested that FERC engage in consultation.[3]

After the Districts' meeting with FERC staff in August of 2004 to discuss the scope of the Project, FERC responded to the Service's request for consultation with a letter requesting the Service's concurrence that the Licensees' proposed modification will not affect or is not likely to adversely affect bull trout or any listed spe-

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[1] FWS Letter April 27, 2001
[2] FERC Letter August 16, 2001
[3] FWS Letter February 25, 2004

cies.[4] The Commission concluded that using of the existing intake structure and existing operations of the dam, the fact that no reservoir draw-down was required and that the Districts' proposed elimination of some transmission lines were all positive benefits and unlikely to affect any listed species. The Commission also noted that Arrowrock Reservoir was no longer under consideration as critical habitat for bull trout. Finally, FERC requested that the Service engage in informal discussions with the Districts to resolve any issues the Service might have.

With the understandings reached with the staff concerning development of the Project to meet the March 2005 start of construction date, the Districts worked diligently with their contractor and had a feasibility study completed by December of 2004, which contemplated the start of construction by fabrication of component parts in March of 2005.[5] The Districts' representative previously met with the Service and provided them with all the information provided to FERC. However, the Service did not act on the FERC's letter until three months had passed. At the end of December 2004, the Fish & Wildlife Service advised FERC and Licensees that it disagreed with the Commission's determination of no affect or not-likely to adversely affect bull trout, and insisted on formal consultation, but stated that it would not be in a position to begin consultation on the Project until the end of March 2005, after the deadline for start of construction.[6] The Service was engaged in a comprehensive consultation which covered multiple species at all Reclamation projects on the Upper Snake River Basin, including Arrowrock Reservoir and wanted to complete that consultation before engaging on this smaller consultation.

Faced with the inability to start construction to meet the deadline because of the Service's stance, the Districts filed a request with FERC to stay the license deadline. The Commission has authority to stay deadlines where the delay is caused by action or inaction of another federal agency. In response to the request for stay, the Service wrote to FERC supporting the stay.[7] The Service advised FERC that the Upper Snake River Basin consultation had recently been completed and that Reclamation's operations would not jeopardize any threatened or endangered species. The Service advised FERC that they had been engaged in informal consultation with the Districts, were cooperating in developing the necessary information, and requested that FERC request formal consultation by June 15, 2005. They anticipated completing formal consultation in sixty (60) days. The Districts continued to consult with the Service, the contractor, and—Reclamation to provide the necessary information for a Biological Opinion.

Despite's the Service's willingness to resolve the ESA issues, the Commission denied the request for stay. 111 FERC ¶ 61,271 (May 27, 2005). In denying the request for stay, the Commission took the position that the changes proposed by the Districts required a preconstruction amendment to the license. The Commission also expressed its skepticism that the Fish & Wildlife Service could complete the consultation in the timeframe it suggested. These conclusions came as a complete surprise to the Districts. They had been operating under the working assumption that, as a result of the meetings with the staff, no preconstruction license amendment was necessary. They were also quite surprised that the Commission had directed the Districts to work with the Service to satisfy the needs to the Service and then the Commission would reject the stay request because it did not believe that the Service would engage in a timely consultation with the Districts as the Service indicated.

Accordingly, the Districts filed a timely motion for rehearing, supplying the Commission with additional evidence of the work that the Service, the contractor, and the Districts had done in moving the Project forward. The Districts also provided significant information about the status of the power sales agreement for the output of this Project. In July of 2005, the Districts filed a supplemental memorandum in support of its petition for rehearing and reconsideration. Later, in July, the Districts advised FERC staff that the informal consultation was completed and that the Service was requesting again that FERC engage in formal consultation. The response of the staff was that they could not even discuss the matter with the Districts because of the motion for rehearing.[8]

The Commission, on September 1, 2005, entered an order denying the motion for rehearing. 112 FERC ¶ 61, 240 (Sept. 1, 2005). The Commission made a number of factual errors in doing so. First, the Commission contended that the staff "clearly informed" the Districts that a preconstruction license amendment was essential for

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[4] FERC Letter September 29, 2004
[5] SSW Feasibility Study December 2004 (excerpts)
[6] FWS Letter December 21, 2004
[7] FWS Letter April 29, 2005
[8] FERC Email July 29, 2005

this Project. This is not correct. After meeting with the staff, the Districts[9] and Licensees[10] both understood that no preconstruction amendment was necessary. Indeed, the Commission issued its. no affect letter to the Service which would have allowed construction to begin in 2005 (if the Service had concurred) and provided information to the Districts and their contractor about how to meet the existing deadline by construction of major component parts. The Districts followed up the August 25, 2004 meeting with a memo to staff in which the Districts stated their understanding that no license amendments would be necessary.[11] The Commission's Order, however, claimed that the Districts were not entitled to rely upon either their meeting with the staff or the previous experience with the Commission in determining whether a license amendment was necessary. *See* 56 FERC ¶ 62, 061 (October 24, 1991) (Districts' Lucky Peak Power Plant Project did not require preconstruction amendments). The Commission's Order contended that the Districts had made no progress towards a power sales agreement. In reaching this conclusion, the Commission ignored information supplied to the Commission that, at the time the Commission made its final ruling, the power sales agreement had been finalized. Yet, the Commission's Order claimed that no progress had been made and that all the Districts had was a draft of a letter of intent. Finally, the Commission contended that the Fish & Wildlife Service was not able to carry out its agreement to consult with the agency and Districts. The Commission's Order ignored the extensive informal consultation between the Licensees and the Service since April 2005 and ignored the fact that the agency was prepared to complete this consultation expeditiously, as soon as the Commission requested formal consultation. The Service even wrote to the Commission on September 1, 2005 again requesting formal consultation and advising that they had everything they needed to complete consultation.[12] In other words, everything was ready, but the Commission chose to believe that the Districts and the Service were not committed-to-the consultation.

These egregious bureaucratic errors will deprive the Districts of the opportunity to build this Project. If allowed to stand, it will deprive the Districts of hundreds of thousands of dollars in investments over the years and will deprive them of the opportunity to provide services to the landowners in the Irrigation Districts. It will deprive Clatskanie PUD of an independent source of power. The Districts urge Congress to pass this legislation. The construction of the Project will provide significant benefits to the nation's energy supply, to the local economy, to the Irrigation Districts and thousands of their patrons, and to a small, publicly owned Oregon Public Utility District, who will utilize the power to supply its customers.

BRIEF DESCRIPTION OF THE PROJECT

The Arrowrock Hydroelectric Project is proposed as a 15 megawatt powerplant built at an existing Bureau of Reclamation dam. The dam is located just east of Boise, Idaho, on the Boise River. The dam was completed in 1918, and the Districts are the major spaceholders for the irrigation water stored behind the dam. No new impoundments will be built. No reservoir draw-downs are required. Existing transmission routes will be utilized. Detailed construction and operation summaries were developed for consultation-with and provided to the Service and other agencies.[13]

The Districts are experienced in building and operating hydroelectric facilities, as they also own, and under contract with the Seattle City Light, operate the Lucky Peak Power Plant Project (FERC Project 2832) immediately downstream of the Arrowrock Hydroelectric Project.

GENERAL BACKGROUND

The Boise-Kuna, Big Bend, Nampa & Meridian, New York and Wilder Irrigation Districts are all public entities formed under the laws of the State of Idaho, and, Big Bend Irrigation District, is formed under the laws of State of Oregon. These Districts hold storage rights to the water held behind the reservoirs on the Boise River, including the Arrowrock Reservoir. The Districts serve 167,000 acres of irrigated farm land in the Boise Valley. Most of the land in these Irrigation Districts is in small farms, with an average size of less than of 100 acres.

The Districts have been diligently trying to develop the hydroelectric resource at Arrowrock Dam for many years. They are the logical entities to develop that resource, since, as the spaceholders of the irrigation water, they control the vast ma-

[9] Kukla Testimony
[10] SSW Letter March 21, 2005
[11] Email to FERC staff September 1, 2004
[12] FWS Letter September 1, 2005
[13] Reservoir Operations & Construction Approach

jority of the water stored behind Arrowrock Dam. The Districts pay the Bureau of Reclamation a significant portion of the Bureau's cost of operation and maintenance of that Dam. Development of the Project over the years has been difficult and beset with problems from the very beginning. Shortly after the license was originally issued in 1989, a severe drought hit the Northwest, including Boise River, making any hydroelectric development of major concern. In the mid-1990s, a listing of anadorous fish downstream in the Columbia and Snake Rivers caused greater uncertainty about the uses to which water would be put in the tributaries above, including on the Boise. Even though there are no anadorous fish in the vicinity of the Arrowrock Dam, or even in the Boise River, the uncertainty about the uses of stored water cause greater uncertainties in the viability of any hydroelectric facility, even one not within the habitat of the listed anadorous species. In 2001, the energy crisis and accompanying volatility of energy prices made a long-term power purchase agreement. difficult or impossible to obtain for a hydroelectric facility with its inherent variability in output. Operational issues concerning the location of the Lucky Peak Reservoir and the Arrowrock Dam, as the Bureau of Reclamation operates the Arrowrock Reservoir and the Lucky Peak Reservoir so as to cause difficulty in maintaining sufficient head between the two reservoirs to insure adequate generation.

In dealing with these various obstacles, the Districts have examined a number of variations on this Project. The Project was originally licensed as a 60 megawatt facility, which would be supplied by drilling large tunnels through the Arrowrock Dam, a concrete structure almost 100 years old. Later, the Districts evaluated a 30 megawatt project. They had a power purchaser willing to purchase the output of a 30 megawatt project but ran into problems when the former developer was not able to deliver the Project for the price that was quoted. Since the spring of 2004, the Districts have been working with Shaw/Stone & Webster, an engineering and construction firm of national prominence in the hydroelectric industry, to develop a project of 15 megawatts. Recent modifications to the Arrowrock outlet works downstream of the dam by the Bureau of Reclamation have created the configuration where the Districts will be able to tie the powerplant into the modified outlet works and use the water that is otherwise being released through the dam by the Bureau of Reclamation without having to drill additional tunnels through the dam. Shaw/Stone & Webster has consulted with Reclamation[14] and completed a feasibility study[6] and updated the study in September 2005[15] The Project is constructible, financeable, and will generate sufficient revenues in power sales to pay for itself over the remaining course of the FERC license. The Districts have entered into a power purchase and sales agreement with an Oregon public power entity, the Clatskanie Peoples-Utilities District, to develop the Project, and for Clatskanie to purchase all of the output of the facility.[16]

Clatskanie PUD sells 1.2 million megawatt hours of electricity yearly to retail customers in northern Columbia County and eastern Clatsop County and to industrial facilities in Bellingham, Washington, and Halsey, Oregon. The output of a 15 megawatt project is, in the view of Clatskanie PUD, a perfect fit for their system, which is otherwise heavily dependent on the Bonneville Power Administration. Clatskanie PUD is a strong supporter of this Project and this legislation.[17,18]

POWER SALES AGREEMENT

The Districts and Clatskanie People's Utility District have executed a Power Purchase and Sale Agreement for all of the output of this Project.[15] In 2005, the Districts negotiated a memorandum of understanding with Clatskanie PUD for the development of the Project.[19] By July, the Irrigation Districts and Clatskanie PUD had completed extensive negotiations on a power purchase agreement. The power purchase and sale agreement was put in final form and approved by the Boards of each of the Irrigation Districts for a vote of the electors of the Irrigation District. The final form was also approved by Clatskanie. In an election held in August of 2005, the voters of the Irrigation Districts overwhelmingly approved the power sales contract with Clatskanie PuD.[20] A two-thirds majority vote was required, and the lowest approval rate of any of the Irrigation Districts was in excess of 75%. One District's (New York) electors unanimously approved the agreement. The Irrigation Districts and Clatskanie were prepared to execute the final agreement in September

[14] SSW email to Reclamation August 26, 2005
[15] SSW Amended Feasibility Study September 2005
[16] Power Purchase & Sale Agreement (executed)
[17] Clatskanie PUD Brochure
[18] Clatskanie PUD Press Release
[19] Clatskanie—Districts MOU
[20] Canvassing Resolutions

of 2005, when FERC untimely denied the petition for rehearing. Even though FERC has refused to permit construction to begin, the Irrigation Districts and Clatskanie PUD believe in this Project so strongly that they recently executed the final agreement approved in the summer of 2005 by the Irrigation Districts' voters and by Clatskanie.[16] A formal signing ceremony of this agreement was held at Arrowrock Dam March 10, 2006 by the parties.[18,21] Clatskanie PUD and the Irrigation Districts have held their first Steering Committee Meeting and will continue to hold regular Steering Committee meetings through the course of the development and construction of the Project.

EXPENDITURES

The Districts and Clatskanie have agreed to share in the future development cost of the Project on a 50/50 basis. Over the years, the Districts have expended in excess of $900,000.00 on this Project.[22] The only way the Districts will recover these expenditures is for the Project to be constructed and begin generating electricity.

FINANCING

The Districts have been working with Lehman Brothers as a bond underwriter for several years in trying to bring this Project online. Lehman Brothers has carefully scrutinized the power sales agreement and determined that the agreement is financeable with Clatskanie as a power purchaser.[23] The Districts have the ability as public entities to issue bonds for the development of this Project. The Districts have the authority under Idaho Code § 43-2301 to sell bonds for the development of a hydroelectric Project as long as the bonds are approved by the voters. Overwhelming voter approval of the bond issuances was obtained in the August 2005.

EPC Contractor

In 2004, the Districts issued requests for proposals for design and construction of the Arrowrock Project. As a result of a rigorous selection process, Shaw/Stone & Webster was determined to offer the best proposal. Shaw/Stone & Webster has prepared two feasibility studies—one in December of 2004,[6] and an amended feasibility study in September 2005.[15] The feasibility studies demonstrate that the Project will generate sufficient electricity to pay the cost of the Project on a project financing basis. Shaw/Stone & Webster remains solidly committed to this Project.[10]

OTHER CONSULTATIONS

Idaho Power conducted an updated system interconnection study of the reduced project generation capacity to 15 megawatts in 2004. This alternative will minimize impact from the Project by significantly reducing power line construction from that authorized by the License. The License authorizes 15 miles of transmission lines. This current plan approved by Idaho Power will allow a tie-in to existing lines at a location only 5 miles from Project No. 4656. Idaho Power confirmed the tie-in and described the interconnection facilities on October 28, 2004.[24] In addition, the transmission line route will upgrade an existing Reclamation line to Arrowrock Dam at no additional cost to Reclamation, so no new power line routes will be required. Line specifications and easement information have been provided to SSW and the Bureau of Reclamation, and are incorporated in the Project plans developed by SSW. In addition to the interconnection studies, Clatskanie has conducted negotiations with Idaho Power on wheeling the output across Idaho Power's transmission system. Idaho Power has also determined there is system capacity for the wheeling to meet Clatskanie's needs.

The Districts also have a valid water license from the Idaho Department of Water Resources for use and generation of electricity.[25] Representatives of the Districts have engaged in consultations with various other agencies, including the Corps of Engineers—the operator of Lucky Peak Reservoir just downstream of the Arrowrock Dam where the powerhouse will be located. The Corps has advised the Districts that no additional consultation will be necessary for placement of the powerhouse, other than a 404 permit.[26] The Districts have engaged in extensive consultation with all of the other agencies and are prepared to complete that consultation as required by the terms of the existing FERC license.

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[21] Photographs (separate file)
[22] Arrowrock Expenditures
[23] Lehman Bros. Letter March 16, 2006
[24] IPCo Interconnection Approval
[25] IDWR Permit
[26] COE Email

Finally, it should be noted that this Project enjoys extensive support. Of course, the Districts' landowners overwhelmingly approved the contract with Clatskanie PUD.[19] Clatskanie is a strong supporter. The Bureau of Reclamation worked with the Districts and the contractor and is committed to finalizing an agreement with the Districts to review and approve the Districts' construction activities as required by the FERC license. The Project is supported by the Idaho Water Users Association, a statewide organization.[27] In addition, the Boise Metro Chamber of Commerce has expressed its support of the Project, and the Chamber's Board unanimously voted to support the Project because of the energy and economic development benefits that the Project will bring.[28]

The Districts have put forth an extensive effort to develop this Project. They have the ability to bring the Project online, with all of the support from the regulatory agencies, the contractor, the power purchaser, and the community at large. The Districts urge Congress to pass this legislation and to allow this clean, renewable hydro project to come online.

STATEMENT OF MIKE D. KUKLA, MEMBER, BOARD OF DIRECTORS OF THE BOISE-KUNA IRRIGATION DISTRICT

I am a director of the Boise-Kuna Irrigation District. I was first elected to the Board of Directors of the Boise-Kuna Irrigation District in 1998. I have served continuously since that time. I have fanned ground in the Boise-Kuna Irrigation District for most of my adult life.

Shortly after my election to the Board of Directors of Boise-Kuna Irrigation District, I was appointed to the Steering Committee for the Lucky Peak Power Plant Project and for the Power Committee which oversees the Arrowrock Hydroelectric Project. The revenues from the Lucky Peak Hydroelectric Project are critical to our District's ability to deliver water to the District's landowners, as the revenues are used to help offset the costs of delivery. The goal of the Irrigation Districts with the Arrowrock Hydroelectric Project would be to provide a similar source of income to help pay costs of the operation of the irrigation delivery system. The Boise-Kuna Irrigation District is a non-profit, governmental entity. All revenues are used for operation and maintenance of the. system.

Boise-Kura Irrigation System is one of five Irrigation District that make up the Boise Project Board of Control. Collectively, these Districts irrigate 167,000 acres of land in the Boise Valley. As fuel costs grow and commodity prices drop, farming is a very difficult business with small margins. Using the power revenues to help keep the costs of delivery of water under control is critical to many of the farmers in our Irrigation District and throughout the Boise Project

As part of my responsibilities with the Power Committee, I have attended all the Power Committee meetings. The Districts have been working very hard over the last several years to build a project at Arrowrock Dam. Many of the difficulties we have experienced have been due to bureaucratic delays in various governmental agencies, particularly with the Fish & Wildlife Service and with the Federal Energy Regulatory Commission.

In March of 2003, we submitted to FERC an application for an extension of time to start construction of the project. FERC did not rule on that request for extension of time until January of 2004, at which time we had a little more than one year left to actually get the project-under construction. The Power Committee met several times a month during 2004 to issue requests for proposals, evaluate and select a new contractor for the project, and to reconfigure the project so that it was economically viable. We also met on a regular basis with potential power purchasers. Of course, those power purchasers needed to be assured that the project could be built and that the regulatory agencies had approved the project.

The Districts selected Shaw Stone & Webster to help them redesign the project to meet the needs of the power purchasers. We worked closely with Shaw Stone & Webster over the course of the summer of 2004 and came up with a project that would significantly reduce the impact of the powerplant by eliminating tunnels through the Arrowrock Darn and to connect into the newly refurbished outlet works on the downstream face of the Dam. Realizing that FERC approval of what we were trying to accomplish was critical and that the deadline for start of construction of March of 2005 was quickly approaching, we scheduled a meeting with the staff of FERC. That meeting took place on August 25, 2004, with approximately six members of the FERC staff. I was present at this meeting, along with our attorney and

[27] IWUA Letter March 6, 2006
[28] Boise Metro Chamber of Commerce Letter March 15, 2006

representatives from Shaw Stone & Webster. We explained the proposal for the project, and had drawings available for review of the new configuration. The new configuration involved placing the powerhouse in the exact same location as the powerhouse for the licensed project. The only significant differences were a reduction in the generation capacity and elimination of a penetration through the Dam. The powerline would follow the licensed route using the existing Bureau of Reclamation powerline right of way, but would not require extension to a substation in Boise because of the reduction output from the smaller facility.

At this meeting, the initial reaction to the proposal from members of the staff was that these changes would require a license amendment, and that a license amendment would require a significant processing time. We discussed at length the schedule for building the project. It did not appear that we could meet the start of construction date for the proposal if a license application would have to have been processed as originally suggested by FERC staff. Accordingly, we began discussing alternatives. From my perspective, I thought we had reached consensus by the time we left the meeting that a license amendment would not he required and that we could meet the start of construction date by start of manufacturing of component parts or "bending of metal." In fact, when we left, the staff agreed to provide the contractor, Shaw Stone & Webster, with information on "bending of metal" as meeting the deadline for start of construction.

The other significant issue related to a potential license amendment was the question of bull trout. Between the time the license was originally issued and the time of the meeting with FER.0 in August 2004, the Fish & Wildlife Service had listed bull trout as a threatened species. The Fish & Wildlife Service had advised us and FERC that the Service insisted on consultation over the operations of the Arrowrock hydroelectric facility. With the modifications to the project eliminating the tunnels through the Dam, it was clear to us at this meeting that the potential for impact to the bull trout in Arrowrock Reservoir from the hydroplant was limited or nonexistent. This was so because the Arrowrock powerplant can only use water that is released for irrigation purposes and has no independent authority to demand water releases. No longer would the releases all go through the powerplant and a separate tunnel, but would go through the existing outlet works. The decision was reached at that meeting by FERC staff that FERC would send a letter to the Fish & Wildlife Service advising the Service that, with the revised configuration of the facility, there would be no effect on the species. A determination that the hydroelectric plant would not affect the species would allow the project to start construction by the March 2005 start of construction date. Therefore, no amendment to the license would be necessary to trigger a Section 7 consultation with the Fish & Wildlife Service because the Service should concur in the no effect determination.

Ultimately, the Fish & Wildlife Service did not agree with the no effect determination, although it took three months for the Service to make that decision. At that time, the Service advised us that it would not even begin consultation on the project until after the deadline for start of construction because of other consultation the Service was conducting. Without approval of the project from the Fish & Wildlife Service, there was no way that the Districts would have been able to issue bonds to fund the project, and the start of construction date was doomed.

The Districts then asked FERC for a stay of the license conditions just to give us sufficient time to complete the consultation with Fish & Wildlife Service, because Fish & Wildlife Service was willing to initiate consultation after March of 2005. FERC turned us down on the stay request asserting that the staff had told us that we were required to amend the license, and, because we had not sought a license amendment, we could not even hope to start construction. This conclusion in the FERC order was a shock to me because it directly contradicted what 1 understood the direction of FERC staff to have been when we left the meeting in August of 2004. We then sought rehearing, and FERC again turned us down. This time, they also asserted we had no hopes of getting Fish & Wildlife Service approval, and that we did not have a real power sales contract in place. Both of these assertions are false. We worked with Fish & Wildlife Service over the course the spring and summer of 2005, and the Fish & Wildlife Service was prepared to, and in fact advised us that they could have issued a biological opinion within as little as thirty days once formal consultation began because of the consultations that we had been engaged with them in advance and because of the previous work that Fish & Wildlife Service had done on Arrowrock Reservoir operations. In addition, FERC totally ignored the fact that we finalized a power sales contract with Clatskanie People's Utility District, and that the Irrigation Districts' voters overwhelmingly approved this contract in elections held in August of 2005. Under our state law, the voters are required to approve any power sales agreements and borrowing money for financing of hydroelectric facilities. A two-thirds majority is required, and each of the

Districts approved that by far more than two-thirds majority. In fact, in Boise-Kuna, the voters approved the contract by an excess of 90% approval.

This vote shows that the Arrowrock Hydroelectric Project is very important to the farmers and landowners of the District. It will provide a tremendous benefit to the landowners at no cost to the federal government. We will provide significant employment in building the project, and we will do our small part in helping to reduce this country's reliance on foreign oil and natural gas and other fossil fuels. On behalf of the people of the Boise-Kuna Irrigation District and all of the farmers and landowners throughout the Boise Project, I strongly urge Congress to pass this legislation.

STATEMENT OF THE CLATSKANIE PEOPLE'S UTILITY DISTRICT

The Clatskanie People's Utility District and five Idaho and Oregon Irrigation Districts recently signed an agreement to jointly develop the 15 megawatt Arrowrock Hydro-Electric Project on the Boise River northeast of Boise, Idaho. Pending extension of the Federal license by Congress, construction could proceed by November of this year, and be completed by 2008.

The Arrowrock Dam, owned by the U.S. Bureau of Reclamation, was built in 1915 and is 353 feet high. When built, it was the highest dam in the world. Water is currently released from Arrowrock Dam with a series of outlet-valves and a spillway.

The project, to be financed by the Boise-Kuna, Nampa & Meridian, New York, Wilder, and Big Bend Irrigation Districts is expected to cost $41 million and produce an average of 81,000 megawatt-hours of electricity per year, which will be purchased by Clatskanie PUD. The project will consist of placing 2—7.5 MW turbines on two existing dam outlets, and reconstructing a 5.5 mile power line to a nearby substation.

"This clean renewable energy project would produce enough electricity to power 5,400 average homes, or about 8% of Clatskanie PUD's current energy needs," according to Greg Booth, General Manager at the PUD. The project has-no anadromous fishery impact and will have very little impact on the environment. "This project will be a long term, low-cost resource for the PUD and, with minimal environmental impact, is as green as it gets," according to Booth.

Clatskanie PUD is a joint owner of the 36 megawatt Wauna Cogeneration Power-Plant and owns the 11 megawatt Alden-Bailey Natural Gas Power Plant.

Clatskanie PUD sells 1.2 million megawatt hours of electricity yearly to retail customers in northern Columbia County and eastern Clatsop County and to industrial facilities in Bellingham, Washington, and Halsey, Oregon. It has annual revenues of approximately $45 million and has the third lowest residential rate in the country.

The Irrigation Districts are also public entities. They own the storage rights to the water behind Arrowrock Dam. The Irrigation Districts supply water to irrigate 167,000 acres in the Boise River Valley and most of the land is farmed in small parcels of less than 160 acres. The Irrigation Districts currently own and operate the 101 megawatt Lucky Peak Hydro-Electric Power Plant located on the Boise River just a few miles downstream from the Arrowrock Dam. The Lucky Peak powerhouse has been operating since 1988.

The voters of the Irrigation Districts overwhelmingly approved the agreement with Clatskanie PUD. "This vote shows that the Arrowrock Hydroelectric Project is very important to the farmers and landowners of the District", according to Mike Kukla, a Director of the Boise-Kuna District and member of the Irrigation Districts' Power Committee. "It will provide a tremendous benefit to the landowners at no cost to the federal government."

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